



How to Respond to the Ever-Increasing Reach of the IRS
Especially for High Net Worth Individuals and Families

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Stuart M. Schabes, Esquire
Ober, Kaler, Grimes & Shriver

smschabes@ober.com

410-347-7696 (U.S.)

052-569-7938 (Israel)

www.usisraeltaxlaw.com

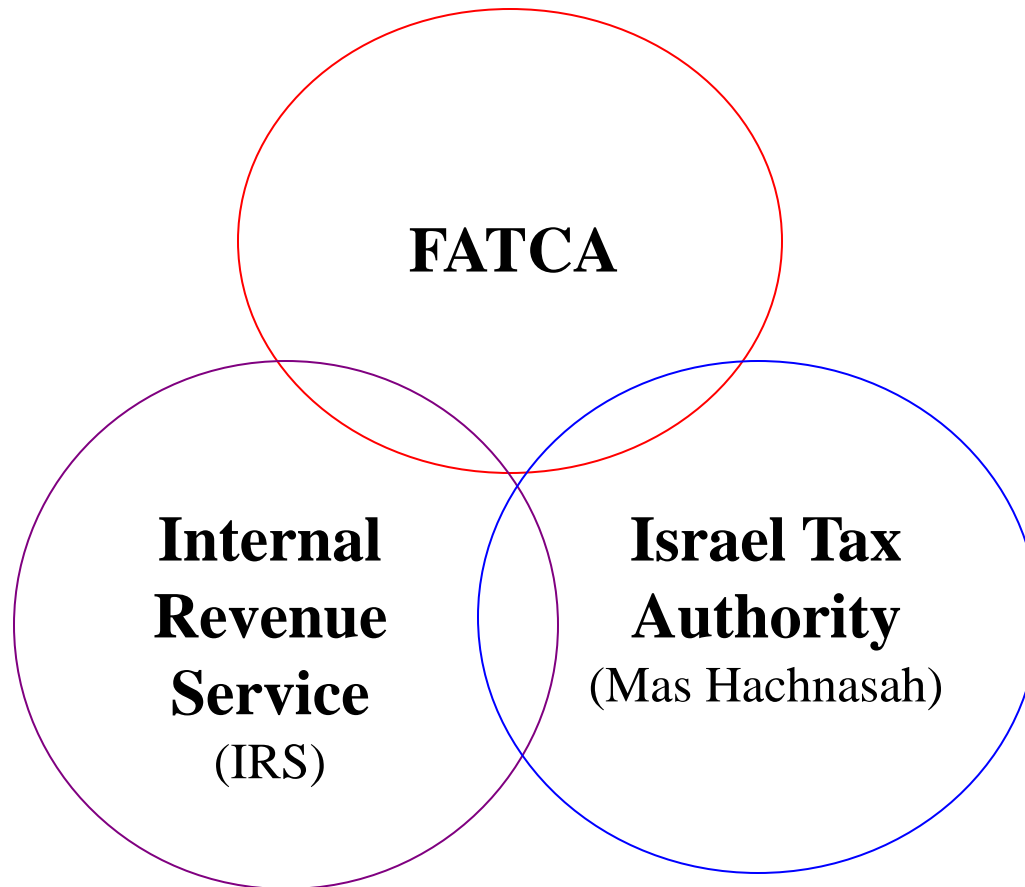
Overview

- Increased interaction between US and Israel
 - *Important Questions*
 - Why now more than before?
 - Why should I care?
 - I am a US and Israeli Citizen, but live in Israel and pay all my taxes to ‘Mas Hachnasah’?
 - What power does the IRS really have in Israel?
 - Does this really affect me if I am not a US citizen but I have or am about to invest in US real estate, securities, business, etc?

Overview

- New US – Swiss bank agreement
- Expatriation
- Issues involving green card holders for US estate and gift taxes
- US Irrevocable Grantor 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

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

- Efforts are being put forth to try to convince ITA that the foreign tax credits must be honored as well as the other provisions under the double tax treaty.

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)