



## DO YOU HAVE UNREPORTED FOREIGN BANK ACCOUNTS? **THE IRS IS LOOKING FOR YOU**

Let Einhorn Harris help you with the new amnesty program

While the 2011 tax season may be behind us, the IRS wants you to know some very important information if you are a United States resident and have any type of bank account located outside of the United States.

The Internal Revenue Service has announced a new initiative, the "2011 Offshore Voluntary Disclosure Initiative (OVDI)", for taxpayers with unreported foreign bank accounts. If you have a financial account in any country other than the United States and have not reported it on your taxes, even if it's only a modest account, you must disclose it to the IRS prior to September 1, 2011 or you could be subject to criminal prosecution. The IRS is taking aggressive steps to force major international banks, such as HSBC, to turn over to the IRS the names of its U.S. account holders who are suspected of hiding their accounts to evade taxes. The IRS is planning to enforce criminal proceedings against the identified individuals after the close of the voluntary disclosure program on September 1, 2011.

Many residents of the United States who have left money in foreign accounts are subject to these rules. For example, the individual may have just come to the country and forgotten about accounts in other countries. They may have worked in a foreign country and opened accounts overseas and then returned to the U.S., or they may have even



inherited these accounts from family members. In each of these instances, the accounts must be disclosed on a federal income tax return. These disclosure requirements also apply to non-income producing accounts, as well as to accounts which belong to others, but over which a taxpayer has signature authority, like a Power of Attorney.

New federal legislation has granted new powers to the IRS to obtain the names of individuals with undisclosed foreign accounts. Under the recently enacted Foreign Account Tax Compliance Act ("FATCA"), foreign financial institutions (which are broadly defined to include banks, mutual funds, funds of funds, exchange-traded funds, hedge funds, private equity and venture capital funds, etc.) must disclose their U.S. customers to the IRS or face their own penalties. Given the severity of these provisions, it is expected that most foreign institutions will ultimately comply with these account disclosure requirements.

Accordingly, you should assume that the IRS will eventually be informed of your foreign account, and criminal prosecution for non-disclosure and non-reporting may follow. The IRS has made the identification of these foreign accounts and the prosecution of their holders a top priority.

On the other hand, if you “come clean” and disclose your interests in the accounts, pay the tax on any previously unreported income (plus any underpayment, failure to file or failure to pay penalties), and pay an additional penalty of 25% of the highest value of the account for the years 2003-2010, you will be able to generally eliminate the risk of criminal prosecution. There are some limited exceptions to these penalties for modest or inherited accounts. Not disclosing these accounts could result in a fine of 50% of the highest value of the account for each year plus an additional fine and a possible prison sentence.

If you do have undisclosed foreign accounts it is important that you speak with an Einhorn Harris attorney who has knowledge of these rules as soon as possible. We can advise you regarding your eligibility to participate in the voluntary disclosure program. Keep in mind, all discussions with our attorneys are strictly confidential.



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We can represent you with respect to your estate planning needs, as well as your tax and business planning, including the transfer of businesses to family members, tax exempt organizations (including charitable trusts and private foundations) and tax controversies with the Internal Revenue Service.

If you have a problem or question related to New Jersey or federal tax laws, contact Einhorn Harris Today.

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Gary Botwinick chairs the firm's Taxation/Trust & Estates Department. He joined the firm in 1998, becoming Partner in 2001. His career began in the IRS Manhattan District Counsel Office, where he tried civil cases before the U.S. Tax Court.

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Chris focuses his practice on estate planning, including drafting complex wills and trusts, GST planning, and closely-held business succession planning. He provides tax advice for businesses and individuals involved in IRS audits, IRS appeals, and disputes with the IRS and New Jersey Division of Taxation

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