



IRS Tax Compliance Involving U.S. Citizens/Green Card Holders in Israel
WHAT HAS CHANGED and WHY?

Israeli Bar Association
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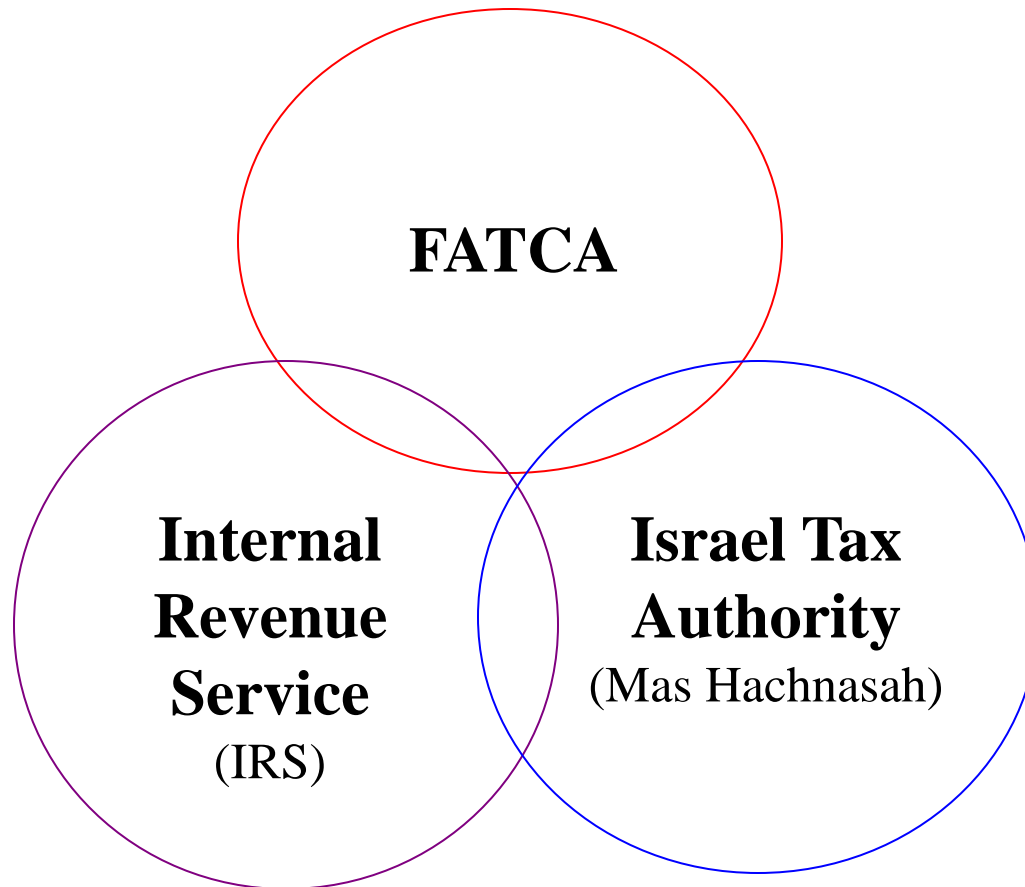
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Overview

- Increased interaction between US and Israel
- New US – Swiss bank agreement
- Impact on other countries including Israel
- Update on IRS Offshore Voluntary Disclosure Program
- Availability of 5% FBAR penalty for Foreign Residents
- Alternative may be the Streamlined Program
- Expatriation
- Issues involving green card holders for US estate and gift taxes
- US Trusts with Israeli beneficiaries – what to do going into 2014

Why now more than before?



Israel and United States

- Significantly Increased coordination and communication between IRS and Israel Tax Authority (“ITA”)
 - FOCUS is on:
 - undisclosed income
 - bank accounts
 - real estate and other investments



FATCA

- New Agreements between US and various countries and its banks and financial institutions to significantly increase **“transparency”** and disclosure of US Citizens and Green Card Holders (Foreign Account Taxpayers Compliance Act – **“FATCA”**)



The New Program

- New disclosure program with Switzerland requiring each bank:
 - to “grade” itself and do a self assessment of its compliance with US tax laws;
 - Four (4) classes to choose from -- depends on the severity of tax evasion;
 - assisting taxpayers in hiding asset(s)



The New Program

- Banks have a limited opportunity this year before December 31, 2013 to decide whether they want to enter into an agreement and possibly avoid criminal prosecution with the US Government



Category One

- Is bank already under criminal investigation by the US Department of Justice ?



Category Two

- Bank is given the opportunity to obtain a non-prosecution agreement in exchange for which the bank has to pay a potential significant penalty and report the names of the US account holders.
 - The penalty ranges from 20% – 50% of the maximum aggregate value of US related accounts that exist or were opened as of August 1, 2008.
- In essence, the Swiss bank will choose this category to the extent it has “reason to believe” it may have committed various tax related offenses with undeclared US related accounts as of August 1, 2008 and forward.

