International tax issues can present significant challenges for a CPA firm. Even the smallest client may provide goods or services outside the United States or use a foreign supplier, sometimes without the CPA even realizing it. For example, such situations may include owning or having signatory authority on foreign bank accounts, owning a foreign entity, being a beneficiary of a foreign trust, or paying a foreign service provider for work performed in the United States. The IRS is aggressively pursuing U.S. companies doing business in foreign jurisdictions and foreign companies doing business in the United States.

REPORT OF FOREIGN BANK AND FINANCIAL ACCOUNTS

Tax practitioners are generally familiar with the responsibility to file a FinCEN Form 114, Report of Foreign Bank and Financial Accounts (FBAR). Clients delinquent in filing required FBARs can be problematic. Consider a situation in which a long-term client never told the CPA about foreign financial interests. The CPA never directly asked the client about the subject; inquiry was limited to an unanswered question in the tax organizer about foreign financial interests. Eventually, after several high-profile FBAR cases are reported in the news media, the CPA asks the client and discovers that for a number of years, the client had signature authority on a foreign bank account. The client consults with a tax attorney and enters the IRS's Offshore Voluntary Disclosure Program to minimize penalties. After entering into a settlement agreement with the IRS, the client sues the CPA for failing to advise of the filing obligations, seeking recovery of the penalties and legal costs.

RISK MANAGEMENT RECOMMENDATIONS

International tax issues are generally complex, subject to interpretation, and affect federal, state, and foreign tax filing obligations. To minimize the risk of experiencing a related professional liability claim, CPAs can use several strategies:

- Educate existing and prospective clients by providing them with access to newsletters and other publications to assist them in identifying issues. The AICPA and others produce newsletters designed for use by clients, such as the CPA Client Tax Letter.
- Complete continuing professional education (CPE) relevant to client industries. The AICPA, state CPA societies, and for-profit CPE providers offer educational
courses and other materials on international tax. Consider completing a graduate-level class in international tax. Read newsletters published by the AICPA and others to increase awareness of emerging international tax issues.

- Engagement letters for tax compliance clients should clearly identify the specific tax returns your firm has been engaged to prepare, including any FBARs or other foreign reporting requirements. In addition, engagement letters should indicate that federal, state, local, and foreign tax filing and reporting obligations vary, and that your firm is available for consultation regarding these obligations.

- When engaged to consult on foreign tax filing and reporting obligations, obtain a signed engagement letter specifying the scope of services. Interview the client and ask about activities conducted both overseas and with foreign businesses in the United States. Consider reviewing the client’s website and other published materials for information about where and how business is conducted.

- Consider creating a “script” that firm members can use when interviewing clients regarding foreign filing and reporting obligations. For example, an inquiry limited to asking, “Do you have any foreign accounts?” is incomplete, as the client may not realize that having signature authority requires disclosure.

- Document information obtained in client discussions, research conducted, and conclusions reached in a memo or email to the client and retained in the workpapers. Consider requiring clients to sign off on the nonexistence or completeness of disclosures regarding foreign bank accounts and other foreign activity, in addition to the U.S. activity of any foreign corporations they own or operate.

- If your firm lacks experience in international taxation, consider consulting with other firms knowledgeable in this area when such matters arise. Engage the client in a frank discussion regarding filing obligations and your firm’s limited experience. While you may be able to render some services, it may be necessary for the client to engage a more-experienced firm. Even when providing limited services based on the recommendations of more-experienced practitioners, perform independent research to verify the advice provided.

- Consider the need to disengage. Sometimes, a client’s needs exceed the CPA firm’s capabilities and ability to access expertise. When disengaging, send the client a termination letter, explaining what the client should discuss with the successor CPA firm.

A proactive approach to addressing potential international tax matters can assist CPA firms in minimizing potential exposure in this complex arena.

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