

IRS Voluntary Disclosures – Short Case Studies

When there is a failure to file FBARS (or other international tax reporting forms) or report foreign income, one must determine whether taxpayer's conduct was non-willful or willful (criminal). Here are several examples of when to use Streamlined Voluntary Disclosures (non-willful, non-criminal conduct) versus Offshore Voluntary Disclosures Initiative ("OVDI") potential criminal conduct. This is always a judgment call, based on all the relevant facts and circumstances. Invariably, the facts are not crystal clear and there is a balancing of whether the conduct in the main is willful or non-willful.

Situation One

Taxpayer is an Australian citizen and U.S. green card holder. She had a bank account in Australia with a few hundred dollars in it. When she visited Australia this summer, her mother told her that mother had been making gifts into taxpayer's Australian bank account without telling her and the amount was now \$80,000. Once taxpayer found out about the accounts, she immediately contacted me (in panic, of course). No FBARS or Form 8938 (\$50,000 threshold for a single person) were filed. Use the Streamlined Voluntary Disclosure Procedure

Willful or Non-willful? About as non-willful as it gets but will cost her \$4,000 (5% of \$80,000). Why use such an obvious example?

Lesson: Parents, relatives, spouses! -- they cause all kinds of issues for their U.S. children, placing them on bank accounts, income producing real estate; making secret gifts and transactions. Warn your foreign student friends about this before they need to file a U.S. tax return.

Situation Two

Taxpayer, a U.S. citizen originally from Germany and a widower for the past 10 years, is age 85. She failed to disclose her foreign bank account and sale of a foreign house in 2013 for \$250,000. She receives a letter from her foreign bank stating that the bank will need to report her income to IRS. She received a tax organizer that specifically asked about foreign accounts, and she indicated to her CPA that she did not have foreign accounts. The Box on Schedule B was checked no.

Willful? Or Non-willful? Is this what a potential tax criminal looks like? Yes, she deliberately misled her CPA about her accounts. Use the OVDI Procedure

Lesson: Not your proto-typical criminal tax felon – not a gangster or money launderer – but still.

Situation Three

Taxpayer became a U.S. citizen in 2009 and filed tax returns for 2010 and 2011. She comes to the U.S. for one month in August and another two weeks at the end of the year, but lives in India the rest of the time. and has not filed U.S. tax returns, thinking her income earned in India was under the U.S. tax filing threshold of \$3,800 for 2012 and \$3,700 for 2011(married, filing separately). Taxpayer received a gift from her non-U.S. resident husband of \$110,000 in 2011,

but did not report the foreign gift. She has not filed FBARS. She paid taxes on her income from India and would owe little, if any taxes in the U.S.

Willful or Non-willful? Non-willful – good faith mistake as to the law. Streamlined? No. Foreign – No! here 6 weeks a year; Solution, in the current year, do not come in December but come in January, then file under Foreign Streamlined Voluntary Disclosure once the current year closes.

Lesson: Weird, non-sensical results; 4 weeks vs. 6 weeks matters. Failing to file because you think no return is due is a big problem.

Situation Four

Taxpayer, a U.S. permanent resident, has \$60,000 in a Scottish bank account. He moved here 20 years ago and never gave his account a second thought. He has a Harvard MBA and is an international consultant with Bain. He earns between \$1.5 million and \$2.0 million a year. In 2015 he checked the Schedule "B" Part III box "no" as to foreign accounts and did not file Schedule B for 2014 or 2016. He has not filed FBARS and had minimal unreported income. His CPA never informed him about the foreign reporting requirements although the CPA knew the taxpayer was foreign. The CPA checked the box on Schedule C, Part III "No" in 2014 without asking taxpayer about it. The CPA did not include Schedule B on the 2015 or 2016 tax returns.

Willful or non-willful? Non-willful – but should he use streamlined or OVDI? The delta in additional penalties will be \$13,500 (27.5% compared to 5%), but he is risking his career if he files for Streamlined, vs, 2-3 days income if he files under OVDI. Will an IRS agent making 1/20 his income believe that taxpayer was non-willful? Why take the risk.

Lesson: Practical approach vs. legal – what's the cost? What's at stake? Use OVDI.

Situation Five

Taxpayer, a U.S. green card holder, has a foreign account with \$200,000 in Holland where he lived and worked. He told his CPA about the foreign account and Schedule B was properly filled out, but taxpayer neglected to file the FBAR. In 2015, taxpayer is involved in a divorce and discovered that he had assets in Greece that his father transferred to him without his knowledge, worth about \$2.0 million. Taxpayer's father used a power-of-attorney to transfer real estate and other assets into taxpayer's name and filed tax returns in Greece on taxpayer's behalf, without ever telling him.

Willful or Non-willful? Willful? As to the \$200,000 bank account, but what about the \$2.0 million? A do-it-yourselfer usually does it wrong, but we obtained an opinion from a Greek attorney stating that the transfers made by father were not legally valid, they were null and void. So OVDI, but only on the \$200,000 in cash (\$55,000 fine) but not on the \$2M of other assets (\$550,000 fine). Use OVDI.

Lesson: Investigate the asset base. Beware of do-it-yourselfers. Turbo-tax; Legal Zoom.