Category Three

- Any Swiss bank that has not committed any tax related offenses.
- Has an effective compliance program including detailed procedures to adequately indicate whether an account holder is a US citizen or resident and whether appropriate tax documentation including Forms W-9 and W-8 Ben to demonstrate the US tax reporting requirements are properly taken care of.

Category Four

- Most favorable class.
- Represents a deemed compliant financial institution.
- Essentially provide at least 98% of the accounts by value by residents of Switzerland or EU member states which must be satisfied as of December 31, 2009.

The New Program

- In 2014 - US Government may have similar programs for banks in other countries.



Important Questions

- Given the significant focus by US on Israeli financial institutions and banks, is Israel next?
- But why should I care if I am an Israeli citizen living in Israel?



Who is affected?

- More people than one thinks:
 - US citizen (born in the United States or naturalized)
 - Greencard holder (whether current or expired and has not been given back to the US Consulate or otherwise)



Example

- Amichai and Livnat are Israeli Citizens who come to the United States for education (example - MBA at MIT or Law Degree from Harvard)
- A child, Yair, is born in the US
 - Yair is a US citizen subject to US taxation including estate and gift tax.
 - The only way to cancel US citizenship is to formally expatriate.
- Similarly, in case Amichai and Livnat decide to stay longer in the United States and secure a Green Card, they too are subject to US Income Taxes.
 - Upon returning to Israel Yair becomes an Israeli citizen and for US and Israeli tax purposes all three (3) are treated as dual citizens.
- *(Special rule for estate and gift taxes that applies only to assets in the US)*

Example

- Consequences:
 - Subject to Israeli tax and US tax with appropriate credit for the Foreign Tax Credit based upon the US/Israel double tax treaty.



New Issue - Greencard Holders

- What happens if my Greencard expires?
- Am I still subject to US taxes?
- YES, and in fact, may cause unexpected tax issues if want to surrender the green card.



Expatriation

- General Rules
 - Must have filed the last five (5) years US tax returns
 - Possibility of exit tax owed to the US
 - Assuming the average income tax in the United States is at least \$151,000
 - Net worth exceeds \$2M on the day before expatriation
 - Careful planning needs to be used to address pre-expatriation gifts
 - Must file a special form with the IRS which requests historical information on the taxpayer

Expatriation

- If not eligible to Expatriate consider the IRS
Offshore
Voluntary
Disclosure
Program

OVDP

- The OVDP process
 - Three (3) distinct “rounds” of activity
 - Round I - Pre-clearance
 - Round II - OVD Letter and Attachments
 - Round III - Full OVDP submission
 - Each round has forms to file and deadlines

OVDP

■ Round I – Pre-clearance

- Pre-clearance requests faxed to IRS Criminal Investigation Lead Development Center
- Purpose is to check eligibility to enter OVDP
- Fax name, date of birth, social security number and address to IRS, along with POA
- IRS responds via fax, used to be 24-48 hours, *then 5-7 business days* and now, post government shutdown, can be up to **30 business days**
- After response, then **45** days to submit Round II

OVDP

- Round II – OVD Letter and Attachments
 - The OVD Letter asks general questions about the taxpayer, including estimate of high balance
 - One (1) attachment for **each** financial account
 - Clients may need assistance filling out the forms
 - Forms sent to Philadelphia, PA and reviewed by CI
 - CI will notify by mail or fax if *preliminarily* accepted
 - CI supposed to notify within 45 days
 - Within **90** days of notification, submit Round III, extensions may be requested

OVDP

- Round III – Full OVDP submission
 - Payment for tax, interest, 20 % accuracy-related penalty, and, *if applicable, the failure to file and failure to pay penalties*
 - Copies of previously filed tax returns, if any, for the past eight (8) years – currently 2005 - 2012
 - Complete and accurate original or amended tax returns, if needed, for past eight (8) years, including
 - Schedules B, D, E and Forms 8938 and 5471 if applicable
 - Signed consents to waive statute of limitations to assess tax and to assess FBAR penalties

OVDP

- Round III – Full OVDP submission
 - Complete and accurate FBARs for the past **eight (8)** years
 - Foreign account or asset statements for each account or asset
 - Penalty computation indicating aggregate highest account balance for the past eight (8) years
 - If aggregate account balance is greater than \$500,000 for even *one* (1) year, taxpayer must include copies of offshore financial account statements reflecting *all* account activity for *each* of the past eight (8) years
 - If aggregate account balance is less than \$500,000, still need to have the statements available in case the IRS requests them

