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Offshore Tax Evasion:
IRS Offshore Voluntary Disclosure Program

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Introduction

Since 2008, U.S. prosecutors have charged at least 86 people in their crackdown on offshore tax evasion including: two dozen bankers, lawyers and advisors. An additional 39,000 Americans have sought to avoid prosecution by entering into the IRS Offshore Voluntary Disclosure Program. To date, the IRS has offered three offshore voluntary disclosure programs:

2009 OVDP (3/23/09-10/15/09);

2011 OVDI (2/8/11-9/9/11);

2012 OVDP (commencing January 2012, no deadline).

In an April 26, 2013 report, the U.S. Government Accountability Office (GAO) revealed the IRS OVDP program has received more than $5.5 billion, as of 12/31/12, a “fraction” of the $100 billion in taxes lost per year from offshore tax evasion, reported by the 2006 U.S. Senate Permanent Subcommittee on Investigations (Chair, Senator Carl Levin) whose report stated that $1.6 trillion in undisclosed U.S. taxpayer assets reposed offshore, with unreported income, depriving the U.S. Treasury of $100 billion per year in lost taxes.

According to Senator Levin: “Offshore tax evasion produces an estimated $100 billion in unpaid taxes each year. It is long past time to collect these taxes and stop the tax dodgers from off-loading their tax burden onto the backs of honest Americans.”

For those U.S. taxpayers considering the IRS 2012 OVDP, under the IRS program they would be subject to:

1) Filing amended form 1040(x) federal income tax returns (and state tax returns) for the voluntary disclosure period, which is the most recent 8 tax years for which the due date has already passed.

2) Payment in full of tax, interest and penalties.

3) Total penalties up to 70% of unpaid tax, plus 27.5% of value of assets (total): aggregated foreign accounts and foreign assets (for the highest year’s aggregate value during the period covered by the voluntary disclosure).

4) **If the IRS “package terms” (i.e. the IRS penalties) are not acceptable to the taxpayer, the case will be subject to IRS audit examination and all applicable penalties will be imposed.**

Chapter 1
IRS Voluntary Disclosure – Foreign Tax Havens

In the 1990s, foreign tax havens greatly increased offshore tax evasions for U.S. taxpayers by use of undisclosed bank accounts, offshore credit/debit cards and money laundering.

In 1996, a cable piracy investigation by the FBI uncovered money laundering resulting in a tax evasion investigation into the Cayman Islands banking system.

In 1999, John Matthewson pleaded guilty to money laundering which led to an IRS investigation into offshore tax evasion involving credit cards issued by offshore banks to U.S. taxpayers. During 2000-2002, the IRS obtained "John Doe" summons against major credit card companies (i.e. American Express, Visa and MasterCard), and over 100 businesses in an effort to identify U.S. taxpayers evading taxes.

According to IRS (I.R.M. Sec. 25.5.7.2), a "John Doe Summons" is any summons where the name of the taxpayer under investigation is unknown and not specifically identified.

In January 2003, the IRS announced its Offshore Voluntary Compliance Initiative; for U.S. taxpayers who had committed tax evasion, this allowed them to pay back taxes, interest and penalties but avoid civil fraud and information return penalties and criminal penalties. In July 2003, the IRS reported the initiative netted $75m in taxes.

For many years, Switzerland was a tax haven for U.S. taxpayers who kept their income undisclosed to the IRS. Swiss banks provided financial secrecy for their U.S. clients by not disclosing account ownership information to the IRS and/or creating "fictitious foreign entities" as the account owners.

In 2001, Swiss Bank, UBS signed an agreement to be part of the U.S. Qualified Intermediary Program which allows a foreign financial institution to enter into an IRS agreement to "assume documentation and withholding responsibilities in exchange for simplified information reporting for foreign account holders and the ability not to disclose proprietary account holders' information to a withholding agent that may be a competitor." When the IRS became aware that UBS was not reporting account information, the IRS and Department of Justice began a criminal investigation of UBS in 2004.

In the spring of 2007, Swiss banker Bradley Birkenfeld informed the U.S. government of a conspiracy between UBS and its bank clients to keep financial account information secret from the IRS. He provided the IRS with detailed information including cell phone numbers, email addresses and names of U.S. hotels used by UBS salesmen. Birkenfeld's evidence that UBS hid $20B in assets of U.S. taxpayers in undeclared accounts and that UBS had assisted them in concealing their identities by investing in sham entities and filing false IRS forms became the basis for a federal judge in Miami on July 1, 2008,

authorizing the IRS to issue a “John Doe” summons on UBS to obtain the names of the U.S. taxpayers with hidden accounts at UBS.

In 2009, UBS entered into a deferred prosecution agreement with the US/DOJ, in which it admitted that it participated in a scheme to assist U.S. taxpayers in hiding accounts from the IRS and agreed to disclose the identities of 4,735 U.S. taxpayers (out of 52,000 U.S. accounts), their account information and pay a $780M fine.

On 8/21/09, Birkenfeld pled guilty to a single count of assisting a U.S. billionaire real estate developer evade paying $7.2M in taxes and was sentenced to 40 months in prison. At Birkenfeld’s sentencing, the U.S. prosecutor admitted: “Without Mr. Birkenfeld…I doubt …that this massive fraud scheme would have been discovered by the U.S. government.

Chapter 2
IRS Revocation of Offshore Voluntary Disclosure

In March 2013, media outlets (e.g. Reuters, Accounting Today) disclosed that the IRS has revoked the Voluntary Disclosure Program for many U.S. taxpayers (including dozens of U.S. taxpayers with accounts at Bank Leumi in Israel).

The IRS has expanded their investigation into U.S. taxpayers with Undisclosed Offshore Accounts (unreported income), "widening the net" from Switzerland to now include: Israel, India, Hong Kong and Singapore. Previously, IRS investigation has led to prosecution of two Swiss Banks: UBS (who paid a $780m fine and disclosed 4735 U.S. taxpayers with undisclosed offshore accounts), Wegelin Bank (Switzerland's oldest bank, since 1741) pled guilty to a felony (i.e., conspiracy to commit tax evasion) paid $74m in fines and penalties, and is going out of business. They are the first Swiss bank to plead guilty to a felony for "tax evasion'. Their Managing Director, Otto Bruderer, publicly stated in New York Federal District Court that "The Swiss Banking Industry is based on tax evasion."

For those U.S. taxpayers with undisclosed offshore accounts (and unreported income) in 2009 and 2011, the IRS created the Offshore Voluntary Disclosure Program ("OVD") for U.S. taxpayers to "clean up their tax evasion" by filing amended tax returns, paying penalties and interest to avoid harsh civil and criminal penalties. The 2009 and 2011 OVD netted over $4.4 billion in back taxes, including more than 30,000 U.S. taxpayers. Since 2012, a new OVD program is open to U.S. taxpayers.

The IRS disqualification of U.S. taxpayer participants in the OVD program has both criminal and civil implications for those disqualified. Prominent criminal tax attorney Sanford Passman, Esq. explained that there is no "immunity" for those entering the IRS OVD program so all the evidence submitted in support of the U.S. taxpayer OVD may be used by the IRS for both civil and criminal prosecutions.

For those U.S. taxpayers, with either undisclosed offshore bank accounts, unreported income or who were disqualified from the IRS OVD program, they should immediately seek legal counsel and prepare their own due diligence "checklist" in order to present their evidence to legal counsel to evaluate their civil and criminal tax issues.

For those U.S. taxpayers who participated in the IRS OVD, based upon advice of counsel, they now find themselves in a precarious position. They disclosed (previously undisclosed) foreign bank accounts, unreported income and, in some cases, both filed amended tax returns and paid taxes, all without any IRS release from either civil liability or criminal liability (i.e. the evidence was disclosed, taxes were paid without any settlement or release agreement with the IRS). Now the very evidence that the U.S. taxpayers submitted in support of a settlement and release agreement with the IRS under the OVD, may be used against them for both civil fraud and criminal tax evasion.

Certain tax attorneys have stated that the OVD was “a trap by the IRS” to uncover the foreign banks that were facilitating U.S. tax evasion by establishing their unreported, undisclosed foreign bank accounts.

Clients who filed the OVD application and submitted evidence without the benefit of either “immunity” from criminal prosecution, or a settlement and release agreement negating penalties for civil tax fraud, now potentially face both criminal and civil penalties. If the attorneys (or other advisors) who recommended the OVD to clients did not disclose the risks of an IRS rejection of the initial application (which would happen after the U.S. taxpayer disclosed their name and ID number), they face malpractice allegations.

After the initial acceptance by the IRS of a taxpayer into the OVD program, the IRS’s receipt of confidential taxpayer evidence, (which evidence may prove both civil tax fraud and criminal tax evasion) and the IRS’s subsequent disqualification of the U.S. taxpayer from the OVD program, then the U.S. taxpayer may review potential causes of action for malpractice against their counsel, including:

1. Waiver of their Fifth Amendment rights against self-incrimination;

2. Disclosure of their name and taxpayer ID number related to their unreported offshore accounts;

3. Submission of confidential evidence, which was never directly summoned by the IRS, related to their unreported offshore accounts, offshore assets and income, all of which may be used against them by the IRS/U.S. Department of Justice for civil and criminal prosecution for civil tax fraud and criminal tax evasion.

Chapter 3
Voluntary Disclosure – Early History

A tax crime is complete on the day the false return was filed.

Between 1945 and 1952, the IRS had a "voluntary disclosure" policy under which a taxpayer who failed to file a return or declare his full income and pay the tax due could escape criminal prosecution through voluntary disclosure of the deficiency, (so long as the voluntary disclosure was made before an investigation was started).

If the IRS determined that a voluntary disclosure had been made, no recommendation for criminal prosecution would be made to the Department of Justice.

