

Doron F. Eghbali Tax Law

IRS Softens on Some Foreign Account Holders

Tuesday, March 9, 2010 by [Doron F. Eghbali](#)

Last year, the IRS caused a storm by aggressively pursuing tax evaders who had been taking advantage of somewhat little enforced US laws and lax foreign-government rules and regulations. As a result, the laws and regulations governing such tax evasion practices were interpreted broadly to ensnare alleged tax evaders. However, now, the IRS seems to have sought to calm the waters a little bit.

BASICS

Foreign Bank Account Reports have been on the books for a long time. Nonetheless, only recently the IRS stepped up efforts to confront alleged foreign account-tax evaders.

Who Should *Generally* File a Report with the IRS?

- **US Taxpayers with Foreign Accounts in Excess of \$10,000:** Generally, any US taxpayer whose total amounts in foreign accounts exceed \$10,000 MUST file with the IRS.
- **US Taxpayers with a Financial Interest in a Foreign Account:** Any US taxpayer with a financial interest in a *foreign bank, brokerage account, annuity, or cash-value insurance policy* MUST file with the IRS.
- **US Taxpayers with Investments in Offshore Mutual Funds:** Any US taxpayer who invests in offshore mutual funds MUST file with the IRS.
- **US Taxpayers Controlling or Owning Foreign Corporations:** Any US taxpayer who owns or controls foreign corporations *WITH* foreign financial accounts MUST file with the IRS.
- **Exemptions:** There are *SOME* exemptions for non-income-producing assets such as art or land.
- **CAVEAT:** Still, there remains many traps for the unwary. You are **HIGHLY ADVISED** to seek competent legal counsel.

THE IRS EASING ON *SOME* FOREIGN ACCOUNT HOLDERS

At least for 2010, the Treasury issued guidelines that let *SOME* foreign account holders off the hook. Nonetheless, many people could be still in danger of not filing.

GENERALLY Not Required

- **Non-US Citizen or Resident:** Non-US Citizens or Residents are **GENERALLY** not required to file.

- **US Taxpayers with Signatory Authority But No Financial Interest:** A US taxpayer who has signatory authority but *no* financial interest in a foreign account GENERALLY not required to file.
- **Hedge-Fund and Private Equity Investors**
- **CAVEAT:** This is *extremely important* to note the definition and scope of each of these generalizations are still *not very clear*. As such, **YOU ARE HIGHLY ADVISED TO SEEK COMPETENT LEGAL COUNSEL.**

SEVERE PENALTIES FOR NOT FILING

- **Willful Failure to File:** The penalties for willful failure are among the harshest. In fact, the penalties could be \$100,000 OR half of the value of the account PER YEAR.
- **Non-Willful Failure to File:** The penalties could be \$10,000 PER YEAR. Such failures to file are not related to the amount of the infraction.

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