OVDP

- Round III – Full OVDP submission
 - What if you can't pay the full amount?
 - You can still enter the program. Submit proposed payment plan and Form 433-A
 - What if you need an extension?
 - You can request up to a **90** day extension
 - Submit as much information as possible and a statement of which information is missing and a request for an extension

OVDP – Post Submission

■ Procedural Steps

- The case will be assigned to an OVDP civil examiner
- But not for **examination**. Instead, for **certification**. Certification is less formal than examination
 - Certification is for accuracy and completeness
 - Examiner may request additional documentation
 - Taxpayer does not have right to appeal the IRS' determination at this level – possible to opt out

OVDP – 5% Reduced FBAR Penalty

- Penalties – 5%: Three categories of taxpayers
- Category 1 – Taxpayer:
 - (a) did not open the account
 - (b) minimal, infrequent contact with the account
 - (c) did not withdraw more than \$1,000 per non-compliant year
 - (d) U.S. taxes were paid on funds deposited in the account (only account earnings were non-compliant)

OVDP – 5% Reduced FBAR Penalty

- Penalties – 5%: Three categories of taxpayers
- Category 2 – Taxpayer:
 - (a) is a foreign resident
 - (b) did not know he/she is a U.S. citizen
 - If taxpayer knew he/she was a U.S. citizen but didn't know required to pay U.S. taxes, not eligible under this
 - Foreign residents -- should they consider the streamlined filing program? (more on this later)

OVDP – 5% Reduced FBAR Penalty

- Penalties – 5%: Three categories of taxpayers
- Category 3 – Taxpayer:
 - (a) is a foreign resident
 - (b) tax compliant in country of residence
 - (c) less than \$10,000 U.S. sourced income per year
 - For taxpayers in this category only: penalty does not apply to business interests, real estate and other non-financial assets if applicable taxes were paid on the funds used to acquire the assets

OVDP - Penalties

- Penalties – 27.5%
 - 27.5% - applies to assets “related in any way to tax non-compliance”
 - Includes financial accounts and assets like real estate artwork, patents and interest in a business
 - Assets are related to tax non-compliance if:
 - Taxpayer failed to report income from the asset, or
 - Failed to pay U.S. taxes on the money used to purchase the asset

OVDP - Penalties

- Penalties – 12.5%
 - Taxpayers whose offshore assets are valued at less than \$75,000 for each OVDP year
 - Includes the following assets:
 - Value of interests in offshore entities
 - Assets purchased with improperly untaxed funds
 - Assets producing income if taxes were not paid on the income

OVDP - What if I want to leave? – Opting out

- If the penalty seems too severe for the taxpayer's facts, the taxpayer may opt out of the program
 - Opt out is only from the OVDP penalty structure - taxpayer will be subject to regular statutory penalty structure for tax and FBAR violations
 - Taxpayer still required to provide all relevant information
 - Taxpayer will submit written statement containing the facts of the case, a recommendation for which penalties apply and the rationale behind those recommendations

OVDP - What if I want to leave? – Opting out

- Will there be an audit and can the case go criminal?
 - Taxpayer's case will be sent to a centralized review committee that will determine the scope of the examination
 - Opt-out may result in full-scale examination
 - Taxpayer must appreciate and understand the potential risks vs. benefits

OVDP Alternatives-Streamlined Program

- Streamlined Compliance Program – in general
 - For non-residents only who did not file US returns
 - The Streamlined Compliance Program does not offer protection from criminal prosecution. Only the OVDP protects from criminal prosecution
 - OVDP is not available once a streamlined submission is made
 - Taxpayers ineligible for OVDP are ineligible for streamlined

OVDP Alternatives-Streamlined Program

- Streamlined Compliance Program – in general
 - Program intended for taxpayers presenting a low level of compliance risk
 - Risk level determined based on the returns filed and the taxpayer's answers in the questionnaire
 - A low risk is:
 - Simple returns
 - Less than \$1,500 of U.S. tax due each year
 - No high risk factors

OVDP Alternatives-Streamlined Program

- Streamlined Compliance Program – risk factors
 - High risk factors include the following:
 - more than \$1,500 U.S. tax liability per year
 - returns claiming a refund
 - material economic activity in the U.S.
 - taxpayer has not declared all income in his/her country of residence
 - taxpayer has a financial interest in an account or entity located outside his/her country of residence
 - U.S. sourced income

OVDP Alternatives-Streamlined Program

- Streamlined Compliance Program – examination
 - All submissions will be reviewed
 - Low compliance risk -
 - IRS will expedite review and will not assert penalties or other actions
 - High compliance risk –
 - IRS will review more thoroughly
 - May result in full examination similar to the examination if taxpayer opts out of OVDP

