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How Not to Hide Assets Offshore

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If you ever thought that using an offshore corporation was a good way to hide assets offshore take a lesson from this [IRS](#) Chief Counsel Advice (CCA20114034).

The first test on disclosure of the ownership of a foreign corporation is the 50% test. This is not a test you want to fail. A U.S. taxpayer must report the ownership of a foreign corporation if the taxpayer owns more than 50% of the total value or total combined voting power of the corporation. This test is applied under the CCA to mean ownership in substance, not just form.

In the examples cited in the CCA the taxpayer attempted to avoid disclosure by having a third party hold title to enough shares so that when calculated the taxpayer owned less than 50%. The CCA concluded that the taxpayer had effective control of the share such that the third party held shares should have been counted as part of the taxpayer's shares and when included the taxpayer held more than 50% of the combined voting power. The result is that the taxpayer was found to have not filed a timely Controlled Foreign Corporation information return (Form 5471) and therefore was subject to the following penalty regime. First, as set forth in §6501, the statute of limitations on assessment and collection (audit) does begin until the unfiled Forms 5471 are filed. Second, the penalty of 40% for understatement of income tax liability was assessable under §6038. The CCA did not indicate if the taxpayer was also subject to penalties for failure to timely file a Foreign Bank Account Report. The failure to file an FBAR has both civil and criminal penalties which can be assessed.

The CCA clearly demonstrates that the [IRS](#) is looking at offshore asset disclosure quite carefully and the failure to report a Controlled Foreign Corporation is not a prudent part of asset protection.

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