

IRS' mission against tax evaders – a warning bell for all!

With governments using the whip on those associated with all forms of black money & tax evasions, taxpayers should bring non-compliant foreign accounts into tax compliance.

This will save them from penalties and prosecution, says

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Following the US government's success in obtaining once-“secret” bank account information from UBS and the erosion of Swiss banking secrecy, the US Internal Revenue Service (IRS) and Department of Justice (DOJ) are now focusing on other foreign jurisdictions. Bank accounts in India are now known targets of investigations and prosecutions for US tax fraud. People with undeclared accounts in India should take action in the face of the IRS crackdown

on offshore accounts that are not US-tax compliant.

In April 2011, the DOJ obtained authorisation from a US federal court in California to serve a “John Doe” summons against HSBC demanding the names of US taxpayers with accounts at HSBC in India. The US government began its attack against UBS with a similar John Doe summons, which led to UBS disclosing account holders' identities to the IRS and ultimately the erosion of Swiss bank secrecy. In the summer of 2010, the DOJ sent letters to HSBC foreign account holders, advising them that they are the subjects of criminal investigations relating to unreported accounts in India and Singapore. The DOJ has already prosecuted a Virginia surgeon and two Miami Beach real estate developers for undeclared foreign accounts with HSBC.

There are also reports that HSBC is implicated in the recent criminal prosecution of Vaibhav Dahake, an Indian-American with undeclared accounts in India and the British Virgin Islands. While the criminal indictment against Dahake does not mention HSBC by name, it alleges that an “unidentified bank” operated a division called “NRI Services” which specifically marketed foreign banking services to Americans of Indian descent. According to the indictment, the bank advised that accounts be opened in India because of higher interest rates, no requirement of US tax forms or social security numbers, and no taxation in India. Interestingly, the indictment details transactions with a total value of less than \$200,000. This suggests that the US government is sending a message that owners of all non-compliant foreign accounts, large and small alike, are vulnerable to investigation and prosecution.

It was the substantial US presence of UBS, and now HSBC, that makes such banks vulnerable to US prosecution. With US banking licences, multiple branches within US, thousands of employees in US, and billions of dollars of assets in the US, these banks are clearly within the jurisdiction of a US court and susceptible to an adverse court judgment or order. UBS had to settle the tax fraud charges against it and give up “secret” banking information to the IRS, because the alternatives – seizure of its US assets and revocation of its lucrative US banking license – would have been catastrophic. It is likely that HSBC will follow suit and release the Indian account data to the US, especially when India does not have “banking secrecy” laws – like Swiss banking secrecy laws – which allowed UBS some delays and legal challenges, but ultimately the banking records were released to US. The absence of such bank secrecy laws in India would not afford HSBC the same delays and legal challenges to the John Doe summons.

HSBC is reported to have specifically targeted Indian-American clients and offered offshore banking services in India and Singapore. The John Doe summons against HSBC demonstrates that India is now clearly a target for US prosecution of non-compliant offshore account holders. Whereas UBS advised clients that their

S. No.	Some of the civil/criminal penalties that might apply if taxpayers don't come under voluntary disclosure	Penalty
1	A penalty for failing to file the Form TD F 90-22.1 (<i>Report of Foreign Bank and Financial Accounts, commonly known as an "FBAR"</i>)	\$100,000 or 50% of the total balance of the foreign account per violation
2	A penalty for failing to file Form 3520, (<i>Annual Return to report transactions with foreign trusts and receipt of certain foreign gifts</i>)	35% of the gross reportable amount
3	A penalty for failing to file Form 3520-A (<i>Information return of foreign trust with a US owner</i>)	5% of the gross value of trust assets
4	A penalty for failing to file Form 5471, (<i>Information Return of U.S. Persons with Respect to Certain Foreign Corporations</i>)	\$10,000, with an additional \$10,000 added for each month the failure continues beginning 90 days after the taxpayer is notified of the delinquency, up to a maximum of \$50,000 per return
5.	Penalty for failing to file Form 5472 (<i>Information return of a 25% foreign-owned US corporation or a foreign corporation engaged in a US trade or business</i>)	\$10,000, with an additional \$10,000 added for each month the failure continues beginning 90 days after the taxpayer is notified of the delinquency
6.	A penalty for failing to file Form 926 (<i>Return by a US transferrer of property to a foreign corporation</i>)	10% of the value of the property transferred, up to a maximum of \$100,000 per return
7.	Possible criminal charges related to tax returns include tax evasion (26 U.S.C. 7201), filing a false return (26 U.S.C. 7206(1)) and failure to file an income tax return (26 U.S.C. 7203). Willfully failing to file an FBAR and willfully filing a false FBAR are both violations that are subject to criminal penalties under 31 U.S.C. 5322	A person convicted of tax evasion is subject to a prison term of up to five years and a fine of up to \$250,000. Filing a false return subjects a person to a prison term of up to three years and a fine of up to \$250,000. A person who fails to file a tax return is subject to a prison term of up to one year and a fine of up to \$100,000. Failing to file an FBAR subjects a person to a prison term of up to ten years and criminal penalties of up to \$500,000

Source: IRS

accounts may be subject to exposure to the IRS, and therefore suggested pre-emptive disclosure (*i.e., voluntarily disclosing to the IRS and correcting a non-compliant foreign account prior to the IRS taking action*), Americans with accounts at HSBC in India received letters from DOJ in 2010, making it clear that DOJ already had their names. In such a case, pre-emptive disclosure is impossible; the IRS will reject a voluntary disclosure if the IRS already has the taxpayer's name (*regardless of the source, e.g., audit, whistle blower, investigation, etc.*).