OVDP Alternatives-Streamlined Program

- Streamlined Compliance Program - procedure
- Taxpayers entering the program submit:
 - Tax returns for the past three (3) years
 - Mark the first page of each return “Streamlined”
 - Payment of any tax and interest
 - FBARs for the past six (6) years
 - Signed and completed Questionnaire
 - If necessary, an application for an ITIN

Quiet disclosure – Highlights from the GAO report

- The GAO report examined IRS and FinCEN data to estimate number of “quiet disclosures”
- A quiet disclosure is when taxpayer files amended returns and pays additional taxes and interest without notifying the IRS
- Taxpayers make quiet disclosures to avoid the penalty framework of the OVDP
- Quiet disclosures do not offer any protection against criminal and civil prosecution

Quiet disclosure – Highlights from the GAO report

- Why is it important to identify quiet disclosure?
 - The IRS wants to identify quiet disclosures for several reasons, including the following:
 - Quiet disclosures avoid paying penalties, minimizing the revenue generated by the programs
 - Quiet disclosures success discourages others from entering IRS disclosure programs
 - Quiet disclosures does not give the IRS the information it needs to search for other non-compliance

Quiet disclosure – Highlights from the GAO report

- The IRS examined several thousand returns and identified “several hundred” quiet disclosures
- According to the GAO, there are potentially 10,595 additional quiet disclosures
- A quiet disclosure that went wrong –
 - Taxpayer used a secret Swiss account to conceal \$40,624. Taxpayer then submitted FBARs and 1040s with the secret account for 2003-2008. Taxpayer was forced to pay \$76,283 in penalties and also faces up to 5 years in prison and \$250,000 in fines

Quiet disclosure – Highlights from the GAO report

■ GAO Report – Key Statistics

Table 2: Selected Penalty Information for 2009 OVDP Individual Taxpayers with Closed Cases as of November 29, 2012

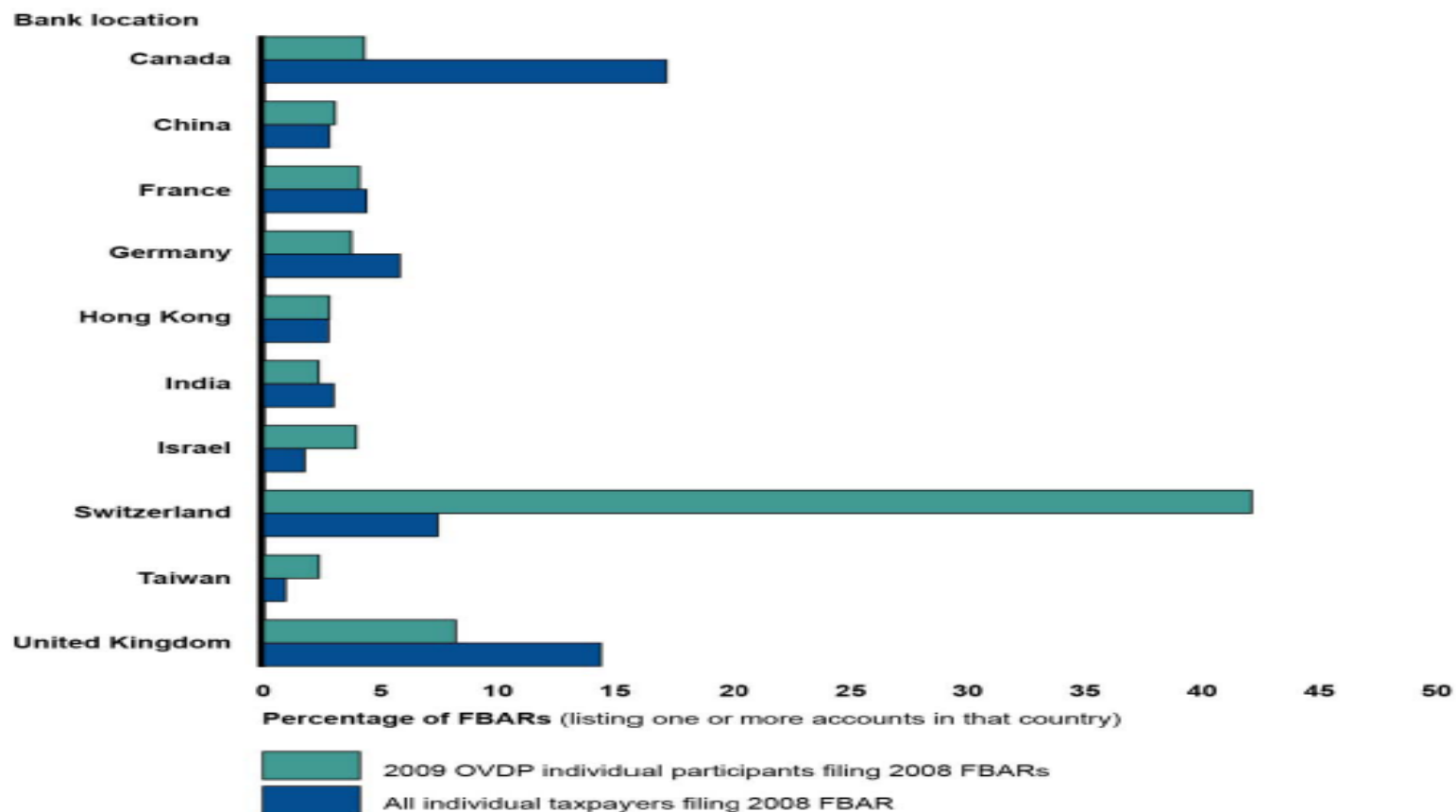
	Mean	10th percentile	25th percentile	Median	75th percentile	90th percentile
Offshore account(s) balance ^a	\$1,923,310	\$78,315	\$190,365	\$568,735	\$1,595,805	\$4,054,505
2009 OVDP penalty	375,879	13,320	35,670	107,949	310,476	793,166
Additional tax owed, tax years 2003-2008	97,681	103	1,661	12,748	60,449	190,399
Interest, tax years 2003-2008	29,645	52	482	3,486	17,398	57,129
Other penalties ^b	24,014	84	605	3,457	14,290	45,163
Total penalties, interest and taxes	\$433,840	\$2,318	\$22,120	\$95,982	\$330,185	\$923,300