Under current IRS practice, the review includes whether there was a true "voluntary disclosure" along with other factors in determining whether or not to recommend prosecution to the Department of Justice. (IRM, Chief Counsel Directive Manual (31) 330 (Dec. 11, 1989) (Voluntary Disclosure).

IRM 9781, Special Agents Handbook § 342.14, MT 9781-125 (Apr. 10, 1990) (Voluntary Disclosure). (Although prosecution after voluntary disclosure is not precluded, the "IRS will carefully consider and weigh the voluntary disclosure, along with all other facts and circumstances, in deciding whether or not to recommend prosecution"). See also IRM 9131(1), MT 9-329 (Mar. 24, 1989). (Prosecution Guidelines).

IRS administrative practice recognizes that a taxpayer may still avoid prosecution by voluntarily disclosing a tax violation, provided that there is a qualifying disclosure that is (1) timely and (2) voluntary. A disclosure within the meaning of the practice means a communication that is truthful and complete, and the taxpayer cooperates with IRS personnel in determining the correct tax liability. Cooperation also includes making good faith arrangements to pay the unpaid tax and penalties "to the extent of the taxpayer's actual ability to pay."

A disclosure is timely if it is received before the IRS has begun an inquiry that is (1) "likely to lead to the taxpayer" and (2) the taxpayer is reasonably thought to be aware" of that inquiry; or the disclosure is received before some triggering or prompting event has occurred (1) that is known by the taxpayer and (2) that triggering event is likely to cause an audit into the taxpayer's liabilities.

Voluntariness is tested by the following factors: (1) how far the IRS has gone in determining the tax investigation potential of the taxpayer; (2) the extent of the taxpayer's knowledge or awareness of the Service's interest; and (3) what part the triggering event played in prompting the disclosure (where the disclosure is prompted by fear of a triggering event, it is not truly a voluntary disclosure).

No voluntary disclosure can be made by a taxpayer if an investigation by the Service has already begun. Therefore, once a taxpayer has been contacted by any Service function

(whether it be the Service center, office examiner, revenue agent, or a special agent), the taxpayer cannot make a qualifying voluntary disclosure under IRS practice.

A voluntary disclosure can be made even if the taxpayer does not know that the Service has selected the return for examination or investigation may be too restrictive. Consequently, if there is no indication that the Service has started an examination or investigation, Tax Counsel may send a letter to the Service stating that tax returns of the taxpayer have been found to be incorrect and that amended returns will be filed as soon as they can be accurately and correctly prepared. This approach has the advantage of putting the taxpayer on record as making a voluntary disclosure at a time when no known investigation is pending. However, neither the taxpayer nor the lawyer can be completely certain that the voluntary disclosure will prevent the recommendation of criminal prosecution.

Where no IRS examination or investigation is pending a taxpayer's alternative is the preparation and filing of delinquent or amended returns. The advantage of filing delinquent or amended returns without a communication drawing attention to them is that the returns may not even be examined after being received at the Service center. In such an event, the taxpayer not only will have made a voluntary disclosure but will have avoided an examination as well. The disadvantage is that during the time the returns are being prepared, the taxpayer may be contacted by the Service and a voluntary disclosure prevented.

If a taxpayer who cannot make a qualifying voluntary disclosure nevertheless files amended or delinquent tax returns, these returns (1) constitute an admission that the correct income and tax were not reported and (2) if incorrect, may serve as an independent attempt to evade or as a separate false statement.

No formula exists, and a taxpayer must endure the uncertainty of the risk that a voluntary disclosure will not be considered truly voluntary by the Service. If so, an investigation that has already started but has lagged may be pursued more overtly and aggressively as a result of the disclosure.

Chapter 4
IRS Offshore Voluntary Disclosure Program – OVDP

In January, 2012 the IRS began their third Offshore Voluntary Disclosure Program (OVDP); the two prior initiatives (2009 OVDP, which ran from 3/23/09 through 10/15/09, and 2011 OVDI which ran from 2/8/11 through 9/9/11). The OVDP was established to encourage taxpayers to disclose previously undisclosed foreign offshore accounts, and undisclosed income from offshore accounts. U.S. taxpayers were given the opportunity to get current on their tax returns and avoid detection by the IRS under audits (with civil tax fraud and criminal tax evasion implications).

Unlike the 2009 OVDP and the 2011 OVDI, there is no set deadline for taxpayers to apply. The terms of the OVDP program could change at any time going forward. The IRS may increase penalties, limit eligibility or end the program entirely.

According to the IRS, taxpayers with undisclosed foreign accounts should make a voluntary disclosure:

1. To become tax compliant;

2. Avoid civil penalties for fraud and foreign information return penalties;

3. Avoid increased risk of criminal prosecution.

The IRS is actively engaged in pursuing U.S. taxpayers with undisclosed foreign accounts. The IRS is receiving information about the identities of U.S. taxpayers with foreign accounts under tax treaties (with foreign governments), submission by whistleblowers, and foreign government disclosure under the Foreign Account Tax Compliance Act (FATCA) and Foreign Finances/Asset Reporting (new IRC Sec. 6038D). Currently the IRS has signed 7 intergovernmental agreements and is negotiating over 40 more agreements with different governments.

The IRS/OVDP (2012) is fraught with peril. Taxpayers who disclose their names, taxpayer identification numbers, undisclosed foreign offshore bank accounts, and unreported offshore income are not given immunity from prosecution. If for any reason the IRS rejects their offer, they face potential civil fraud and criminal tax evasion prosecution (as in the recent 3/13 case of Israel’s Bank Leumi).

In addition, U.S. taxpayers must file amended Form 1040(x), federal income tax returns (and state tax returns) for the voluntary disclosure period, which is the most recent 8 tax years for which the due date has already passed.

Chapter 5
Offshore Voluntary Disclosure Program Reopens

IRS Offshore Programs Produce $4.4 Billion To Date for Nation's Taxpayers

WASHINGTON (Jan 9, 2012) – The Internal Revenue Service today reopened the offshore voluntary disclosure program to help people hiding offshore accounts get current with their taxes and announced the collection of more than $4.4 billion so far from the two previous international programs. The IRS reopened the Offshore Voluntary Disclosure Program (OVDP) following continued strong interest from taxpayers and tax practitioners after the closure of the 2011 and 2009 programs. The third offshore program comes as the IRS continues working on a wide range of international tax issues and follows ongoing efforts with the Justice Department to pursue criminal prosecution of international tax evasion. This program will be open for an indefinite period until otherwise announced.

"Our focus on offshore tax evasion continues to produce strong, substantial results for the nation's taxpayers," said IRS Commissioner Doug Shulman. "We have billions of dollars in hand from our previous efforts, and we have more people wanting to come in and get right with the government. This new program makes good sense for taxpayers still hiding assets overseas and for the nation's tax system."

The program is similar to the 2011 program in many ways, but with a few key differences. Unlike last year, there is no set deadline for people to apply. However, the terms of the program could change at any time going forward. For example, the IRS may increase penalties in the program for all or some taxpayers or defined classes of taxpayers – or decide to end the program entirely at any point.

"As we've said all along, people need to come in and get right with us before we find you," Shulman said. "We are following more leads and the risk for people who do not come in continues to increase."

The third offshore effort comes as Shulman also announced today the IRS has collected $3.4 billion so far from people who participated in the 2009 offshore program, reflecting closures of about 95 percent of the cases from the 2009 program. On top of that, the IRS has collected an additional $1 billion from up front payments required under the 2011 program. That number will grow as the IRS processes the 2011 cases.

In all, the IRS has seen 33,000 voluntary disclosures from the 2009 and 2011 offshore initiatives. Since the 2011 program closed last September, hundreds of taxpayers have come forward to make voluntary disclosures. Those who have come in since the 2011 program closed last year will be able to be treated under the provisions of the new OVDP program.

The overall penalty structure for the new program is the same for 2011, except for taxpayers in the highest penalty category.

For the new program, the penalty framework requires individuals to pay a penalty of 27.5 percent of the highest aggregate balance in foreign bank accounts/entities or value of foreign assets during the eight full tax years prior to the disclosure. That is up from 25 percent in the 2011 program. Some taxpayers will be eligible for 5 or 12.5 percent penalties; these remain the same in the new program as in 2011.

Participants must file all original and amended tax returns and include payment for back-taxes and interest for up to eight years as well as paying accuracy-related and/or delinquency penalties.

Participants face a 27.5 percent penalty, but taxpayers in limited situations can qualify for a 5 percent penalty. Smaller offshore accounts will face a 12.5 percent penalty. People whose offshore accounts or assets did not surpass $75,000 in any calendar year covered by the new OVDP will qualify for this lower rate. As under the prior programs, taxpayers who feel that the penalty is disproportionate may opt instead to be examined.

The IRS recognizes that its success in offshore enforcement and in the disclosure programs has raised awareness related to tax filing obligations. This includes awareness by dual citizens and others who may be delinquent in filing, but owe no U.S. tax. The IRS is currently developing procedures by which these taxpayers may come into compliance with U.S. tax law. The IRS is also committed to educating all taxpayers so that they understand their U.S. tax responsibilities.

More details will be available within the next month on IRS.gov. In addition, the IRS will be updating key Frequently Asked Questions and providing additional specifics on the offshore program.

Chapter 6
Voluntary Disclosure – Yes or No?

Special Contribution by Sanford M. Passman, Esq.

The Internal Revenue Service ("IRS") Offshore Voluntary Disclosure Program (2012) is offered by the IRS to American taxpayers who may be in violation of U.S. tax laws for a myriad of reasons. Given the enormous sums of money which are spirited to offshore tax havens throughout the world, the IRS has prioritized the recapture of taxes on those funds which have been evaded by U.S. taxpayers. As can be seen from the recent cases involving international banks such as UBS, Wegelin and Bank Leumi, the IRS in concert with the U.S. Department of Justice, has made it a priority to ferret out those tax transgressors and their network of financial advisors, financial institutions, lawyers, accountants and even family and friends, all of whom may have been complicit in the various tax evasion schemes.

