

## **Uncle Sam Wants You and Your Foreign Bank Accounts**

The United States taxes its citizens and residents on a worldwide basis. So any U.S. citizen or resident (person or company) must pay taxes on its worldwide income. Furthermore, such people and companies have for a longtime been required to disclose foreign bank accounts when filing their annual tax returns. However, until recently, many people simply never thought to disclose these accounts. Penalties were low and not criminal, and the non-disclosure failures seemed not to have had high priority with the Internal Revenue Service (I.R.S.).

Several highly publicized stories changed the situation. In June 2008 a banker at UBS Switzerland pled guilty to conspiring to defraud the IRS by helping U.S. taxpayers avoid IRS reporting requirements. The banker claimed that UBS was managing approximately \$20 billion in offshore accounts for U.S. taxpayers. This resulted in UBS being forced into a settlement requiring its disclosure of 4,450 bank accounts to the I.R.S.

A month later, the U.S. Government accused LGT Bank of Liechtenstein of promoting tax evasion through the use of fake trusts and shell companies. This affair was especially embarrassing to the Lichtenstein royal family who own LGT. Reports have surfaced of an expanded inquiry by the IRS into Credit Suisse and HSBC. A similar interest may also exist with the IRS as to Israeli accounts held by US citizens, which would not be surprising given the fact that many Israeli banks have been providing services to U.S. residents.

Seeking to put their hands on money held in foreign banks, the I.R.S., armed with serious criminal and civil penalties, strengthened the foreign bank account reporting requirements ("FBAR"), hired another 400 revenue agents and aggressively went after the holders of non-disclosed foreign assets, bank accounts and the foreign banks assisting them.

FBAR regulations require any United States person who has a financial interest in or signature authority over any financial account in a foreign country, to disclose it if the aggregate value of such account exceeds \$10,000 at any time during the calendar year. To clarify, a U.S. person is a citizen or resident of the United States, and any form of entity established in the U.S. FBAR regulations also govern foreign persons or entities doing business in the United States. Thus, FBAR includes U.S. citizens living in Israel, and Israeli companies doing business in the United States. Accountants and tax preparers may face liabilities as well, both from the US government and from their own clients, should they have failed to use reasonable care in preparing their tax returns.

A Financial Interest includes cash, securities, interests in real property or precious metals such as gold or silver. FBAR applies to any account in which a U.S. person has an interest or over which such person has signatory authority. FBAR applies even to cases where a U.S. Person has a power of attorney over the accounts of his/her elderly parents, even though no such power is ever exercised. Whether FBAR applies to all the accounts of an Israeli company doing business in the U.S., or just to some, is open to interpretation.

The penalties for non-compliance border on draconian. Anyone with a foreign account who does not report can be subject to criminal penalties and civil penalties. The criminal penalties are a maximum of \$250,000, or five years in prison, or both. Even if no criminal tax penalties are imposed the civil tax penalties are stunningly expensive and are the greater of \$100,000, or 50 percent of the entire balance in the account.

What to do? Seeking to allow taxpayers to come forward voluntarily, the IRS established an Amnesty program. Under it, a taxpayer could avoid criminal prosecution and civil fraud penalties by voluntarily disclosing true and complete information, and making payment, by October 15, 2009. Did it make sense to file for Amnesty? You decide. In the case of a taxpayer with a foreign bank account of \$1,000,000 that has earned \$50,000 in interest since 2003, under the Amnesty, the tax due would be \$386,000 plus interest. That person, by failing to apply for Amnesty, could incur taxes, penalties and interest of well in excess of \$2.3 million. If the IRS determined that the non-reporting was due to fraud, the amount would be much higher. This is in addition to potential criminal liability.

Now that the deadline for Amnesty has passed, is it too late to come forward? No. The IRS recently reported that 14,700 individuals voluntarily came forward before the Amnesty deadline, but that many of the disclosures were not complete. In a recent informal meeting between the I.R.S. and U.S. tax professionals a senior official with the IRS Criminal Investigations division indicated that taxpayers could still disclose and avoid criminal prosecution if there were no real intent to evade tax. Thus taxpayers (whether living in Israel or the U.S.) may still be able to enjoy the Amnesty if the funds held in Israeli (or other foreign) bank accounts have their source in gift or inheritance or passive Israel-source income. In such cases, it is easier to claim that there was no actual intent to evade tax. However, if the source of the funds is undeclared U.S.-sourced earned income, the situation is more complex.

As the U.S. Government has limited resources to pursue these cases, the IRS revealed new details about the terms of the U.S.-UBS settlement and where the IRS priorities are in dealing with offshore accounts. The IRS is particularly looking for large account balances or evidence of concealment. In a secret annex to the US-Swiss agreement, UBS is required to disclose U.S. person accounts holding \$1,000,000, or as low as \$250,000 where there is evidence of "tax fraud or the like." For example, if the taxpayer established the account in the name of an offshore trust or corporation, UBS would be required to disclose the account. The IRS views the use of such entities as evidence of intent to conceal an account, and is putting a priority on pursuing such taxpayers.

In summary, the I.R.S. has become more aggressive in pursuing undisclosed foreign bank accounts and the failure to report the same can result in serious criminal and civil liability. While the October 15th Amnesty deadline to disclose has passed, in many cases, a U.S. Person can still effect disclosure and benefit from some of the leniency included in the Amnesty program. This is more likely available in those cases where prior failure was the result of ignorance of the law and where there has been no intentional tax fraud or evasion.

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