Source: GAO analysis of IRS's Enforcement Revenue Information System (ERIS) and Individual Returns Transaction File.

Quiet disclosure – Highlights from the GAO report

■ GAO Report – Key Statistics

Figure 3: Top Ten Locations of Offshore Accounts on 2008 FBARs Filed by 2009 OVDP Participants Compared to All 2008 Individual FBAR Filers



Source: GAO analysis of FinCEN data.

Quiet disclosure – Highlights from the GAO report

- What does this mean going forward? Are quiet disclosures going to be found and examined?
 - The GAO gave the IRS the data on potential quiet disclosures and the IRS may examine these cases
 - The IRS agreed with the GAO methodology and is exploring new methods of finding quiet disclosures
 - The IRS is also exploring new methods of identifying taxpayers who report old accounts as if they are new
 - The IRS is using the information from the FBAR, Form 8938 and Schedule B to look for patterns

OVDP

■ Statistics from TAO 2012 annual report

TABLE 1.8.1, OVD Program Applications, Dispositions, and Processing Time as of September 29, 2012¹⁷

	2009 OVDP		2011 OVDI		2012 OVDP
	Number	Average Processing Time (closed cases)	Number	Average Processing Time (closed cases)	Number
Total applicants ¹⁸	11,161		11,941		4,095
Closed after certification	10,723	307.3 days	1,463	116.6 days	0
Open certification	63		10,417		4,095
Opted out	280		30		0
Closed after opt out	235	548.4 days	8	176.5 days	0
Open after opt out	38	647.4 days	22	173.4 days	0
Removed	105		0		0
Closed after removal	79	583.9 days	0	n/a	0
Open after removal	24	711.1 days	0	n/a	0

OVDP – IRS Use of Information

- Participants in the OVDP process give the IRS valuable information regarding offshore activities
- Information the IRS requests includes:
 - Bank and branch information
 - Advisors who assisted in opening the account
 - Modes of accessing the account

OVDP – IRS Use of Information

- The IRS compiles databases based on the information that it receives from OVDP participants
- The IRS is looking for trends of avoidance
 - If an IRS agent spots a trend, the agent can run searches through the IRS databases to find others that are implicated in the same trend

OVDP – John Doe Summons

- John Doe summons – can you still enter OVDP?
 - IRS will request identifying information when it suspects taxpayers are hiding assets
 - IRS issued John Doe summons relating to FirstCaribbean International Bank on 4/30/13
 - Prior to this the IRS identified 129 OVD participants with money in FirstCaribbean
 - IRS agent personally interviewed 6 of these participants
 - IRS also noted several criminal cases involving FirstCaribbean

OVDP – John Doe Summons

- Even if there is a John Doe summons taxpayers can still enter the OVDP
- However, this is only if the IRS does not have specific information about the taxpayer
- According to the IRS, a taxpayer concerned that the IRS will receive specific identifying information should “make a voluntary disclosure as soon as possible.” (From FAQ 21.)