The IRS has opened or will soon open field offices in Panama, Australia and China. Tax Information Exchange Agreements have been signed by all the former "tax havens", including Liechtenstein and Monaco. While the IRS is intensifying its presence and available tools around the world, there are other indications that



The IRS has unlocked vaults in UBS that has removed the mask off the faces of many tax evaders

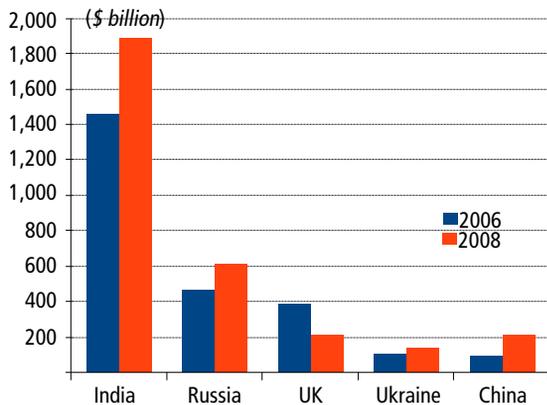
India is "on the radar" of the IRS, as well as other governments.

In 2008, a renegade employee of LGT Bank in Liechtenstein stole data about client accounts and sold it to the German intelligence service in return for millions of euros. With that data, the German government prosecuted many prominent Germans for tax fraud. The German government also shared the data with other governments around the world, including, apparently, India.

The Government of India has launched prosecutions of Indian citizens who had undeclared "black money" accounts outside of India. The "black money" campaign includes moneys hidden in Liechtenstein from the Indian tax authorities, even if the funds have no criminal connection or involvement in money laundering. The issue is currently before the Supreme Court of India, which has rebuked the central government for doing too little to investigate Indian black money in foreign accounts and for not making public the names of Indian citizens accused of having undisclosed foreign accounts.

WHILE THE IRS IS INTENSIFYING ITS PRESENCE AROUND THE WORLD, THERE ARE OTHER INDICATIONS THAT INDIA IS "ON THE RADAR" OF THE IRS AS WELL.

Swiss bank deposits from different countries In terms of wealth unaccounted for – India wins



Source: Swiss Banking Association Report



INDIA, AN ECONOMIC POWERHOUSE AND NEVER KNOWN AS A "TAX HAVEN", IS NOW IN THE SPOTLIGHT FOR NON-COMPLIANT BANK ACCOUNTS

In this regard, the interest of the Government of India seems to be allied with the goal of the IRS: to bring offshore funds back, so that the funds can be properly taxed. India's methods of ferreting out such offshore funds are similar to those of the US, and include cooperation and exchange of information with foreign governments. In 2010, India signed a protocol to the income tax treaty with Switzerland, and India is in the process of negotiating tax treaties with 65 countries, including "tax havens" such as the Cayman Islands, Jersey, Monaco, the British Virgin Islands and the Isle of Man. While there currently is no tax treaty between India and Liechtenstein, Liechtenstein has shown its new transparency by promulgating multiple tax treaties with other countries, including the US. A future treaty with India is likely. But even in the absence of such a treaty, India already has names, thanks to the LGT affair. The LGT information is almost certainly in the possession of the IRS as well.

Thus, at the same time India is making efforts to uncover non-compliant foreign accounts, it is finding itself a target of the IRS for having such accounts on its own soil, where Indian-Americans have secreted funds from the IRS. India, a stable democracy, US ally, economic powerhouse and never known as a "tax haven" jurisdiction, is now in the spotlight for non-compliant bank accounts.

Clearly, against this background of the erosion of banking secrecy and cooperation amongst governments in sharing banking data, taxpayers with undeclared accounts in India must consider preemptive measures, including bringing such accounts into compliance.

In February 2011, the IRS announced the Offshore Voluntary Disclosure Initiative (OVDI), which closely mirrors the 2009 Offshore Voluntary Disclosure Program (OVDP), with a few refinements. The new penalties are 25%, greater than the 20% penalty under the prior OVDP, yet less than the 50% penalty that the IRS has been imposing in recent criminal tax fraud prosecutions.

The new OVDI presents an opportunity for taxpayers with foreign accounts in India and elsewhere, who did not come forward under the former OVDP, but still want to avoid criminal prosecution and bring their foreign accounts into compliance. It is clear that the IRS is moving past UBS and Switzerland to other banks in other countries, and India appears to be a particular focus. Taxpayers must bring non-compliant foreign accounts into tax compliance, in order to avoid discovery by the IRS, higher penalties and criminal prosecution. In this new era of international transparency, decreased banking secrecy and stronger enforcement efforts, offshore banking compliance is very highly recommended.

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