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VIEWPOINTS

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Recently, there has been increasing cooperation between the tax authorities of many governments. For example, when Germany purchased bank account information from bank employee whistleblowers, it shared the information with other European and North American governments, which resulted in tax investigations of people in various countries. The Foreign Account Tax Compliance Act, passed by the U.S. Congress in 2010 and coming into effect this year, provides for foreign governments and foreign financial institutions to share information with the IRS regarding U.S. taxpayers with accounts in foreign countries. Dozens of foreign countries and thousands of foreign banks have signed on to FATCA. According to one recent report, a staggering 77,000 FFIs have agreed to cooperate and share information with the IRS under FATCA. The reach of the IRS is now truly global.

On May 1, 2014, Israel announced that it had reached a FATCA agreement with the United States. The agreement is a Model 1 agreement, under which Israeli banks will provide the required information to the Israeli government, which in turn will provide it to the U.S. government. The FATCA agreement is reciprocal, meaning that the United States can report to Israel regarding Israeli-owned U.S. accounts.

Israel's eagerness to accede to FATCA was apparent long before the May 1 official announcement. In 2012 the Association of Banks in Israel urged the country's central bank, the Bank of Israel, to ask the government to reach a FATCA agreement with the United States. Earlier in 2014, even before the signing of the FATCA agreement, the Bank of Israel ordered Israeli financial institutions to begin to implement FATCA procedures, including appointing an officer to oversee FATCA compliance, identify U.S. customers, make them sign IRS declarations (such as IRS Form W-9), and expel any clients unwilling to do so. While some foreign governments faced criticism for caving to U.S. pressure to sign FATCA, Israel appears to have needed very little persuasion; in fact, it seems to have backed FATCA — and the reach of the IRS into Israeli banks — willingly and eagerly.

Further, Israel appears to be unique among countries in its vigilance in upholding and enforcing FATCA within its own borders. The Israeli Ministry of Finance has drafted proposed regulations that would impose criminal penalties on Israeli financial institutions (including banks, brokerage houses, and insurance companies) that do not comply with FATCA reporting obligations. Individual employees at these financial institutions who knowingly assist clients in avoiding FATCA disclosures could face jail sentences as severe as seven years.

Note that of all the foreign facilitators (that is, the foreign bankers, lawyers, and other professionals who assisted U.S. taxpayers in committing U.S. tax fraud via secret accounts) charged criminally by the U.S. Department of Justice, those from Switzerland compose the largest group, followed by Israeli bankers. With Israel's eagerness to criminally enforce FATCA under Israeli law, it appears to some that Israel may now be overcompensating to maintain a clean banking image.

While Israel has long been known as a first-world country for many industries, including science and technology, its status as a tax haven was lesser known but still real. As reported in the Israeli press, seemingly in opposition to Israel's embrace of U.S. law:

> Israeli banks are subject to laws in Israel, and not to U.S. laws such as FATCA. Until now, Israeli banks were obliged to protect their customers'

privacy and were forbidden from providing information on account holders to any parties unless Israeli regulators explicitly stated otherwise.[1]

While Israel's banking privacy regime was not as well known as that of Switzerland, Israeli banks have long been used by U.S. taxpayers who have not reported their accounts, or the income earned in those accounts, to the IRS. As a result, within the last few years, Israeli banks have joined Swiss banks under the scrutiny of the DOJ and IRS for facilitating U.S. tax fraud. The Swiss branches of Bank Leumi, Bank Hapoalim, and Bank Mizrahi-Tefahot have been the targets of DOJ criminal investigations, along with major Swiss banks such as Credit Suisse and Julius Baer. Although those three Israeli banks have been publicly named as being the targets of criminal tax investigations, it is likely that many others are also being investigated for offering accounts that allowed U.S. taxpayers to escape taxation.

Israel's recent willingness to implement FATCA and criminalize FATCA noncompliance as a matter of Israeli domestic law comes at the same time that Israeli banks and bankers are increasingly under the spotlight for aiding U.S. tax fraud. While Israel announced its FATCA agreement with the United States on May 1, one day earlier Israeli banker Shokrollah Baravarian of Beverly Hills, California, was criminally charged with assisting his U.S. clients to commit U.S. tax fraud, including using accounts in Israel and the Cayman Islands, and offshore entities in Nevis and the British Virgin Islands. Baravarian was a senior vice president at Bank Mizrahi-Tefahot.

In 2013 multiple U.S. taxpayers with undisclosed foreign accounts in Israel and Israeli banks with branches elsewhere were prosecuted by the DOJ, among them David Raminfard (who failed to disclose his Israeli account, along with a Turks and Caicos entity, and accessed his funds via back-to-back loans); Aaron Cohen (who had accounts in Israel and the Caymans and used back-to-back loans); Moshe Handelsman (who had an account in Israel); and Alexei Iazlovsky (who had an account at the Luxembourg branch of an Israeli bank). Also in 2013, David Kalai and Nadav Kalai, two tax preparers in the United States with Israeli clients, were prosecuted for facilitating tax fraud through the use of undeclared accounts at Israeli banks, including those with branches in Luxembourg.