OVDP – Recent Developments Involving an Israeli Bank(s)

- IRS accepted taxpayers into the OVDP
- Some taxpayers had already completed their Round III submissions -- paid taxes and penalties but OVDP case not worked yet
- Later, the IRS sent notices stating that the taxpayers were actually *not* eligible for the OVDP
- It appears that the Department of Justice received information relating to the specific taxpayers and so the taxpayers were not eligible to enter the program

OVDP – Recent Developments Involving an Israeli Bank(s)

- According to Kathryn Keneally, Assistant AG for Tax Division, only around 45 taxpayers were accepted into the program and then determined to be ineligible
- It seems that lack of communication between the IRS and DOJ caused the IRS to mistakenly accept taxpayers that the DOJ already knew about
- Bank Leumi announced it will take a charge of 340 million shekel to cover the cost of the IRS investigation into its customers

OVDP – Recent Developments Involving an Israeli Bank(s)

- It seems unlikely that these taxpayers will face criminal charges
 - Assistant AG Keneally said that DOJ will consider the “fairness of proceeding against” an individual that was already accepted and made a disclosure

OVDP – Recent Developments Involving an Israeli Bank(s)

- Recent comments by Assistant AG Keneally
 - Keneally denied that the DOJ is investigating taxpayers independent from the IRS
 - According to Keneally, the taxpayers that were accepted into the OVDP and then rejected generally failed to comply with the terms of the OVDP
 - Taxpayers either took too long to complete submissions, challenged treaties in foreign countries, or applied to OVDP knowing that there already was an investigation into the taxpayer
 - Keneally stressed that other bank investigations are under way and urged taxpayers not to hold off: “To wait for the next bank is a very foolish thing to do”

IRS Ramps up Criminal Investigations

The following table provides IRS-CI's International Operations statistics over the past three fiscal years:

IRS-CI Statistics - International Cases			
	FY 2012	FY 2011	FY 2010
Investigations Initiated	211	244	351
Prosecutions Recommendations	196	195	216
Indictments/Informations	153	149	181
Convictions	110	133	96
Incarceration Rate	87.9%	70.6%	87.4%
Average Months to Serve	71	61	50

Bank Secrecy Act (BSA) Investigations			
	FY 2012	FY 2011	FY 2010
Investigations Initiated	923	795	738
Prosecution Recommendations	683	518	456
Indictments/Informations	575	462	380
Sentenced	342	344	299
Incarceration Rate	76.6%	75.3%	73.9%
Average Months to Serve	40	33	38

BSA statistics include investigations from Suspicious Activity Report (SAR) Review Teams, violations of BSA filing requirements, and all Title 31 and Title 18-1960 violations.

Recent Guilty Plea Involving Israelis Living in the US

- Two Israeli Banks– 3 cases
- All cases are from the U.S. District Court for the Central District of California
- All cases involved Israelis living in U.S.
- All plead guilty to concealing money offshore
- All face civil penalties
- All face criminal penalties

Recent Guilty Plea Involving Israelis Living in the US

- Case 1 – Zvi Sperling
- Sperling had accounts with Banks A and B with U.S. and Israeli branches and took loans from U.S. branch secretly secured by Israeli accounts
 - Bank A was identified as Bank Mizrachi and Bank B was identified as Bank Leumi
- Sperling hid approximately \$381,563. The approximate account high balance was \$4 million
- Agreed to \$2 million penalty and faces up to 5 years in prison and an additional \$250,000 fine

Recent Guilty Plea Involving Israelis Living in the US

- Case 2 – Guity Kashfi
- Kashfi also had an Israeli account with an Israeli bank that she used to secretly securitize loans from a U.S. branch
- Kashfi also had an account in Luxembourg with a second Israeli bank that she used to take out another loan
- Kashfi hid approximately \$221,306 in interest income
- High balance was approximately \$2.5 million
- Kashfi agreed to pay 50% of the high balance and she also faces up to 5 years in prison and a \$250,000 fine

Most Recent Guilty Plea Involving Israelis Living in the US

- Case 3 – David Raminfard
- Raminfard also had an Israeli account with an Israeli bank that he used to secretly securitize loans from a U.S. branch
- Raminfard hid approximately \$521,193 in interest income
- High balance was approximately \$3.0 million
- Raminfard agreed to pay 50% of the high balance and he also faces up to 5 years in prison and a \$250,000 fine

OVDP – Criminal Prosecutions

- Similar crimes – very different punishments
 - Michael Canale and Marry Estelle Curran were both charged with hiding assets in Swiss bank accounts
 - Both plead guilty
 - Both faced up to several years in jail
 - Canale goes to jail. Curran? Less than 5 minutes probation

OVDP – Criminal Prosecutions

- Similar crimes – very different punishments
 - Dr. Michael Canale
 - 62 years old, 30 years of U.S. Army service
 - Inherited Swiss account from his father
 - Account held \$1.5 million in 2010
 - Marry Estelle Curran
 - 79 years old, active in various charities
 - Inherited Swiss accounts from husband
 - Account held **\$43 million** at its highest point