The publicity surrounding the efforts of the various government agencies to shed light on these various nefarious activities has created great concerns among those individuals participating in this form of conduct. Hence, the Voluntary Disclosure Program (the "Program"), which appears on its face to be a quick fix solution to mitigate the civil and criminal penalties for such violations, but which in effect can place the applicants to the Program in far greater jeopardy. First, it would be safe to say that every criminal and civil lawyer is familiar with the Fifth Amendment which provides protection against self incrimination and which is the starting point for the discussion as to why a strong argument can be made for advising client taxpayers not to attempt to avail themselves of the Program.

The single most compelling reason to avoid what may appear to an inexperienced practitioner to be a simple solution to the client's actual or potential tax problems is in fact a minefield in waiting. The reason for that is, in order to gain entrance to the Program, an individual or individuals must give up two fundamental Constitutional Right, the right not to hoist oneself on their own petard, i.e. the Fifth Amendment and the protection afforded by the Fourth Amendment, i.e. Unlawful Search and Seizure. Metaphorically speaking, the IRS is offering the rope for the clients to use to hang themselves. Harsh though it may appear, those are the facts.

The rationale for this conclusion is due to the fact that voluntary disclosure does not provide for the grant of immunity, either use or transactional. For those readers who are not familiar with the aforementioned concepts, immunity is a method whereby individuals can be protected from prosecution as a result of disclosures made either orally or in writing. The types referred to herein are either use or transactional immunity. The latter form of immunity provides broader protection from prosecution than the former, which is academic, because neither of these forms of immunity is available under the Program. The reader may ask why is this important for a procedure ostensibly designed to allow the transgressing taxpayers to expiate their tax sins and

avoid the civil and/or criminal penalties attendant thereto? The answer is that nothing prevents civil and criminal prosecution being initiated after the taxpayer "confesses" and details to the IRS, the entire scope of their conduct which gives rise to their application.

The information which the taxpayer must provide includes the identities of every person who advised and participated, actively or passively, in furtherance of the taxpayer's non-compliance with U.S. tax laws. This body of individuals and/or entities includes the financial institutions who actively or passively facilitated the taxpayer's non-compliance conduct. The applicants to the Program must disclose the duration of time for which the taxpayer was in non-compliance with U.S. tax laws; the amounts of money involved and location thereof; the identity of all entities used by the taxpayer in evading tax compliance, be they corporations, limited liability companies, general and/or limited partnerships, trusts, lawyers, accountants, tax advisors, business managers, investment portfolio managers, banking officials, corporate officers, "straw men" in every form, shape and fashion; and last, but not least, family members of the taxpayer, including spouses, all of whom may potentially be subject to civil and/or criminal prosecution by the United States Government.

In the summer of 2011, the Practical Tax Lawyer published an article which discussed the Program and stated that the Criminal Investigation Division of the IRS was given the responsibility for initially screening the amended tax returns of applicants to the program in order to determine their eligibility to participate therein. With that said, the application itself is very detail specific and mandates compliance by the taxpayer who must also execute the application under penalty of perjury.

To gain entry to the Program, the taxpayer must disclose every scintilla of damning evidence that can be used against the taxpayer without any self-incrimination protection. Also, if the taxpayer is accepted into the Program, that taxpayer can still be prosecuted criminally and civilly for tax violations if the IRS determines that the taxpayer was not forthcoming in the submitted application. The IRS embraces the concept that no one knows the level of one's transgressions better than the person who commits them and damn if they won't search Heaven and Earth to ferret out that information. Voluntary disclosure gives it to them on the proverbial "silver platter". Anything disclosed by the taxpayer voluntarily, absent protections, i.e. immunity, can be used against the taxpayer.

Furthermore, the clients should be advised that if they are admitted into the program and the IRS dismisses them therefrom, which they can do, all of the information provided to the IRS can be used against that very taxpayer who provided it, absent either form of immunity, which the IRS simply does not offer. Talk about hedging your bet, the IRS has covered all the bases!

Again, in summary, all of the "evidence" that the IRS and/or the U.S. Department of Justice needs to prosecute an offending taxpayer for tax fraud; tax evasion; conspiracy

to commit tax evasion; money laundering and conspiracy to commit money laundering; and wire fraud are already in their possession. Thus, the question must be asked as to what circumstances would the Voluntary Disclosure Program be beneficial to a taxpayer given the absence of any self-incrimination protection. The answer for the individual lawyer, whose counsel is sought by the taxpayer, is that every case is fact dependent but, on the surface, it appears to this author that any practitioner would have to think long and hard before advising any client to apply to the Program.* Perhaps attorneys should advise their client to seek other alternatives to the Program and should consider Statute of Limitations issues which could benefit the taxpayer. If you truly believe that voluntary disclosure is a boon to your client, be advised you cannot put the genie back in the bottle.

* This article is not intended to be a complete nor comprehensive review of the various State and Federal immunity statutes, but rather is used in the context of the IRS Voluntary Disclosure Program.

Chapter 7
IRS OVDP – IRS and Tax Practitioners

If the taxpayer seeks the advice of a tax practitioner, the practitioner must exercise due diligence in determining the corrections of any oral or written representations made to the client about the program and the implications for that taxpayer of going forward.

If the taxpayer decides to proceed with the disclosure, the practitioner must exercise due diligence in determining the correctness of any oral or written representations that the practitioner makes during the representation to the Department of the Treasury. The practitioner must avoid giving or participating in giving false or misleading information to the Department of the Treasury or giving a false or misleading opinion to the taxpayer.

If the taxpayer decides not to make the voluntary disclosure despite the taxpayer's non-compliance with U.S. tax laws, Circular 230 requires the tax practitioner to advise the client of the fact of the client's non-compliance and the consequences of the client's non-compliance.

A practitioner whose client declines to make a full disclosure of the existence of, or any taxable income from, a foreign financial account during a taxable year, may not prepare the client's income tax return for that year without being in violation of Circular 230.

Chapter 8
IRS Treasury Department Circular 230 – Tax Advisors

Effective August 2011, the Treasury Department issued Circular No. 230 (Title 31 Code of Federal Regulations, Subtitle A, Part 10): Regulations Governing Practice before the IRS. Tax advisors must comply with the requirements (of Circular 230) or face IRS disbarment, censure or sanctions.

Under Circular 230 the following rules apply:

1. Sec. 1021: A practitioner with knowledge of a client's non-compliance with U.S. revenue laws, or omission/error on tax returns, must:

a. Advise client promptly of fact of client's non-compliance/error;

b Advise client of consequences of client's non-compliance/error.

2. Sec. 1022: A practitioner must exercise due diligence and accurately prepare and file returns, and determine the correctness of oral or written representations made by the practitioner to the Department of the Treasury.

3. Sec. 1033: Best Practices for Tax Advisors: Practitioners should provide clients with highest quality representation concerning federal tax issues. Practitioner should communicate clearly with clients to determine client's expected purpose. Practitioners should establish the facts, determine which facts are relevant, including the reasonableness of any assumptions or representations, relating the applicable law to the relevant facts, and arriving at a conclusion supported by the law and the facts.

4. Sec. 1034: Practitioner and Tax Advisors: Under Sec. 1034(d), practitioner may not sign a tax return that lacks a reasonable basis, or is an unreasonable position (IRC Sec. 6694(a)(2), or understate tax liability (IRC Sec. 6694(b)(2), or advise a client to take an unreasonable position or understate a tax liability.

Under Sec. 1034(b), practitioner may not submit documents to the IRS to impede tax in frivolous or intentional disregard of tax rules.

Under Sec. 1034(c), practitioner must advise clients of potential penalties re: tax return position.

Under Sec. 1034(d), practitioner must not ignore implications of client information, which is incorrect/inconsistent with an important fact, or is incomplete.

Under Sec. 1034(e), this section applies to tax returns, documents or affidavits after 9/26/07.

Chapter 9
IRS Circular 230 – Tax Practitioner Fees

10.27 Fees

(a) A tax practitioner may not charge an unconscionable fee in connection with any matter before the IRS.

(b)(2) A tax practitioner may charge a contingent fee for services regarding IRS examination or challenge to:

1. Original Tax Return;

2. Amended Tax Return, or Claim for Refund (where the amended return or claim for refund was filed within 120 days of taxpayer receiving a written notice of the examination of, or a written challenge to the original tax return).

3. Claim for refund filed solely in connection with the determination of statutory interest or penalties assessed by the Internal Revenue Service.

4. In connection with any judicial proceeding arising under the IRC.

(c)(1) A contingent fee is defined as any fee, based in whole or in part, on whether or not a position taken on a tax return, either avoids challenge by the IRS, or is sustained either by the IRS or in litigation.

A contingent fee includes a fee that is based on a percentage of a refund reported on a return, that is based on a percentage of the taxes saved, or that otherwise depends on the specific result attained.

A contingent fee also includes any fee arrangement in which the practitioner will reimburse the client for all or a portion of the client's fee in the event that a position taken on a tax return or other filing is challenged by the IRS or is not sustained, whether pursuant to an indemnity arrangement, a guarantee, or rescission rights.

(c)(2) A client "matter before the IRS" (Sec. 1022(a) includes: tax planning and advice, preparing or filing tax returns (refund claims), and "all matters" connected with a presentation to the IRS, which includes but is not limited to:

1) Preparing and filing documents;

2) Corresponding and communicating with the IRS;

3) Rendering written advice with respect to any entity, transaction, plan or arrangement;

4) Representing a client at conferences, hearings and meetings.

d) Effective applicability date: For fee agreements entered after March 26, 2008.