Against this background, on June 9, 2014, it was reported that Bank Leumi is in discussions with the DOJ to settle the tax fraud probe, and that the bank has set aside ILS 1 billion ($300 million) to pay in settlement in return for a deferred prosecution agreement, which would avoid a formal criminal indictment. Only two weeks earlier, Credit Suisse paid $2.5 billion to settle U.S. tax fraud charges. UBS paid $780 million to settle U.S. tax fraud charges in 2009, also in return for a deferred prosecution agreement. As part of its settlement with the U.S. government, UBS released the names of almost 5,000 Americans with formerly secret UBS accounts.

It is possible that Bank Leumi's settlement with the DOJ will also include the release of client names. If not (as was the case with the Credit Suisse settlement), the United States can still obtain client names through a treaty request or John Doe summonses, which are frequently approved by U.S. courts and served on foreign banks. John Doe summonses are also served on U.S. banks regarding foreign accounts.

In 2013 a U.S. court approved John Doe summonses on Bank of New York Mellon, Citibank, JPMorgan Chase, HSBC Bank USA, and Bank of America to produce information about U.S. taxpayers with undisclosed accounts at the Bank of N.T. Butterfield & Son Ltd. and its affiliates in the Bahamas, Barbados, the Cayman Islands, Guernsey, Hong Kong, Malta, Switzerland, and the United Kingdom. Also in 2013, a U.S. court approved John Doe summonses on the Bank of New York Mellon and Citibank to produce information about U.S. taxpayers who may have had unreported accounts at Zurcher Kantonalbank in Switzerland. Thus, even if the Credit Suisse and Bank Leumi settlement agreements with the U.S. government do not include the banks' handing over secret account details, the IRS and DOJ can still readily obtain the identities of U.S. clients at foreign banks.

Note that any undisclosed account in Israel, or at a branch of an Israeli bank elsewhere, is vulnerable to discovery by the U.S. government, whether through FATCA, a John Doe summons, or a treaty request. The threshold amount for reporting foreign accounts to the IRS is low, only $10,000. The DOJ will prosecute U.S. taxpayers with accounts of all values, not only in the millions of dollars — the DOJ does not want an account owner with, for example, ''only'' $50,000 offshore to feel that the amount in his account is too low for IRS scrutiny.

Also, even if a U.S. taxpayer had an undisclosed foreign account but didn't use foreign corporations, back-to-back loans, and other methods of hiding the foreign funds, the taxpayer could still be the target of an audit, investigation, and civil penalties. Those penalties can exceed the value of the foreign account. Even if the account is depleted by the penalties, the U.S. taxpayer would still be responsible for the deficiency, and the IRS would then proceed against the taxpayer's U.S. assets.

As noted, the account holder need not have employed sophisticated methods of offshore concealment. The following examples, all more benign, are still subject to IRS reporting:

[1]Sivan Aizescu, ''Banks Told to Prepare for New Reporting Rules on U.S. Clients,'' *Haaretz*, Mar. 19, 2014.

- use of an account in Israel in connection with Israeli real estate (and if that real estate gives rise to rental income unreported to the IRS, then the taxpayer has a double problem);
- use of an account in Israel in connection with the support of relatives in Israel; and
- Israeli accounts that remained open following immigration to the United States.

The following scenarios could also trigger IRS reporting requirements:

- Americans who immigrated to Israel (made Aliyah), still remain U.S. citizens, and are obligated to report to the IRS their foreign accounts and Israeli income; and
- Israeli children of American citizens who may never have even visited the United States or do not have any U.S. tax nexus, but are still subject to U.S. tax law and reporting requirements.

The tentacles of the IRS are clearly global, both in terms of the extraterritorial reach of U.S. tax law and reporting obligations, as well as the willingness of foreign governments and FFIs to sign on to FATCA and report to the IRS. In Israel and Israeli financial institutions, the IRS seems to have found ready, willing, and eager partners, more so than in any other foreign country.

In light of the DOJ and IRS investigations and prosecutions of U.S. taxpayers with undeclared accounts in Israel, coupled with Israel's eagerness to join FATCA and assist the IRS, U.S. taxpayers with undisclosed accounts at Israeli banks must take steps to comply with U.S. tax law. There is an opportunity to comply preemptively, avoid criminal prosecution, and pay lower penalties than if the IRS learns about the accounts first (for example, through FATCA). If you have unreported foreign assets, you must see a U.S. tax attorney with experience in offshore accounts and IRS compliance. ◆