OVDP – Criminal Prosecutions

- Similar crimes – very different punishments
 - Dr. Michael Canale
 - Paid over \$1.25 million in taxes and penalties
 - Accepted felony guilty plea, forced to retire from his position with the Department of Veteran Affairs
 - Sentenced to 6 months in jail
 - Also sentenced to 400 hours community service giving rehabilitative medical care

OVDP – Criminal Prosecutions

- Similar crimes – very different punishments
 - Marry Estelle Curran
 - Paid over \$21 million in penalties and taxes
 - Judge calls prosecution “tragic” and “unfortunate”
 - Refuses to sentence her to jail and instead places her on probation, which he terminates immediately
 - Urges defense to appeal to the President for a pardon and urges the Government to join the defense in the appeal

OVDP – Criminal Prosecutions

- Similar crimes – very different punishments
 - What is the difference between them?
 - Different judges – different jurisdictions
 - Curran tried to come clean; Canale didn't
 - When Curran found out that her Swiss accounts were subject to U.S. tax she hired an attorney to disclose the accounts to the IRS. The attorney delayed for 1 month and in that time, the IRS received information about Curran that disqualified her
 - Canale seemingly did nothing to try and disclose the account

What's new with the FBAR?

- E-filing becomes mandatory July 1, 2013
 - FinCEN generally requires all forms to be e-filed as of July 1, 2012
 - FinCEN granted general exception to mandatory e-filing FBARs until June 30, 2013
 - After this date, all FBARs must be filed electronically
 - Electronic filing is with the BSA e-filing system

What's new with the FBAR?

■ Proposed changes to the FBAR

Part II Information on Financial Account(s) Owned Separately										
15 Maximum value of account during calendar year reported			15a Amount Unknown <input type="checkbox"/>		16 Type of account a <input type="checkbox"/> Bank b <input type="checkbox"/> Securities c <input type="checkbox"/> Other—Enter type below					
17 Name of Financial Institution in which account is held										
18 Account number or other designation			18 Mailing Address (Number, Street, Suite Number) of financial institution in which account is held							
20 City		21 State, if known		22 Zip/Postal Code, if known			23 Country			
Signature			44a Check here <input type="checkbox"/> if this report is completed by a 3rd party preparer and complete item 46 and the 3rd party preparer section.							
44 Filer Signature			45 Filer Title, if not reporting a personal account				46 Date (MM/DD/YYYY)			
3rd Party Preparer Use Only	47 Preparer's last name		48 First name		49 MI	50 Preparer's signature			51 Check <input type="checkbox"/> if self-employed	52 TIN
	52a TIN type <input type="checkbox"/> PTIN <input type="checkbox"/> SSN/TIN <input type="checkbox"/> Foreign		53 Contact phone no.		53a Ext	54 Firm's name			55 Firm's EIN	
	56 Address (Number, Street, Suite Number)				57 City		58 State	59 Zip/Postal Code	60 Country	

What's new with the FBAR?

- Proposed changes to the FBAR
 - FinCEN proposed changes to the FBAR on 2/26/13 to allow for 3rd party filing
 - Changes include adding new fields to record:
 - Preparer's name
 - Preparer's TIN, or if employed, the employer's EIN
 - Preparer's telephone number
 - Preparer's or the preparer's firm's address

What's new with the FBAR?

- One relatively common ambiguity-*in brief*
- It is not clear where a business's accounts should be listed on the individual owner's FBAR
 - Part II (accounts *owned* separately) and III (accounts *owned* jointly) seem to be only for accounts the filer has direct ownership over
 - Part IV is only for accounts that the filer has no financial interest in
 - Likely that the account belongs in Part II or III because the filer has a financial interest in the account

What's new with the FBAR?

- Willful failure to file penalties
 - *Williams III* and *McBride* – recent cases that shed some light on the standard for willfully failing to file FBARs
 - Evidentiary standard is preponderance of the evidence and not clear and convincing proof
 - Knowledge of the filing requirement, and willfulness, can be imputed to the taxpayer
 - The courts noted that Schedule B Part III contains plain instructions that foreign accounts need to be disclosed

FATCA/Form 8938 facts

- Israel and FATCA
 - Will be the Model 1 IGA – **still pending**
 - The Israeli banks will disclose account information to the Israeli authorities
 - The Israeli authorities will give the information over to the IRS
 - Israeli banks will not have to deal directly with the US authorities

FATCA/Form 8938 facts

- Form 8938 threshold amounts for taxpayers living outside of the U.S.
 - Unmarried taxpayer –
 - \$200,000 at year end or \$300,000 any time during the year
 - Married filling separately -
 - \$200,000 at year end or \$300,000 any time during the year
 - Married filing jointly-
 - \$400,000 at year end or \$600,000 any time during the year