Chapter 10
IRS OVDP – Tax Compliance 2012

Special Contribution by Ryan L. Losi, CPA

The IRS/OVDI program requires:

1. Filing complete and accurate Form 1040(x) amended federal income tax returns for all tax returns covered by the voluntary disclosure, with applicable schedules detailing the type and amount of previously unreported income from the account or entity (Schedule B for interest and dividends, Schedule D for capital gains and losses, Schedule E for income from partnerships, S Corporations, estates or trusts and the years after 2010, Form 8938, Statement of Specified Foreign Financial Assets).

2. File Form TDF 90-22.1 (Report of Foreign Bank and Financial Accounts, "FBAR Filings") for all tax years covered by the voluntary disclosure.

3. Cooperate in the voluntary disclosure process, including providing information on offshore financial accounts, institutions and facilitators and signing agreements to extend the period of time for assessing Title 26 liabilities and FBAR penalties.

4. Payment in full of tax, interest and penalties due. Penalties include:

a. Failure to File a Tax Return
(IRC Sec. 6651(a)(1), 5% of the tax due per month, up to 25% (tax due).

b. Failure to Pay Tax Due
Shown on Tax Return (IRC Sec. 6651(a)(2), 5% of the tax due shown on return, per month, up to 25% (tax due).

c. Accuracy Related Penalty (IRC Sec. 6662)
Taxpayer may be liable for a 20% or 40% penalty. Under the IRC Sec. 6662(b)(7) and (j), a 40% accuracy-related penalty is imposed for any underpayment of tax that is attributable to an undisclosed foreign financial asset understatement.

d. Title 26 Penalty
27.5% of highest aggregate balance in foreign bank accounting/entities, or value of foreign assets, during the period covered by the voluntary disclosure.

Total penalties up to 70% of unpaid tax plus 27.5% of value of assets (total): aggregated foreign accounts and foreign assets (for the highest year's aggregate value during the period covered by the voluntary disclosure).

5. Execute a closing agreement on final return income covering specific matters, Form 906.

6. Agree to cooperate with IRS offshore enforcement effected by providing information about offshore financial institutions, offshore service providers, and other facilitators.

Civil Fraud/Criminal Tax Evasion

Until such time as the U.S. taxpayer and the IRS execute a Form 906 closing agreement, the U.S. taxpayer may be still subject to both imposition of civil tax fraud penalties and prosecution for criminal tax evasion, if and when the IRS "disqualifies the U.S. Taxpayer" from the IRS/OVDI (2012) (as is the case with Israel's Bank Leumi's U.S. clients).

Civil Tax Fraud

Civil fraud penalties imposed under IRC Sec. 6651(f) or 6663, for either underpayment of tax, or a failure to file a tax return due to fraud, the taxpayer is liable for penalties of 75% of the unpaid tax.

Criminal Tax Evasion

U.S. taxpayers with undisclosed offshore bank accounts and unreported income face criminal charges for:

1. Tax Evasion (26 USC Sec. 7201) [5 years in jail; $250,000 fine];

2. Filing False Tax Return (26 USC Sec. 7206(1)) [3 years in jail, $250,000 fine];

3. Failure to File Tax Return (26 USC Sec. 7203); [1 year in jail, $100,000 fine];

4. Willful Failure to File FBAR or Filing False FBAR (31 USC Sec. 5322) [10 years in jail, fines up to $500,000].

In addition, the willful failure to file the FBAR has a civil penalty as high as the greater of $100,000 or 50% of the total balance of the foreign account per violation (31 USC Sec. 5321(a)(5).

Chapter 11
IRS OVDP – Title 26 Penalty of 27.5%

The Title 26 Penalty of 27.5% of the highest aggregate balance in foreign bank accounts/foreign assets includes unreported foreign bank accounts/assets held by individuals or businesses.

This "offshore penalty" is intended to apply to all of the taxpayer's offshore holdings that are related in any way to tax non-compliance, regardless of the form of the taxpayer's ownership or the character of the asset.

This Title 26/27.5% penalty applies to all assets directly owned by the taxpayer including financial accounts/holding cash, securities or other custodial assets; tangible assets such as real estate or art, and intangible assets such as patents or stock or other interests in a U.S. or foreign business.

If such assets are indirectly held or controlled by the taxpayer through an entity, the penalty may be applied to the taxpayer's interest in the entity. If the entity is taxpayer's nominee; an alter ego, the penalty may be applied to the taxpayer's interest in the entity.

27.5% Penalty

For purposes of the 27.5% penalty, tax non-compliance includes: failure to report income from the assets, as well as failure to pay U.S. tax that was due with respect to the funds used to acquire the asset.

Regarding non-income producing assets, if offshore assets were acquired with funds that were subject to U.S. tax but on which no such tax was paid, the offshore penalty would apply regardless of whether the assets are producing current income. If the non-income producing assets (e.g., land, art, jewelry, automobiles, yachts, planes, wine collection) have produced no taxable income, there has been no U.S. taxable event and no reporting obligation to disclose. The U.S. taxpayer will be required to report any current income from the property or gain from its sale or other disposition at such time in the future as the income is realized.

If there has not been tax non-compliance, the 27.5% offshore penalty would not apply to those assets. If the foreign assets (e.g. land, art, et al.) produced income subject to U.S. tax during the voluntary disclosure period, which was not reported, the assets will be included in the penalty computation, regardless of the source of funds used to acquire the assets. If the foreign assets were held in the name of an entity such as a trust or corporation, there would be an information return filing obligation that may need to be disclosed.

If a taxpayer transferred funds from one unreported foreign account to another during the voluntary disclosure period, any duplication will be removed before calculating the

27.5% penalty. However, the burden will be on the taxpayer to establish the extent of the duplication.

Chapter 12
IRS OVDP – FBAR Signatory Authority

A taxpayer who has failed to file a FBAR to report a foreign account over which the taxpayer has signatory authority but no beneficial interest (e.g. an account owned by his employers), that foreign account will not be included in the asset base for calculating the taxpayer's 27.5% offshore penalty, and will be treated as unrelated to the tax non-compliance the taxpayer is voluntarily disclosing.

The taxpayer may cure the FBAR delinquency for the account the taxpayer does not own by filing the FBAR with an explanatory statement before being contacted regarding an income tax examination or a request for delinquent returns.

In certain cases, if the taxpayer is determined to have a direct or indirect beneficial interest in the account(s), the taxpayer will be liable for the 27.5% offshore penalty if there is unreported income on the account, including:

1. The account over which the taxpayer has signatory authority is held in the name of a related person, such as a family member or a corporation controlled by the taxpayer;

2. The account is held in the name of a foreign corporation or trust for which the taxpayer had a Title 26 reporting obligation;

3. The account was related in some other way to the taxpayer's tax non-compliance.

If there is no unreported income with respect to the account, no penalty will be imposed.

For parents with a jointly owned foreign account on which they have made their children signatories, the children have a FBAR filing requirement but no income. The children should file any delinquent FBARs with an attached statement explaining why the reports are filed late.

The IRS will not impose a penalty for the failure to file the delinquent FBARs if there are no underreported tax liabilities and the taxpayer has not previously been contacted regarding an income tax examination or a request for delinquent tax return.

Regarding the parents, they will be jointly required to pay a single 27.5% penalty on the account.

If there are multiple individuals with signatory authority over a trust account, only one 27.5% offshore penalty will be applied with respect to a voluntary disclosure tied to the same account. The penalty may be allocated among the taxpayers with beneficial ownership making the voluntary disclosures in any way they choose. However, every individual who is required to file a FBAR must file one.

For a taxpayer with two offshore accounts and no FBAR filed, and income reported from one account but not the other, because the annual FBAR requirement is to file a single

report reporting all foreign accounts meeting the reporting requirement, it is not possible to bifurcate the corrected filing. The taxpayer should make a voluntary disclosure for the omitted income and include the delinquent FBARs with respect to both accounts. The account with no income tax issue is unrelated to the taxpayer's tax non-compliance, so no penalty will be imposed with respect to that account.

Chapter 13
IRS OVDP – Statute of Limitations

Under the normal rules, a three-year statute of limitations applies for the IRS to assess tax penalty and interest. The three-year statute of limitations may be extended:

1. To six years, if the IRS can prove a substantial omission of gross income;

2. If there was a failure to file information returns; e.g., Form 3520, 5471 or 8938, the statute of limitations will not have begun to run;

3. If the IRS can prove fraud, there is no statute of limitations for assessing tax;

4. For FBAR penalties, the statute of limitations is six years from the date of the violation, which would be the date that an unfiled FBAR was due to have been filed (31 USC Sec. 5321(b)(1). See IRS/OVDI (2012) FAQ No. 42);

5. As part of the IRS/OVDI (2012), the U.S. taxpayer is required to extend the period of time to assess tax (including tax and penalties) and to assess FBAR penalties. (See IRS/OVDI (2012) FAQ No. 43).

Chapter 14
IRS OVDP – Closing Agreement

The penalty framework for offshore voluntary disclosure and the agreement to limit tax exposure to an 8-year period are package terms under the OVDP. If any part of the offshore penalty is unacceptable to the taxpayer, the case will be examined and all applicable penalties will be imposed. After a full examination, any tax and penalties imposed by the IRS may be appealed, but the IRS' decision on the terms of the OVDP closing agreement may not be appealed.

Offshore voluntary disclosure examiners do not have discretion to settle cases for amounts less than what is properly due and owing under the IRS OVDP guidelines.

