

THE PITFALLS OF “FOREIGN” US TAX COMPLIANCE

Iain Younger
Frank Hirth plc



FRANK HIRTH PLC – WHO WE ARE



We are experts in international taxation. Since 1975, we have been helping clients by providing tax and accounting services across borders.

With a specialist team that spans both sides of the Atlantic, we offer a wealth of experience and knowledge to assist you, your family and your business with all your tax obligations in the UK, US and other global jurisdictions, in the most efficient way possible.

Using our industry expertise we will guide you through the process of managing your tax obligations in a smarter way. And you can rest assured that as your opportunities grow and the tax issues multiply, we have the resources to help you.

PRACTICAL COMPLIANCE AND RELATED ISSUES

FOCUS ON FOREIGN INFORMATION REPORTING

- FINCEN 114 (FOREIGN BANK ACCOUNT REPORT)
- FORM 8938 (DISCLOSURE OF SPECIFIED FOREIGN FINANCIAL ASSETS)
- DISCLOSURE OF GIFTS FROM NON-US PERSONS
- SUBSTANTIAL PENALTIES FOR NON-COMPLIANCE (OUTSIDE “STREAMLINED” FILING PROCEDURES)

PRACTICAL COMPLIANCE AND RELATED ISSUES

FOREIGN TRUST REPORTING:

- FOREIGN NON-GRANTOR TRUST
- FOREIGN GRANTOR TRUST

FOREIGN CORPORATE REPORTING:

- CONTROLLED FOREIGN CORPORATIONS

FOREIGN NON-GRANTOR TRUST

ATTRIBUTION OF UNDERLYING ASSETS TO US BENEFICIARIES:

- PASSIVE FOREIGN INVESTMENT COMPANIES
- CONTROLLED FOREIGN CORPORATIONS
- FACTS & CIRCUMSTANCES!!!
- FORM 8621 / 5471 / FBAR

FOREIGN NON-GRANTOR TRUST

“ACTUAL” METHOD:

- ESTABLISHING UNDISTRIBUTED NET INCOME
- ADEQUATE INFORMATION TO PROVIDE FOREIGN NON-GRANTOR TRUST BENEFICIARY STATEMENT

FOREIGN NON-GRANTOR TRUST

FORM 3520:

- FULL DISCLOSURE OF BENEFIT RECEIVED
- ATTACH FNGTBS OR “DEFAULT”
- PENALTIES – 35% OF BENEFIT RECEIVED
(MINIMUM \$10,000)
- DUE DATE FOLLOWS FORM 1040

FOREIGN GRANTOR TRUST

- LACK OF PLANNING (IMPACT OF IRC. S.679)
- UNDERLYING INVESTMENTS (PFICS & CFC'S)
- FORM 8621 / FORM 5471 / FBAR

FOREIGN GRANTOR TRUST

FORM 3520-A:

- FULL DISCLOSURE OF US TAX BASIS INCOME/GAINS/EXPENSES
- GROSS BALANCE SHEET (AS AT YEAR END)
- DISCLOSURE OF DISTRIBUTIONS

FOREIGN GRANTOR TRUST

FORM 3520-A:

- DUE DATE: MARCH 15 (ASSUMING CALENDAR YEAR)
- FORM 7004 – EXT REQUEST TO SEPT 15
- PENALTIES – 5% OF GROSS BALANCE SHEET ASSETS (MINIMUM \$10,000)

FOREIGN GRANTOR TRUST

FORM 3520:

- US SETTLOR – DISCLOSE CONTRIBUTIONS (PART I) AND ONGOING OWNERSHIP (PART II)
- ATTACH FOREIGN GRANTOR TRUST OWNER STATEMENT (FROM 3520-A)
- US BENEFICIARY – DISCLOSE DISTRIBUTIONS
- ATTACH FOREIGN GRANTOR TRUST BENEFICIARY STATEMENT (FROM 3520-A)

FOREIGN GRANTOR TRUST

FORM 3520 – SETTLOR:

PENALTIES (DEPENDENT ON BASIS FOR FILING):

- 35% OF CONTRIBUTION TO BE TO BE DISCLOSED (MINIMUM \$10,000)
- REPORTING OWNERSHIP – INTERACTION WITH 3520-A PENALTIES

FOREIGN GRANTOR TRUST

FORM 3520 – BENEFICIARY:

- 35% OF DISTRIBUTION TO BE TO BE DISCLOSED (MINIMUM \$10,000)

CONTROLLED FOREIGN CORPORATION

FORM 5471:

- DISCLOSE ACQUISITION OF INTEREST
- ONGOING INTEREST IN A CFC (ANNUAL REPORTING)
- ABILITY TO “PIGGY BACK” REPORTING
- TRACKING US TAX BASIS INCOME
- CALCULATION OF SUB-PART F INCOME
- FILED WITH INCOME TAX RETURN
- PENALTIES - \$10,000

CONTROLLED FOREIGN CORPORATION

COMPLIANCE ISSUES:

- ATTRIBUTION OF FAMILY MEMBERS INTEREST (INCLUDING NRA'S)
- ATTRIBUTION OF UNDERLYING ASSETS
- HISTORICAL TRACKING OF E&P
- FORM 926 / FBAR

DISREGARDED ENTITIES

FORM 8858:

- DISCLOSE ACQUISITION OF INTEREST IN DRE
- ANNUAL REPORTING
- ABILITY TO “PIGGY BACK” REPORTING
- TRUNCATED FINANCIAL INFORMATION
- AS DRE, INCOME / GAINS FLOW TO OWNER
- FILED WITH TAX RETURN
- PENALTIES – \$10,000

COMPLIANCE ISSUES:

- WHO FILES?
- “FULL” US TAX CALCULATIONS REQUIRED
- TRACKING OF BASIS AND E&P
- FBAR / FORM 8938

CONTROLLED FOREIGN PARTNERSHIPS

FORM 8865:

- DISCLOSURE OF INTEREST IN CFP
- ABILITY TO “PIGGY BACK” REPORTING IF CONTROLLING PARTNER
- FULL FINANCIAL INFORMATION
- AS PARTNERSHIP, INCOME / GAINS FLOW TO TAX OWNER
- FILED WITH TAX RETURN BY THE PARTNER, NOT THE ENTITY
- PENALTIES – \$10,000

COMPLIANCE ISSUES:

- WHO FILES?
- MINORITY INTEREST WITH NO CONTROL?
- “FULL” REPORTING REQUIRED
- OVERLAP WITH 1065 WHEN CFP HAS US ECI
- TRACKING OF BASIS AND INCOME
- FBAR / FORM 8938