

LAW OFFICES OF SANFORD I. MILLAR

MILLARLAWOFFICES.COM

FBAR Conviction of NJ MD Affect Dual Nationals

On January 11, 2012 Michael Reiss, a physician from NJ was sentenced for failing to report offshore (Swiss) bank accounts (11:CR:0068), United States District Court SDNY. The sentencing memos of the U.S make some important policy statements.

The policy statements are:

First, Dr. Reiss made no effort to enter the [IRS](#) Voluntary Disclosure Program (OVDP) which began in 2009.

Implication: Taxpayer's should make every effort to come forward on their own Taxpayer's should now come forward if they have not already.

Second, Reiss was aware of his obligation to file a Report of Foreign Bank Account (FBAR) as he filed reports annually on certain offshore accounts, but not the Swiss accounts.

Implication: This is a badge of willful behavior and the 50% FBAR penalty will be sought in similar circumstances.

Third, Dr. Reiss hired an independent financial advisor (presently under indictment) who assisted in obscuring the ownership of the accounts through the use of "dummy" foundations. Dr. Reiss failed to disclose the ownership or existence of the foundation.

Implication: The use of "blocking:" strategies to conceal account ownership is another badge of willful behavior. Taxpayer's who have used independent advisors should come forward and cooperate to avoid prosecution.

Fourth, Dr Reiss is a "dual national". He has Dutch citizenship and a U.S. Green Card. He was issued the Green Card in 1988. The Sentencing Memo makes note, that even though the crimes charged and to which Dr. Reiss pled are not "aggravated felonies" his immigration status is in doubt.

Law Offices of Sanford I. Millar

Office: 310-556-3007

Fax: 310-556-3094

Address: 1801 Avenue of the Stars, Suite 600
Los Angeles, CA. 90067

Email: smillar@millarlaw.net

www.millarlawoffices.com

Implication: Conviction of an FBAR offense may affect immigration status.

Fifth, the disclosure of foreign accounts on an FBAR is only one example of dual national immigration vulnerability. Other examples include failure to file Reports of Foreign Gifts or Bequest, (Form 3520) or an interest in a Controlled Foreign Corporation (Form 5471). The Offshore Voluntary Disclosure Program provide as safe haven for dual nationals by allowing them to file such information returns as part of the program.

Implication: Dual nationals and U.S. Ex-patriots may be particularly vulnerable to attack for failure to report inherited funds, in light of reporting requirement of Form 8938. A new Form 8938 is required for tax returns for year 2011. Taxpayer's must disclose specified foreign financial assets. This is an income tax return schedule, not an FBAR and unless fully and accurately completed brings the risk of prosecution for "false statement crime" and evasion. Of course, if there are assets that are revealed, which surely there will be for some taxpayer's, which should have been reported in prior years, as a result of gift or inheritance, curative disclosure steps may now be required.

Conclusion: Dr. Reiss' life was left in shambles. He career was destroyed, between, income tax, interest, failure to file and failure to pay tax penalties, and the 50% FBAR penalty he is left in financial ruin. He may even face deportation if his Green Card is revoked. Why, because he did not file an accurate, and timely FBAR, and/or enter a Voluntary Disclosure Program when he could have. The U.S. Government is not holding back on its efforts to insure FBAR compliance and collect income and estate tax on worldwide income and on worldwide assets of U.S. taxpayers. Tax return preparers should now be particularly alert to these issues and make reasonable efforts to alert clients to seek counsel.

Law Offices of Sanford I. Millar

Office: 310-556-3007

Fax: 310-556-3094

Address: 1801 Avenue of the Stars, Suite 600
Los Angeles, CA. 90067

Email: smillar@millarlaw.net

www.millarlawoffices.com