If undertaking a voluntary disclosure, a taxpayer disagrees with the application of the offshore penalty, the taxpayer must indicate in writing the decision to withdraw from or opt out of the program. Once made, this election is irrevocable. An opt out is an election made by a taxpayer to have his or her case handled under the standard audit process. If issues are found upon a full scope audit that was not disclosed by the taxpayer, those issues may be referred to the IRS Criminal Investigation Division.

Opting out of the civil settlement structure does not affect the status of a taxpayer's voluntary disclosure under IRS' Criminal Investigation's Voluntary Disclosure Practice, so long as the taxpayer provides all requested foreign records and submits to interrogation and as long as no new issues are uncovered that were previously not disclosed.

Chapter 15
IRS Tax Evasion – Offshore Accounts

Under Treasury Department Circular #230 (Rev. 8/11), Title 31 Code of Federal Regulations, Subject A, Part 10 (published June 3, 2011), Section 1021 requires a tax practitioner who knows that the client has not complied with U.S. revenue laws, or made an error or omission in a tax return, to promptly advise the client of the fact of such non-compliance, error or omission and the consequences under the Internal Revenue Code and Treasury Regulations.

Under Circular #230, Section 1022, a practitioner must exercise due diligence in preparing and filing tax returns.

For U.S. taxpayer offshore accounts, in order to ensure U.S. taxpayer IRS compliance, the tax practitioner should confirm the following, prior to filing a client's tax returns:

Offshore Accounts: Tax Compliance Issues

1. Original source of proceeds?

2. How was the money earned?

3. Were the proceeds reported for tax purposes? If so, what tax year?

4. Was the fund transfer of the original proceeds from the U.S. sent directly to the offshore account?

5. Were there any intermediary transfers to third party banks or accounts? (If so, dates, accounts).

6. Total amount in each account (highest balance/each tax year).

7. Regarding the offshore account, did you file FBARs?

Yes/No:

a. Every year?

b. Accounts over $10,000?

c. Did you own the account?

d. What was the name on the account?

e. Did you have signatory authority over the account?

8. Regarding offshore accounts, did you disclose the account on Form 1040/Schedule B, Part III, No. 7?

9. For foreign financial assets over $50,000, did you file Form 8938 for each tax year?

10. For financial assets over $50,000, did you purchase these assets with funds from the offshore account? If not, what was the source of funds for these purchases?

IRS Offshore Accounts – (Civil Penalty Issues)

1. Civil Tax Fraud (75% of tax due) (no statute of limitations).

2. Underpayment of Tax (25% of tax due).

3. For voluntary disclosures, under the IRS Offshore Voluntary Disclosure Program (2012), the values of foreign accounts and other foreign assets are aggregated for each year and the penalty is calculated during the period covered by the voluntary disclosure. Under the 2012/IRS Voluntary Disclosure, total penalties of up to 70% of unpaid tax, and 27.5% of highest balance total foreign bank accounts/foreign assets as follows:

a. Failure to File a Tax Return (IRC Sec. 6651(a)(1), up to 25% tax due.

b. Failure to Pay Tax (IRC Sec. 6651(a)(2), up to 25% tax due.

c. Accuracy Related Penalty (IRC Sec. 6662), a 20% penalty for tax underpayment attributable to undisclosed foreign financial asset understatement.

d. Title 26 Penalty – 27.5% highest aggregate balance of foreign bank accounts, entities and assets.

Offshore Accounts – IRS/Criminal Penalty Issues

U.S. taxpayers with undisclosed offshore bank accounts and unreported income face criminal charges for:

1. Tax Evasion (IRC 7201), five years in jail, $25,000 fine;

2. Filing False Tax Return (IRC Sec. 7206(1)), three years in jail, $250,000 fine;

3. Failure to File Tax Return (IRC Sec. 7203), one year in jail, $100,000 fine;

4. Obstruct (Impede) IRS Tax Collection (IRC Sec. 7212), 3 years in jail;

5. Conspiracy to Commit Tax Evasion (18 USC 371) ("Klein Conspiracy"), 5 years in jail;

6. Willful failure to file FBAR or Filing False FBAR (31 USC Sec. 5322), ten years in jail, fines up to $500,000 with related civil penalty the greater of $100,000 or 50% of the total balance of the foreign account per violation computed annually (IRC Sec. 5321(a)(5).

Chapter 16
IRS Tax Evasion – Willfulness Defense

U.S. taxpayers, who fail to file tax returns or pay taxes due, face a felony for willful evasion of tax (IRC Sec. 7201). U.S. taxpayers, particularly international investors who are classified as U.S. taxpayers, under either the "Substantial Presence Test" or "Green Card Test", often defend their tax non-compliance by stating that they were "unaware of the law".

Under U.S. tax law, "ignorance of the law is no excuse" (in Latin: ignorantia juris non excusat). The legal principal is that a person who is unaware of a law may not escape liability for violating that law because they were unaware of its content.

U.S. Model Penal Code Section 2.02(9) states that knowledge that an activity is unlawful is not an element of an offense unless the statute creating the offense specifically makes it one.

For federal tax evasion, willfulness is required. This legal position was enshrined in Cheek v. U.S., (1991) 498 U.S. 192, which stated that in a federal criminal tax case, a taxpayer's "good faith" belief that he was not required to file tax returns would negate the 'intent element' of the crime of tax evasion (however, the defendant Cheek was held to not have a "good faith belief" and was convicted by the jury; i.e., the final arbiter of the evidence) and served a year and a day in jail.

On the issue of intent, the jury may consider "willful blindness"; i.e. the defendant willfully, knowingly and intentionally concealed the truth from himself, so that the defendant "intentionally" committed a tax crime.

Chapter 17
IRS Voluntary Disclosure Initiative – Post-UBS Agreement

On 3/23/09, the IRS issued three memoranda regarding the voluntary disclosure of offshore accounts with the following key points:

1. The IRS was prioritizing audit examinations and investigations of abusive offshore transactions designed to evade the payment of U.S. taxes;

2. The Criminal Investigation Division ("CID") of the IRS was made responsible for initially screening any taxpayer's amended return to determine the actual eligibility of the taxpayer to make a voluntary disclosure of this income to the IRS;

3. The amended returns with offshore account disclosures were to be processed for civil penalties through the Philadelphia Offshore Identification Unit;

4. The IRS/Philadelphia office would seek to execute taxpayer agreements to resolve the offshore issues, including: the assessment of all taxes and interest for six years, an accuracy or delinquency penalty for all years, and penalties "equal to 20% of the amount in foreign bank accounts/entities in the year with the highest aggregate account/asset value;

5. Taxpayers had until 10/15/09 to make their voluntary disclosures.

In 2010, the Hiring Incentives to Restore Employment Act of 2010 ("HIRE Act") (P.L. No. 111-147) was enacted with provisions to prevent U.S. taxpayers from avoiding federal taxes by hiding money in offshore accounts.

Under the HIRE Act, foreign financial institutions will have a 30% tax withheld on their U.S. investments if they refuse U.S. account holder information:

1. Name;

2. Social Security Number, and

3. Account Information.

U.S. taxpayers will have to disclose foreign accounts on their U.S. tax returns (Form 1040) by attaching Form 8938. The minimum penalty for non-disclosure is $10,000 increased by $10,000 every 30 days of non-disclosure, up to $50,000.

The understatement of tax penalty was increased from 20% to 40% (IRC Sec. 6662(j). The statute of limitations was lengthened from three years to six years (IRC Sec. 6501(e)).

Civil penalties may include:

1. Failure to file;

2. Failure to pay tax;

3. Accuracy-related penalty;

4. Civil fraud;

5. FBAR penalty; and

6. Failure to file information returns.

Criminal penalties may include:

1. Tax evasion;

2. Willful failure to file return;

3. Failure to supply information or pay tax;

4. False returns; and

5. False documents.

6. Obstruct/Impede Collection of Tax

On February 8, 2011 the IRS announced a second Offshore Voluntary Disclosure initiative for U.S. taxpayers with previously undisclosed offshore income, through 8/31/11, with higher penalties.

In January 2012, the IRS announced their third Offshore Voluntary Disclosure program (with no time deadline) with higher penalties.

Chapter 18
IRS Offer in Compromise

The IRS may compromise the tax liability in most civil or criminal cases before referral to the Department of Justice for prosecution or defense. The Attorney General or a delegate may compromise any case after the referral. However, the IRS may not compromise certain criminal liabilities arising under internal revenue laws relating to narcotics, opium, or marijuana. Interest and penalties, as well as tax, may be compromised (Code Sec. 7122; Reg. § 301.7122-1). Offers-in-compromise are submitted on Form 656 accompanied by a financial statement on Form 433-A for an individual or Form 433-B for businesses (if based on inability to pay) (Reg. § 601.203(b)). A taxpayer who faces severe or unusual economic hardship may also apply for an offer-in-compromise by submitting Form 656. If the IRS accepts an offer-in-compromise, the payment is allocated among tax, penalties, and interest as stated in the collateral agreement with the IRS. If no allocation is specified in the agreement and the amounts paid exceed the total tax and penalties owed, the payments will be applied to tax, penalties, and interest in that order, beginning with the earliest year. If the IRS agrees to an amount that does not exceed the combined tax and penalties, and there is no agreement regarding allocation of the payment, no amount will be allocated to interest.