FATCA/Form 8938 facts

- Specified “Foreign Financial Assets” includes:
 - Foreign deposit and custodial accounts
 - Foreign stock and securities even if not held in account
 - Foreign partnership interests
- The following are not considered FFAs:
 - Real estate
 - Government sponsored Social Security type program
 - Foreign currency and precious metals held directly

Net Investment Income Tax (“NIIT”)

- 26 U.S.C. 1411 was enacted as part of Obamacare
- Applies a 3.8% tax on certain investment income
- Applies to individuals, estates and to trusts
- Does not apply to NRA filers unless making a Sec. 6013(g) election
- The threshold is:

Filing Status	Threshold Amount
Married filing jointly	\$250,000
Married filing separately	\$125,000
Single	\$200,000
Head of household (with qualifying person)	\$200,000
Qualifying widow(er) with dependent child	\$250,000

Net Investment Income Tax (“NIIT”)

- The tax applies to qualified investments, including:
 - interest, dividends, capital gains, rental and royalty income, non-qualified annuities and certain business income involved in trading and passive activities
- The tax does not apply to:
 - wages, operating income from non-passive businesses and self-employment income

International Tax Reform

- Tax reform is now a hot button political topic
 - Both parties are calling for some type of reform
 - Proposals range from minor tweaks to a complete overhaul of the tax code
 - Senate Finance committee is compiling tax reform options
 - Reports are prepared jointly by majority and minority staffs of the Senate Finance Committee

International Tax Reform

- Senate Finance Committee Int'l tax reform proposals include the following:
 - Eliminating some of the deferral potential of CFCs, moving to an exemption system on dividends and strengthening subpart F rules
 - Reintroducing more FTC limitation baskets, switching to a per country basket system
 - Reform effectively connected income and PFIC rules
 - Provide election to U.S. citizens who are long-term non-resident citizens to be taxed as NRAs

Exit Tax

- Exit Tax for covered “expatriates”:
 - A U.S. citizen who gives up U.S. citizenship,
 - A “long term resident” – a green card holder for eight (8) of the last fifteen (15) years and is no longer a lawful resident, or
 - You fail to certify that you have complied with all US Federal Tax obligations for the preceding five (5) years
- And the person meets one of the following thresholds:
 - Average net income tax for past 5 years test
 - Has net worth over \$2 million

Exit Tax

- Mark-to-Market and unrealized gains
- Tax applied to “net unrealized gains” under covered expatriate assets estimated on the Mark-to-Market basis as if the assets were sold at their Fair Market Value on the day preceding expatriation.
- Tax base includes any interest in property that would have been taxable as part of the gross estate for Federal Estate purposes in case the individual dies as a US citizen or resident and assets are valued according to the rules governing Estate Tax computation.

Expatriation News

- Transfer tax on receipt of gifts from expatriates
 - Under Section 2801, the *recipient* of a covered gift or bequest pays a tax. This is unlike other transfer taxes where the party making the gift pays the tax
 - Covered gifts include:
 - Property acquired by gift from a covered expatriate
 - Property acquired by death of covered expatriate
 - Does not include certain property to which a marital deduction would be allowed

Expatriation News

- Transfer tax on receipt of gifts from expatriates
 - A non-resident non-citizen receives a more favorable tax treatment than an expatriate
 - Generally, only subject to transfer taxes on property located in the U.S.
 - And has a \$60,000 exemption for U.S. located property
 - This allows room for important estate planning, especially for green card holders

Expatriation News

- Transfer tax on receipt of gifts from expatriates
 - When is the date of the gift received
 - For example, if a gift is made to an irrevocable trust, is it received on the date the gift is made or on the date that a distribution is made to a beneficiary?
 - Who is liable for the tax, the trust or the beneficiary?
 - Recent comments by Cathy Hughes, Treasury Estate and Gift Tax Advisor regarding the “date received”
 - Guidance on the date a gift is considered “received” is “top priority” for Treasury

Further New Issues - Especially With Non Israeli Established Irrevocable Trusts

- Historically Foreign Trusts (Irrevocable) set up by non-Israeli grantors are not subject to Israeli taxation although there are Israeli beneficiaries
- As of January 24, 2014, such Foreign Trusts are being domesticated subject to an Israeli Trust with no express offset for a foreign tax credit or sourcing of income

Further New Issues - Especially With Non Israeli Established Irrevocable Trusts

- Currently, efforts are underway to try to convince the ITA that the foreign tax credits must be honored as well as the other provisions under the double tax treaty between at the least the US and Israel.

Planning Techniques

- Planning techniques to help avoid estate and gift tax:
 - Use of certain flow through entities (LLCs in particular) with an Israeli company (e.g. Chevra Mishpachti)