FEATURE BY GAVRIEL MEIR

Last Chance to Come Clean

The IRS is enabling U.S. citizens to disclose accounts in Israel and elsewhere, and Israeli residents to catch up on years of non-reporting. Experts strongly advise taking advantage of the offer to become fully tax compliant

There's good news and bad news from the U.S. Internal Revenue Service (IRS). The good news is that U.S. citizens living in Israel, as well as Americans who have accounts in Israel, have been given an additional grace period during which they can settle their tax issues; the bad news is that if they don't take advantage of the offer, the IRS is going to come after them with more determination than ever.

"The IRS is giving a new chance for U.S. citizens abroad to come clean and be compliant with U.S. tax requirements," explains Ehud Kisch, an American and Israeli CPA who heads Kisch & Co. CPAs, a Ramat Gan and Jerusalem-based tax and accounting firm that specializes in U.S.-Israel taxation. "At the same time, the U.S. government has made a strategic decision to increase enforcement with regard to Americans with assets and income outside of the United States."

Obviously, the first step in "coming clean" is knowing what we have to come clean about. Here are a few shockers. Did you know that if you made *aliyah* 30 years ago, and your child is an American citizen, he has to file an annual tax return (as a working adult), even if he's never set foot in the United States?

> All U.S. citizens and green card holders have to file a yearly tax return if their income is above $9,350 a year, even if they have lived outside the United States for many years. This includes grown-up children of U.S. immigrants

Did you know that you have to pay U.S. tax on a *keren hishtalmut* that you cashed in after seven years or on the profits of an apartment that you sold (in Israel, both can be tax-free)?

We met with Mr. Kisch last week to find out what Americans in Israel need to know in order to take full advantage of the IRS's grace period, officially known as the "Offshore Voluntary Disclosure Program," to straighten out any past misunderstandings with the IRS.

Everyone is saying that the U.S. is having a hard time economically, and therefore the administration is aggressively pursuing Americans abroad for tax money. Is that an accurate assessment?

There is no question that there is increased enforcement and very large penalties. But the IRS has made it known that there is going to be a policy of leniency toward Americans abroad who come forward voluntarily to settle their accounts, rather than wait for the tax man to find them. This has been expressed in IRS publications, and we've heard it in our conversations with IRS agents. That's why now is the time to amend prior years of non-reporting or incomplete reporting.

Do you have the sense that the IRS is more aggressive in Israel than in other countries?

Look, there are about 7 million U.S. citizens living outside the United States on a permanent basis, of which some 200,000 live in Israel. Obviously, such a concentration in one place attracts attention. From our experience, the IRS has been increasing audits significantly in the last year or two. We hear the same from our colleagues.

OK. So let's start with the most basic question: Who has to file?

All U.S. citizens and green card holders have to file a yearly tax return if their income is above $9,350 a year, even if they have lived outside the United States for many years.

My grown-up children are Israelis with American passports. Are you telling me that they have to file annual returns?

Absolutely.

Ehud Kisch: "From our experience, the IRS has been increasing audits significantly in the last year or two. We hear the same from our colleagues."

What do I have to report on?

There are three types of reports that have to be filed. The first one is, of course, the personal tax return, the 1040 form. There is a tax treaty between the United States and Israel, so it's very unlikely that you'll have to pay additional income tax in the U.S. on your salary.

The second report is called the FBAR, Foreign Bank Account Reporting. If you have any financial account in Israel, including checking and savings accounts, stocks, *kupot gemel*, *kranot hishtlamut*, etc., you have to report it to the U.S. government. This also applies to people living in the United States who maintain accounts in Israel.

The third report relates to ownership in foreign corporations or partnerships. An Israeli who is a U.S. citizen who owns an Israeli company or partnership has to file special tax reports.

If you own your own business and are self-employed in Israel, you will be liable to self-employment (social security) tax in the United States of 15.3%.

Any more bad news?

You have to be aware that while Israel under certain circumstances doesn't tax the gain on the sale of an apartment, or the proceeds from a keren hishtalmut that is cashed in after seven years, or an inheritance, the U.S. does. But you can reduce the bill with proper tax planning.

Also, since Congress didn't want to encourage U.S. citizens to invest in foreign investment companies, it levied higher taxation on investments in foreign investment companies and mutual funds (such as the Israeli *kranot ne'emanut*).

What are the penalties for not filing these reports?

Penalties for not filing the FBAR can be very severe. In the case of nonwillful (unintentional) reporting the fine is up to $10,000, while the fine for willful nondisclosure is up to $100,000 or half the amount in the account, whichever is larger.

Failure to file on ownership in foreign corporations can draw high penalties of $10,000 per year, per report.

Is the U.S. being aggressive in pursuing information about foreign bank accounts, not only of people living in Israel but of those living in the United States who have accounts in Israel?

Yes. We saw this happen with UBS bank in Switzerland. It was amazing to see how the IRS was able to bring the Swiss government to its knees. The famous Swiss bank secrecy was dissolved with the IRS receiving information on 50,000 accounts of U.S. citizens. The IRS initiated criminal proceedings against the bank and its officers, on the grounds that they had assisted U.S. citizens in criminal avoidance of payment of taxes to the U.S. government.

In its efforts to increase enforcement, the U.S. government started to more vigorously enforce the very high penalties that have been in existence in the U.S. tax code but were not being applied.

When is the United States going to apply the same strict standards to banks in Israel?

The process has already begun. The U.S. passed FATCA (the Foreign Account Tax Compliance Act) in 2010, which requires all foreign financial institutions (FFI), including banks, to identify their American clients. The banks have to request that their clients sign a secrecy waiver. As of Jan. 1, 2014, they have to report to the IRS on all accounts held by Americans, and they have already informed clients who refuse to cooperate with the FATCA disclosure requirements that they will close their accounts in Israel.

This act is being applied to all the world's banks, which means there will be nowhere to hide funds. This is a good time to amend prior mistakes.

So how does the Offshore Voluntary Disclosure Program work? How does it benefit people?

First, it means that you can approach the IRS and come clean without worrying about criminal charges. After a taxpayer files for the last eight years and pays all taxes due and certain penalties, he becomes tax compliant. Under the voluntary disclosure program, he knows in advance what his penalties will be and isn't hit with the stiffest penalties.

For instance, the penalty for not reporting a foreign bank account can be as high as 27.5% of the highest balance in his accounts over those eight years; that usually applies to Americans living in the U.S. who willfully don't report. But under certain circumstances it can be reduced to 12.5% under the program, and can often be reduced to 5% or less in the case of Americans living abroad.

As IRS Commissioner Doug Shulman said, "This new (OVDP) program makes good sense for taxpayers still hiding assets overseas. ... People need to come in and get it right with us before we find you. ... We are following more leads, and the risk for people who do not come in continues to increase."

Now is the window of opportunity to come and file because we don't know what the IRS's policy will be in two or three years.

Another point to bear in mind is that under the U.S.- Israel tax treaty there is an article about the exchange of information between the two governments.

Does that mean that Israel can likewise seek information from the U.S. Treasury on income earned by Israelis?

Certainly. Israel has the ability and is working to get information.

Has the United States ever sought the extradition of Americans in Israel who have not filed?

No. But it's important to know that much worse than not filing, is filing false tax returns.

The bottom line here is that the U.S. tax authorities are encouraging people to come forward and file tax returns. The message is that if you come to us before we come to you, you're better off.

You've convinced us. When is the deadline for filing?

The regular deadline for Americans living and working abroad is June 15. The deadline for FBAR reports is June 30.

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