A $150 user fee is required for many offers-in-compromise (Reg. § 300.3). Taxpayers must normally pay the user fee at the time a request to compromise is submitted. No user fee is imposed with respect to offers (1) that are based solely on doubt as to liability or (2) that are made by low-income taxpayers (i.e., taxpayers whose total monthly income falls at or below income levels based on the U.S. Department of Health and Human Services poverty guidelines). If an offer is accepted to promote effective tax administration or is accepted based on doubt as to collectability and a determination that collecting more than the amount offered would create economic hardship, the fee will be applied to the amount of the offer or, upon the taxpayer's request, refunded to the taxpayer. The fee will not be refunded if an offer is withdrawn, rejected or returned as nonprocessible. The IRS treats offers received by taxpayers in bankruptcy as non-processible, even though two district courts have held that the IRS must consider such offers (R.H. Macher, DC Va., 2004-1 USTC ¶50,114 (Nonacq.); W.K. Holmes, DC Ga., 2005-1 USTC ¶50,230). However, one district court and one bankruptcy court have held in favor of the IRS on this issue (1900 M Restaurant Associates, Inc., DC D.C., 2005-1 USTC ¶50,116; W. Uzialko, BC-DC Pa., 2006-1 USTC ¶50,297).

Detailed IRS procedures for the submission and processing of offers-in-compromise are reflected in Rev. Proc. 2003-71.

Taxpayers are required to make nonrefundable partial payments with the submission of any offer-in-compromise (Code Sec. 7122(c)). Taxpayers who submit a lump-sum offer (any offer that will be paid in five or fewer installments) must include a payment of 20 percent of the amount offered. Taxpayers who submit a periodic payment offer must include payment of the first proposed installment with the offer and continue making

payments under the terms proposed while the offer is being evaluated. Offers that are submitted to the IRS without the required partial payments will be returned to the taxpayer as nonprocessible. However, the IRS is authorized to issue regulations waiving the payment requirement for offers based solely on doubt as to liability or filed by low-income taxpayers. Pending the issuance of regulations, the IRS has announced that it will waive the payment requirement for such offers (Notice 2006-68).

The required partial payments are applied to the taxpayer's unpaid liability and are not refundable. However, taxpayers may specify the liability to which they want their payments applied. Additionally, the user fee (see above) is applied to the taxpayer's outstanding tax liability. Any offer that is not rejected within 24 months of the date it is submitted is deemed to be accepted. However, any period during which the tax liability to be compromised is in dispute in any judicial proceeding is not taken into account in determining the expiration of the 24-month period (Code Sec. 7122 (f)).

Chapter 19
IRS Unreported Income – Jeopardy Assessment

Under a jeopardy assessment, Taxpayers who have unreported income may be subject to immediate IRS seizure of assets. If the IRS determines that tax collection is at risk, the IRS may immediately seize taxpayer assets without prior notice.

The IRS must have made a determination that a deficiency existed and that tax collection would be jeopardized if the IRS were to follow normal assessment and collection procedures. (IRC § 6861(a)).

In the event of a jeopardy assessment, the IRS is permitted to send a notice and demand for payment immediately.(IRC § 6861(a)).

Normally, the IRS assertion of an income tax deficiency is made after the taxpayer's year closes and the tax return is filed. However, if the IRS determines that a Taxpayer (who received significant income) may prejudice tax collection (e.g., leave the country, place assets beyond IRS reach) the IRS may issue a jeopardy assessment (levy on Taxpayer's property without prior notice (IRC § 6861(a)).

IRS jeopardy assessment requirements:

1. The Taxpayer's year is completed;

2. The due date of the tax return (with extensions) has passed;

3. Either:

a. Taxpayer did not file tax return or;

b. Tax liability on the filed return is understated, and;

c. Tax collection is jeopardized.

Treas. Reg. Sections 301.6861 – 1(a)

IRS general levy requirements (IRC § 6330, 6331) do not apply if the IRS finds that tax collection is in jeopardy.

Under IRC § 6330(f), the IRS is entitled to levy on taxpayer's property, without prior notice to Taxpayer.

To justify a jeopardy levy, the IRS must be able to show:

1. The Taxpayer is (or appears to be) designing to quickly depart from the U.S.;

2. The Taxpayer is (or appears to be) designing to quickly place their assets beyond the reach of the IRS by:

a. Removing assets from the U.S.;

b. Concealing assets;

c. Dissipating assets;

d. Transferring assets to third parties; or

3. The Taxpayer is in danger of becoming insolvent (bankruptcy or receivership, alone is not sufficient evidence to establish financial insolvency for jeopardy purposes).

The IRS procedures for a jeopardy levy, (as stated in the Internal Revenue Manual):

1. IRS chief counsel must personally give prior written approval to a jeopardy levy (IRC § 7429(a));

2. Thereafter, the IRS must provide Taxpayer with a written statement, within five days, of the information upon which the IRS relied in making its jeopardy levy (IRC § 7429(a)(1)(B));

3. IRM 5.11, Notice of Levy Handbook section 3.5(5) instructs the IRS to try to give Taxpayer notice in person, or certified mail (last known address);

4. IRS notice should include:

a. Reason for jeopardy levy;

b. Taxpayer's rights to administrative and judicial review (IRC § 7429);

c. Notice of Taxpayer's rights to administrative and judicial review within a reasonable period of time (under IRC § 6330).

The jeopardy assessment may be made either:

1. Before or after a notice of tax deficiency is issued, and;

2. Also, either before or after a Tax Court petition is filed (IRC § 6861(a), Treas. Reg. Section 301.6861 – 1(a).

IRS notice and demand for payment gives the Taxpayer ten days to pay the tax in full or post a bond to stay collection (Treas. Reg. Section 301.6861 – 1(d).

If tax collection is determined to be in jeopardy, the IRS may immediately levy on Taxpayer's assets (without 30 day notice of intent to levy) (IRC § 6331(d)(3)), subject to IRS chief counsel personally approving the levy in writing (IRC § 7429(a)(1)(A)).

The IRS must send a formal notice of deficiency within 60 days after making the jeopardy assessment (IRC § 6861(b)). Upon receipt of notice of deficiency, the Taxpayer

may file a Tax Court petition for redetermination of the deficiency amount (IRC § 6213(a)).

Under IRC § 6213(a), the Tax Court petition stops additional IRS assessments until the Tax Court decision is finalized. However, upon receipt of the notice of deficiency, payment (of the tax assessed), or a bond is required, within ten days, to stay collection (IRC § 6863(a)).

Under a jeopardy assessment, any amount collected by the IRS, in excess of the amount determined by the Tax Court, (as the final assessment), is refunded (IRC § 6861(f)).

Chapter 20
IRS OVDP – International Investors and U.S. Income Tax

International investors are subject to tax reporting and tax payment of U.S. income taxes as either a U.S. income tax resident, or as a non-resident alien.

Resident aliens (under either the "Green Card" or "Substantial Presence Tests") are subject to taxation on their world-wide income which includes annual tax filings: Form 1040 (report world-wide income), Form 8938 (report ownership of foreign assets over $50,000), TDF 90-22.1 ("FBAR filing") for foreign financial accounts with over $10,000, where taxpayer has ownership or signatory authority).

Non-Resident Aliens ("NRA") are taxed on U.S. source income:

1. 30% withholding tax (withheld at the source, with no deductions) on U.S. Fixed or Determinable Annual Periodical Income ("FDAP"), which includes passive income: interest, dividends, rents, royalties, et al.

2. Net basis income tax (at graduated U.S. tax rates) on income "effectively connected" with a U.S. business. U.S. real estate gains are treated as effectively connected income.

3. In the event of dual residency, with the NRA's country of citizenship/tax residency, the treaty tiebreaker rules may act as a "Treaty Override" and obviate U.S. income tax.

Chapter 21
Taxation of NRAs- FDAP Income

Passive income (i.e. FDAP income) is subject to a 30% withholding tax with exceptions for:

1. Bank Deposit Interest;

2. Portfolio Interest: Fixed interest only. Exception not applicable to bank loans in ordinary course of business, “10% shareholders” of corporate or partnership lender.

Regarding Portfolio Income, under IRC Sec. 469(e)(1), it includes: interest, dividends, annuities and royalties, gain or loss from the disposition of income-producing or investment property that is not derived in the ordinary course of a trade or business. Portfolio income is not treated as income from a passive activity, it must be accounted for separately, and passive losses and credits generally not be applied against it.

Regarding income from swaps:

1. Income is sourced by residence, no withholding tax on U.S. source;

2. Exception, certain “dividend equivalents” sourced as dividends.

For NRAs, FDAP income, 30% withholding U.S. tax, may be reduced or avoided under applicable income tax treaties. Under the U.S. Model Tax Treaty, dividend withholding tax generally reduced to 15%. Interest withholding tax generally eliminated, unless “back-to-back loans” involved.

Chapter 22
Taxation of NRAs – Effectively Connected Income

Non-Resident Aliens (NRAs) have net basis tax on income "effectively connected" with a U.S. business. Income from U.S. sources is effectively connected income. However, payments under a covenant not to compete are "FDAP Income", so the tax issue is where all services under covenant not to compete are performed, which source rule determines whether it is FDAP or ECI income.

Tax filing requirements for ECI mandate that failure to file by certain deadlines causes all deductions to be disallowed (cost of goods sold are not tax deductions). Under the relevant treasury regulations, the deadline for NRA tax filing is normal due date plus 16 months (however, the validity of this deadline is unclear, See: Swallow Holdings, Ltd. v. Commr. 12C TC96 (2006), invalid on facts presented, Swallow Holdings, Ltd. v. Commr., 515 F.3d 162 (3rd Cir. 2008) valid on facts).

Under applicable income tax treaties, business profits are taxable only if attributable to permanent establishment: ("PE")

1. Generally, any office, place of management;

2. Facility to store or display goods;

3. Activities of dependent agency may result in deemed PE, (e.g., if habitually exercises authority to sign contracts).

Income from employment may be excluded if:

1. The NRA was present in the U.S. less than 183 days during the applicable 12 month period;

2. Remuneration not borne by U.S. resident or U.S. permanent establishment. Exceptions may apply to entertainers and sportsmen.

