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Transparency Law 9416 and IRS Form 5471

By Garland M. Baker
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The panic continues for those with a company, association, trust or other legal entity in Costa Rica that is required to file a shareholders and beneficial owners report with the Central Bank, as mandated by Law 9416.

Unbeknownst to most American expats, they have another problem, IRS Form 5471. In a month's worth of interviews with many U.S. citizens who are the owners of companies in Costa Rica, only three people could be found who file the required form. The U.S. fine for not doing so is \$10,000 per instance.

For those late to the show, a summary of Law 9416 and how to file the information with the government can be found by reading, "[Time to fess up or pay up!](#)," "[How to register for Law 9416](#)," and "[How to fill out transparency forms](#)."

The law is designed to harvest data on ownership to catch tax dodgers, drug dealers and terrorists, but not just in Costa Rica, internationally. The crux is that the information will inevitably be shared with other authorities throughout the world.

What does Costa Rica Law 9416 and filing the shareholders and beneficial owners report with the Banco Central have to do with IRS Form 5471? It is called transparency! It means interchanging information. Sharing data with other countries keeps Costa Rica in good standing with its international brotherhood, which, in turn, lets it borrow more money.



Most U.S. citizens and residents who are officers, directors, or shareholders in a foreign corporation need to file Form 5471 and its schedules to satisfy the reporting requirements of sections 6038 and 6046, and the related regulations of the U.S. Internal Revenue Code.

It is only a matter of time before the Costa Rica's tax department shares the information it captures at the Central Bank with other governments, including the United States. What happens next is that those countries cross-reference the data they collect internally to see who is hiding money and assets overseas. The U.S. has Form 5471 for U.S. citizens to

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disclose their offshore interests. Other countries have similar reporting requirements.

Expats of all nationalities with investments out of their country should check with their respective tax legislation to stay friendly with their country and avoid getting caught by not reporting something.

Most Americans just do not know about Form 5471, and it is complicated to fill out correctly. Harder yet, the form must be physically mailed using the U.S. Postal Service and cannot be done online. One retired expat said in an interview, "... I schedule a trip back to the U.S. around tax time each year, so I can put Form 5471 along with my income tax return in the mail as required by law." In addition, the form must accompany a personal return and cannot be mailed separately. Not doing things properly leaves a person liable for the same fines as if the form were not filed at all.

What should U.S. citizens do if they have not filed their form and own stock in a company outside the United States? They should contact a tax professional. There are ways to mitigate penalties for not filing, if done correctly. Many expats own dormant or inactive companies to hold property. The IRS wants to know about them too, but are more interested in foreign entities earning income and the shareholders not paying their share to the U.S. government.

The final deadline for filing the shareholders and beneficial owners report with the Central Bank of Costa Rica is Jan. 31. The penalties for not filing are bank breaking: The minimum fine is three basic salaries or 1,338,600 colons (an estimated \$2,400) up to a maximum fine of 44,620,000 colons (an estimated \$80,000).

Most people want to do the right thing and pay their taxes. Expats dislike Law 9416 because it is an invasion of privacy but have accepted the fact that they have to file the reports. The big problem is they are having a hard time doing so for the following reasons:

- All the information at the Central Bank is in Spanish.
- Only Costa Rican citizens and residents with a DIMEX card can access the system. They also must have a digital signature.
- It is virtually impossible to get the digital signature setup by the deadline of Jan. 31 because the places that issue the document are backlogged months.
- Filing is limited to presidents, managers, administrators, and trustees.
- The questions asked in the registration process are cryptic and not understood by most people.
- Legal professionals are charging a fortune to help others with fees ranging from \$250 to over a \$1,000.

Do not count on an extension like in March. The government wants the information badly so it can start with crunching the numbers. It is referred to as big data analytics, which boils down to the same thing, cross-checking to find inconsistencies.

The best advice is not to wait until the very last minute, shop prices between legal professionals, do not succumb to price gouging, and, if at all possible, try to file personally with assistance from a knowledgeable person.

Fourteen years ago, this writer wrote about a [phantom named Transparency](#) and warned everyone he was whittling his way into the republic. Well, he is here, in full force, and Law 9416 is its beacon.

Editor's note: Garland M. Baker is a 47-year resident and naturalized citizen of Costa Rica. His team solves problems for expats. Reach him at info@crexpertise.net. Baker has undertaken the research leading to his articles with A.M. Costa Rica. Find the collection at crexpertise.info. A free reprint is available at the end of each piece. Copyright 2019. Use without permission prohibited.

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