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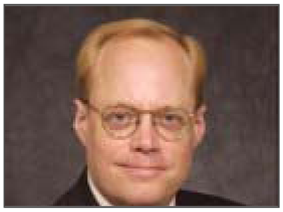

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THE TAX LAWYER

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Latest Foreign Account Prosecution Fuels Fears

If you are fence-sitting and can't decide whether to disclose your past foreign account noncompliance to the IRS, the latest press release from the Justice Department and the IRS might just give you the necessary shove. According to the criminal information and plea agreement, Michael Schiavo, 53, of Westford, Mass., held an account in his name at HSBC Bank Bermuda from 2003 to 2008. In 2006, about $100,000 went from a partner's account at UBS in Switzerland to HSBC Bank Bermuda. See HSBC Client Schiavo Accused of Failing to Report Offshore Account to U.S.

Schiavo confessed that he knew this payment was taxable income, but he deliberately chose not to report it. The same was true of the interest income that accrued in the HSBC Bank Bermuda account. Schiavo shortchanged the IRS to the tune of $40,624 in taxes.

Observers are struck by the relatively small amounts of income and tax involved and the small size of the account. It ranged from about $65,000 to $150,000. But even more striking was the nature of the disclosure Schiavo made and how the government reacted to it.

Shiavo appears to have tried to make a "quiet" disclosure, meaning that he simply filed past due FBAR forms and amended his prior Form 1040 tax returns to report the account. What's wrong with that?

It isn't a voluntary disclosure and it seems to fly in the face of the OVDI, that's what. The OVDI is supposed to serve as a vehicle for avoiding criminal prosecution. Mr. Schiavo could have come forward but chose not to, instead silently filing his forms.

On its website, the IRS strongly encourages taxpayers to come forward and contains some stern warnings:

> "The IRS is aware that some taxpayers have attempted so-called "quiet" disclosures by filing amended returns and paying any related tax and interest for previously unreported offshore income without otherwise notifying the IRS. Taxpayers who have already made "quiet" disclosures are eligible to take advantage of the penalty framework applicable to this initiative by submitting an application, along with copies of their previously filed returns (original and amended) to the IRS's Voluntary Disclosure Coordinator (see FAQ 24) by August 31, 2011. Taxpayers are strongly encouraged to come forward under the 2011 OVDI to make timely, accurate, and complete disclosures. Those taxpayers making "quiet" disclosures should be aware of the risk of being examined and potentially criminally prosecuted for all applicable years." FAQ 15.

Schiavo faces up to five years in prison, followed by three years of supervised release and a $250,000 fine.

For more, see:

Bank Director Charged With Hiding Funds In HSBC Bermuda Account

"Quiet" Foreign Account Disclosure Not Enough

IRS Foreign Account Disclosure: What About The States?

Beware Foreign Trust Reporting to IRS

Don't underestimate IRS's new foreign tax rules

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