Chapter 23
IRS OVDP – International Investors

International investors, classified as U.S. income tax residents, may enter voluntary disclosure agreements. International investors may be classified as U.S. income tax residents for each tax year that:

1. They have a U.S. green card; i.e., Lawful Permanent Resident ("The Green Card Test");

2. They are in the U.S. as a tax resident under the substantial presence test ("Day Counting Test"); they are in the U.S. for 183 days in any tax year or they are in the U.S. for 122 days per year for a 3-year period (the tax year being tested, for which they are in the U.S. for at least 31 days, and the 2 prior years).

For the "3-year" "substantial presence test", days are presumed as following each day in the year being tested= 1 day, each day in preceding year= 1/3 day, each day in second preceding year= 1/6 day.

For example, if the international investor is in the U.S. for two days per year for 3 years, they 'fail' the "Substantial Presence Test".

Year #1 – 120 days

Year #2 – 40 days (1/3 of 120)

Year #3 – 20 days (1/6 of 120)

TOTAL – 180 days [less than 183 days]

For international investors there is a closer connection exception to the substantial presence test:

1. They are in the U.S. for less than 183 days in the year being tested;

2. Their tax home is in a foreign country for the entire year; i.e., regular or principal place of abode, or regular place of abode in a real and substantial sense;

3. "Closer Connection" to a foreign country:

- Location of permanent home, family and belongings;

- Whether alien taxed as a resident in such country;

- Membership in social, political, religious organizations;

- Driver's license, voting, banking activities;

- Where alien conducts business activities;

- Country of residence stated by alien on forms.

Under the Substantial Presence Test, the residence starting date is generally the first day of physical presence in the U.S.

However, up to 10 days may be disregarded if the international investor has a tax home in, and closer connection to, a foreign country. For example, U.S. house hunt February 1-8, move June 15. Residency starting date is June 15. This “10 day” exception is not applicable if more than 10 continuous days in U.S., e.g. house hunt February 1-15, residence starting date = February 1. Similar rules apply as to residence termination date for last year of residence.

International investors may elect U.S. income tax residency for either no 30% “FDAP” tax withholding or to take advantage of U.S. tax losses. Otherwise the investor may be subject to 30% non-resident alien withholding taxes.

The international investor may elect to be a U.S. tax resident under the substantial presence test if he makes a first year election. The requirements for the election are:

1. Not a U.S. tax resident in preceding year;

2. U.S. tax resident under substantial presence test in following tax year;

3. Sufficient presence in election year; i.e. 31 consecutive days, and in the U.S. for 75% of the days in “testing period”, i.e. portion of year beginning on first day of 31-day period and ending December 31.

For example, in 2011 non-resident alien, in 2013 resident alien under substantial presence test, for the first year election, in 2012, 2012 presence: in U.S. 8/1/12-11/30/12 (122 days), not in the U.S. for December 2012. The testing period is 8/1/12-12/31/12. The taxpayer is in the U.S. for 79% of days in testing period (i.e. 122 days out of 153 days for 8/12-12/12).

International investors with possible dual residence (U.S. and home country) may establish their tax residence under treaty tiebreaker rules. If dual residency is possible, conflict is resolved by application of the treaty tiebreaker rules. The following facts are evaluated:

1. Country of permanent home(s);

2. If permanent home in both countries, country with which personal and economic relations are closer (center of vital interests);

3. If no permanent home in either country, and center of vital interests cannot be determined, country in which he has habitual abode;

4. Country of which he is a national;

5. Competent authorities (i.e. U.S./home country may settle);

6. If qualify under the treaty tiebreaker rules, the taxpayer is taxed as a non-resident alien.

Chapter 24
International Investors – U.S. Tax Planning

International investors who either move to the U.S. or invest in U.S. assets (with U.S. source income) face multiple U.S. tax issues:

1. U.S. Income Tax Residents, For those international investors who become U.S. income tax residents, under either the "Green Card Test", or the "Substantial Presence Test" (i.e. they are in the U.S. 183 days in one year or 122 days per year over three years) they are subject to world-wide tax on their income and must annually declare this income under their Form 1040/ Individual Income Tax Returns, file Form TDF 90-22.1 ("FBAR Filings") to report ownership, or control over, foreign accounts with more than $10,000, file Form 8938 ("FATCA filing") to report ownership of foreign assets over $50,000.

2. U.S. Estate/Gift Tax Residents. For those international investors who relocate their domicile (i.e. permanent home) to the U.S. (which according to the IRS includes "Green Card Holders") they are subject to a 40% estate/gift tax on assets over $5.25M (2013).

International investors who maintain their domicile in a foreign country, and own U.S. real estate, tangible personal property or stock in U.S. corporations at their death are subject to a 40% U.S. estate tax on their assets (with a $60,000 estate tax exclusion).

There is no gift tax exclusion for non-U.S. gift tax residents (who do not pay gift tax on transfers of stock in U.S. corporations).

3. NRAs (Non-Resident Aliens). Those international investors who maintain non-U.S. income tax status as non-resident aliens are subject to 30% income tax withholding on the receipt of U.S. source "FDAP Income" (i.e. fixed or determinable annual or periodic gains, profits or income; e.g. dividends, interest, rents and royalties, et al.) with no deductions allowed.

They are not subject to U.S. tax withholding on U.S. capital gains but must file tax returns (Form 1040 NR) and report capital gains and losses on Form 8949 and report the totals on Schedule D.

Gain or loss on the disposition of a U.S. real property interest is taxed as if the gain or loss were effectively connected with the conduct of a U.S. trade or business and reported on Schedule D (Form 1040) and Form 1040NR, line 14.

A non-resident alien who is engaged in a U.S. trade or business is taxed at graduated U.S. income tax rates on all "effectively connected income"; i.e. all income, gain or loss from sources within the U.S., after allowable deductions. The graduated U.S. income tax rates are the same tax rates that apply to U.S. citizens and tax residents.

A NRA receives effectively connected income if they are a nonresident alien engaged in a trade or business in the U.S. during the tax year. Income the NRA receives through the sale or exchange of property, or the performance of services is treated as effectively

connected in that year it would have been effectively connected, the year the transaction took place or the services were performed.

Chapter 25
FATCA – Pre-Immigration Planning

Under the Foreign Account Tax Compliance Act ("FATCA"), effective 1/1/14, Foreign Financial Institutions ("FFI") must withhold 30% tax on U.S. source "withholdable payments" (and "pass-through payments') including:

1. U.S. Source FDAP Income: including portfolio interest;

2. Gross proceeds from U.S. securities. To avoid the withholding tax the foreign financial institution either has an agreement with the IRS or if no agreement, certify no substantial U.S. owners, or disclose all substantial U.S. owners.

Under FFI agreements, foreign banks must:

1. Determine which accounts are U.S. taxpayers;

2. Report to IRS regarding U.S. accounts;

3. Deduct 30% of withholdable payments to recalcitrant account holders.

Pre-Immigration Planning (Tax Strategies)

1. Accelerate income prior to entry into U.S.;

2. Defer income until resume non-residency (for investment portfolios by use of international life insurance and deferred annuities);

3. For investment portfolio earnings (e.g. "short-term" capital gains, "ordinary income" interest), defer or entirely eliminate tax by international life insurance. See my article, "U.S. Tax Planning for Passive Investments".

4. Prior to U.S. entry, "Step-up" basis transactions if tax basis substantially less than FMV. For publicly traded property can sell and repurchase, transfer to corporation in "taxable transaction" and still maintain ownership (through corporation).

5. To avoid anti-deferral regimes, sell stock of foreign mutual fund (PFIC) and purchase interest in U.S. fund.

Chapter 26
Tax Evasion and the U.S. Mail

UBS and Beda Singenberger

Beda Singenberger of Zurich Switzerland, who ran Sinco Treuhand, a wealth management and tax advisory business in Switzerland, disclosed a list of U.S. clients (hiding money in Switzerland) in the mail, which was retrieved by U.S. authorities.

Over an eleven-year period, Singenberger helped sixty people in the U.S. hide $184M in secret offshore accounts under colorful names; i.e., "Real Cool Investments" and "Wanderlust Foundation". His client list included details: client residences, their Swiss banks and the ways they hid accounts from the IRS. The U.S. government is "mining the list" which has already ensnared three "tax cheats".

1. Jacques Wajsfelner, an 83-year old exile from Nazi Germany, who pled guilty to hiding $5.7M from the IRS, sentenced to three months house arrest.

2. Michael Candle, a retired U.S. Army surgeon, who held an inheritance via a Lichtenstein foundation, which had an account at a now-defunct Swiss Bank, Wegelin Bank, pled guilty in New York on December 21, 2012, and awaits sentencing.

3. Cancer researcher Michael Reiss, who pled guilty.

Since 2008, U.S. prosecutors have charged at least 86 people in their crackdown on offshore tax evasion including two dozen bankers, lawyers and advisors. An additional 38,000 Americans have sought to avoid prosecution by entering into the IRS Voluntary Disclosure Program.

Beda Singenberger was charged in New York federal court in July 2011 with conspiracy to "cheat the IRS". He is accused of managing, opening and transferring accounts for U.S. clients. He visited U.S. clients, delivering cash from their undeclared accounts or taking cash back to deposit in Switzerland. A client in New York banked with UBS for a half-century and had a $74M account, while another client in California banked with UBS (which held $47M).

To date, Singenberger has not made an appearance in U.S. court. Switzerland does not have an extradition treaty with the U.S.

Chapter 27
Unreported Swiss IRS Bank Accounts

IRS UBS/Wegelin Summons

U.S. Taxpayers with unreported foreign bank accounts/income from those accounts face civil and criminal prosecution from accounts held at Swiss Banks: UBS/Wegelin Bank. Under a recently issued IRS summons (approved by U.S. Federal Court), the IRS has summoned wire transfer information from UBS Correspondent Bank Accounts (in Connecticut) to disclose the identity of those U.S. taxpayers who sent funds offshore to Swiss Banks (UBS), Wegelin Bank and at least two other unnamed Swiss Banks.

