

THERE'S NO PLACE LIKE HOME... ESPECIALLY FOR YOUR BANK ACCOUNTS

BY GARY ALTMAN, ESQ. AND MICHAEL WOLSH, ESQ.

Of course, there are many reasons one might open a bank account in another country - saving on fees while traveling, having a place to deposit income earned abroad, or sharing an account with a relative living in another country are a few examples. Furthermore, with so many banks having branches all over the world, it is easy to think that there would be no problems with administering a foreign account from the United States. However, improperly managed/accounted for, such accounts can become a tax and estate planning disaster.

When in Rome...Do as the IRS Tells You to Do

Let's start with probably the most underestimated challenge of having a foreign-housed bank account: reporting. If you or a loved one have a financial interest in or signature authority over a foreign financial account, including a bank account, brokerage account, mutual fund, trust, or other type of foreign financial account, the Bank Secrecy Act may require you file an annual Report of Foreign Bank and Financial Accounts (FBAR).

Since FBAR became law in 2008, the US Government has been using it to identify persons who may be using foreign financial accounts to circumvent US law. Tracking down and penalizing people who have been, intentionally or not, non-compliant with the law has also been a priority of the IRS and the penalties are stiff.

Per the IRS web site:

"United States persons are required to file an FBAR if:

1. The United States person had a financial interest in or signature authority over at least one financial account located outside of the United States; and
2. The aggregate value of all foreign financial accounts exceeded \$10,000 at any time during the calendar year to be reported."

Not sure if you they're talking to you? By "United States person", they mean: United States citizens; United States residents; entities,

including but not limited to, corporations, partnerships, or limited liability companies created or organized in the United States or under the laws of the United States; and, last, but not least, trusts or estates formed under the laws of the United States, which leads me to the next complication...

How Do You Say "Probate" in Italian?

A primary factor that motivates our clients to work on their estate plan is so that their heirs can avoid probate. We can almost always advise our clients, as well as draft the right documents, so that their assets will transfer free of probate after they pass. However, that careful planning can be disrupted if a client opens a financial account in another country because foreign financial institutions often require the client to probate those foreign assets in the jurisdiction in which the account was opened.

All too often, someone will pass away before closing or settling a foreign account they may have opened. Thus, not only do the client's heirs not avoid probate, but in order to get the assets in the foreign account, the heirs are also forced to endure probate in another country, thereby subjected to that country's laws and legal system. This result occurs because most banks, even the ones with branches all over the world, will not allow the bank account to be closed from any other country other than the one it in which it was opened. This leaves heirs to travel to the country to probate their relative's assets in the account, which can require hiring a foreign attorney and, quite possibly, a translator; all this is a large expenditure of time and money. *(In one case, I actually had to hire a translator for a case where one of my client's had an account with a Hungarian branch of Bank of America!)*

The Bottom Line?

Managing a foreign financial account is tricky enough when the account-holder is alive. Factor in death, lack of proper planning, foreign laws and heirs and what you have is a huge mess. It is not imperative that you to be aware of all of the pitfalls; rather, it is important for you to discuss your financial actions, even if they seem benign, with your advisors. Like all estate planning, it is better for you to make the right decisions now, so your heirs aren't left having to sort out issues later.

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