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Navigating Foreign Pension Plans

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Pension plans are a common investment tool for individuals. The reporting requirements for most U.S. pension plans are straightforward; however, foreign pension plans may have additional filing requirements that are not readily apparent.

The individual owners of foreign pension plans may be required to file a Form 3520-A (Annual Information Return of Foreign Trust with a U.S. Owner), Form 3520 (Annual Return To Report Transactions with Foreign Trusts and Receipt of Certain Foreign Gifts), Form 8621 (Information Return by a Shareholder of a Passive Foreign Investment Company or Qualified Electing Fund), and/or FinCEN Form 114 (Report of Foreign Bank and Financial Accounts), depending on the facts and circumstances of the investment.

A foreign pension plan may be viewed as a foreign grantor trust if the investor has a certain level of control over the investments and distributions, which would trigger a Form 3520-A requirement. The penalty for not filing Form 3520-A is the greater of $10,000 or 5% of the gross value of the portion of the foreign trust's assets treated as owned by a U.S. person under the grantor trust rules.

The owner of a pension plan considered a foreign grantor trust must file Form 3520. The penalty for not filing Form 3520 is the greater of $10,000 or 35% of the gross value of any property transferred or distributed.

A pension plan may be deemed a Passive Foreign Investment Company (PFIC) if the taxpayer invests (directly or indirectly) in a company in which 75% or more of gross income is passive income, or the average percentage of assets that produce passive income, or which are held for the production of passive income, during the taxable year is at least 50%. This investment would trigger a Form 8621 filing, and the investment would be subject to PFIC rules, which are very harsh.

All pension plans must also appear on a Report of Foreign Bank and Financial Accounts (“FBAR”) if the plan is held in a segregated retirement account (assuming the taxpayer’s accumulated account balances exceed $10,000). The penalty for not filing an FBAR is $12,921 if non-willful, and the greater of $129,210 or 50% of the account if willful.

Navigating compliance and avoiding penalties, which may arise on self-created plans, employer plans, or government plans, is complicated. What may seem like a simple distribution pick up may actually be a complex tax matter with possible exposure to potentially high penalties

For further information please contact:

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