U.S. Taxpayers who sent funds via wire transfer to unreported, undisclosed Swiss Bank Accounts and evaded U.S. income taxes (on either the original monies earned which were the source of the wire transfer, or the earnings in the undisclosed foreign, offshore accounts), with the participation of U.S. (or offshore) tax advisors, face four separate felonies: tax evasion, conspiracy to commit tax evasion, money laundering, mail fraud and wire fraud.

The scenario includes:

1) Tax Evasion: The U.S. Taxpayer willfully fails to: pay a tax due, file a tax return due, or fraudulently files a false tax return. (Penalty: 5 years in jail.)

2) Conspiracy to Commit Tax Evasion: Under a “Klein Conspiracy” (18 USC 371), it is a crime for two or more persons to conspire to commit an offense against the U.S., which includes an agreement by two or more persons to impede the IRS. (Penalty: 5 years in jail.)

3) Money Laundering: The disguise of the nature or the origin of funds. The predicate offenses (known as Specified Unlawful Activities, i.e. “SUA”) under the Money Laundering Control Act (18 USC Sec. 1956 and 1957) includes: tax evasion.

4) Mail Fraud/Wire Fraud: If a tax advisor sends instructions to a client via telephone, e-mail, U.S. Mail, and a client transfers funds (pursuant to counsel’s instructions) by wire transfer, the client may be liable for mail fraud and wire fraud.

On March 19, 2013 the Los Angeles Times reported that Alfred J.R. Villalobos, former CalPERS Board Member and Deputy Los Angeles Mayor, and Federico Boen-Rostro, Jr., former CEO of CalPERS, were indicted for ”kickbacks”; i.e. they were paid large amounts of money to secure $3b in CalPERS business (investments), for Apollo Global Management (New York based private equity firm) and committed fraud by creating and sending phony documents to “comply” with the requirement from Apollo that CalPERS officials knew they were being paid by Apollo.

The federal indictment charged conspiracy to: defraud the U.S., conspiracy to commit mail fraud and wire fraud. The maximum penalty for mail and wire fraud is 20 years in

prison and a fine of $250,000, or twice the amount of loss, whichever is greater. These penalties may also apply to offshore tax evasion, for taxpayer off-shore wire transfer of funds.

Chapter 28
U.S. Estate & Gift Tax Treaties/U.S. Income Tax Treaties

U.S. Estate & Gift Tax Treaties

U.S. Income Tax Treaties A-Z

Conclusion

To date, the IRS and the U.S. Attorney's office have prosecuted two Swiss Banks for facilitating offshore U.S. tax evasion:

UBS: Who paid a $780M fine and disclosed 4,735 U.S. taxpayers with undisclosed offshore accounts;

Wegelin Bank: Switzerland's oldest bank (since 1741) who pled guilty to a felony (i.e. conspiracy to commit tax evasion) paid $74M in fines and penalties and is going out of business. Their Managing Director, Otto Bruderer, publicly stated: "The Swiss Banking Industry is based on tax evasion."

The International Consortium of Investigative Journalists conducted a 15-month investigation with 112 journalists from 58 countries and on 6/14/13 publicly released a database with in excess of 100,000 entities for the world's wealthiest people who have offshore bank accounts (under either their names, third-party nominees or held "anonymously" by their trusts or companies).

U.S. taxpayers with undisclosed offshore accounts (and unreported income) face a myriad of civil and criminal penalties:

1. Civil Tax Fraud: (IRC Sec. 6651(f) or 6663) for either underpayment of tax or a failure to file a tax return due to fraud; penalty: 75% of the tax due.

2. Failure to File a Tax Return: (IRC Sec. 6651(a)(1), 5% of the tax due per month; penalty: (up to) 25% of the tax due.

3. Failure to Pay Tax Due: (IRC Sec. 6651(a)(2), 5% of the tax due shown on the return per month; penalty: (up to) 25% of the tax due.

4. Accuracy-Related Penalty (IRC Sec. 6662): Under IRC Sec. 6662(a),(b)(7) and (j), a taxpayer may be liable for any underpayment of tax that is attributable to an undisclosed foreign financial asset understatement, penalty: 20-40% of the tax due.

5. Willful Failure to file an "FBAR": (31 U.S. Sec. 5321(a)(5): Civil penalty as high as the greater of: $100,000 or 50% of the total balance of the foreign account (computed annually).

Criminal Penalties

Criminal Tax Evasion

1. Tax Evasion: (26 USC Sec. 7201): (five years in jail; $250,000 fine);

2. Filing False Tax Return: (26 USC Sec. 7206(1): (three years in jail; $250,000 fine);

3. Failure to File Tax Return: (26 USC Sec. 7203): (one year in jail; $100,000 fine);

4. Obstruct/Impede Tax Collection: (IRC Sec. 7212); (three years in jail);

5. Willful Failure to File FBAR or Filing False FBAR (31 USC Sec. 5322): (ten years in jail, fines up to $500,000);

Related Criminal Penalties

1. Conspiracy to Commit Tax Evasion: If a U.S. taxpayer willfully fails to: pay a tax due, file a tax return due or fraudulently files a false tax return, if they conspire with another party, under a "Klein Conspiracy" (18 USC Sec. 371), it is a crime for two or more persons to conspire to commit an offense against the United States, which includes an agreement by two or more persons to impede the IRS. (Penalty: five years in jail);

2. Money Laundering: The use of "tax cheating proceeds" to purchase assets (e.g. real estate, stocks, bonds, art and jewelry). The "disguise of the nature or the origin of the funds". The predicate offenses (known as Specified Unlawful Activities; i.e. "SUA") under the Money Laundering Control Act (18 USC Sec. 1956 and 1957) includes: tax evasion (the maximum penalty is up to twenty years in jail);

3. Mail Fraud/Wire Fraud: Taxpayer transfer of "tax-cheating proceeds" to undisclosed, unreported offshore accounts may constitute either mail fraud or wire fraud (with a maximum penalty of up to twenty years in jail);

In summary, criminal penalties for tax evasion total up to 16 years in jail, willful failure to file FBAR- 10 years in jail (for each year for each offense), with related 20 year jail terms for money laundering, mail fraud and wire fraud.

So the threshold issue for the U.S. taxpayer is whether to submit to the IRS Offshore Voluntary Disclosure Program which requires them to "fly directly into the radar"; i.e. they "put a spotlight" on their civil and criminal tax fraud/evasion conduct voluntarily notifying the IRS of:

1. Their names and their ID numbers;

2. Their undisclosed accounts;

3. Their unreported income;

4. The institutions, advisors and "other facilitators" who perpetrated their "tax cheating" conduct.

Under the IRS OVDP, with their waiver of Fifth Amendment rights against self-incrimination, statute of limitations defenses voluntary disclosure of their "tax cheating" without immunity from prosecution, taxpayers pay a "heavy price": unpaid tax, interest, penalties: up to 70% of unpaid tax, plus 27.5% of value of total unreported foreign accounts and other assets.

So what is their alternative? The U.S. taxpayer may elect to file amended income tax returns, report all income, pay tax due (with interest and any related penalties for late payments/late filing) if they have adequate tax records, and a "reasonable cause" for their failure to previously file tax returns or report the income or disclose the accounts.

If the taxpayers file amended tax returns and report the income, the tax returns may be used as evidence against them (i.e. the amended tax returns contain evidence that may be used against them in a civil tax fraud audit or criminal tax evasion prosecution). Therefore, it is important that the taxpayer have a well-documented "reasonable cause" for their conduct, with a detailed tax opinion providing legal authority to support their position, and if advisable, lawsuit(s) against those advisors responsible for taxpayer's predicament which may obviate the "willfulness" element of the "crime of tax evasion", thereby minimizing criminal penalties.

For those taxpayers who view "tax cheating" as the "sport of kings", the question they must ask themselves is: "Are they willing to pay the price if they get caught?" If not, as Bob Dylan once said: "If you can't do the time, don't do the crime."

About the Author

Gary S. Wolfe received his Juris Doctorate from Loyola Law School in 1982, where he was President of the Tax Law Society.

From 1982 through the present, Gary has been in private practice in Beverly Hills and Los Angeles.

Gary is an international tax attorney representing clients for IRS audits, international tax planning, and asset protection.

Previously, Gary was the managing partner of a tax and business law firm, which represented Fortune 500 companies (IBM, ITT) and financial institutions (Sterling Bank, First Charter Bank.) Gary now provides case management for international litigation.

In 1997, Gary completed the Team Beverly Hills civic leadership training.

From 1997-1999 Gary was Vice-President and Member of the Board of Trustees of The Greystone Foundation, Beverly Hills, California.

From 1995-2001, Gary was the Chief Financial Officer and a Member of the Board of Directors of the Le Faubourg Honore Homeowners Association, Beverly Hills, California.

Since 2004, Gary has been conducting private seminars throughout California on the IRS, International Tax and Asset Protection.

Gary is an international tax expert and a nationally published tax author. In 2013 he published articles in the ABA (ALI-CLE) publication: The Practical Tax Lawyer (Winter, 2013 Edition), “U.S. Tax Planning for Passive Investments,” (Spring 2013 Edition), “Why

U.S. Tax Evasion is a Bad Idea (UBS/Wegelin Bank)," and in the Summer 2013 Edition he is publishing 2 articles:

1) "International Tax Planning for U.S. Exports (IC-DISC)"

2) "International Tax Evasion, Money Laundering, and Other Crimes"

In the Autumn 2013 Edition he will be publishing another article:

1) "EB-5 Visas (Immigrant Investor Visas)"