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The Panama Papers: Implications for American Taxpayers with Offshore Assets – Part II

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There is nothing inherently illegal about holding assets in an offshore company or transacting business with one. The account “owner” simply has to embrace transparency and comply with government disclosure requirements. Failure to do so, however, could result in dire consequences.

Take, for instance, the case of United States v. Carl Zwerner in which a federal jury in Florida in May 2014 awarded the government FBAR penalties totaling \$2,241,809 for his “willful” failure to disclose a Swiss bank account with a high value of \$1,691,054. Despite attempts by Mr. Zwerner to voluntarily disclose the existence of his offshore assets, the IRS assessed the maximum penalties available alleging he acted willfully. Mr. Zwerner at the time was 87 years old and was a successful businessman. Several years earlier, Mr. Zwerner’s lawyers voluntarily disclosed the existence of the Swiss account to the IRS but, unfortunately, there was no formal program in place at that time for disclosing offshore accounts like there is today.

Taxpayers need to understand that if the IRS begins an investigation into their offshore assets, the current Offshore Voluntary Disclosure Program (OVDP) is unavailable. Taxpayers with offshore assets need to come forward before any investigation begins.

Take the case of the Alaskan plastic surgeon, Dr. Michael Brandner, who was sentenced to four years in prison after a jury convicted him of failing to disclose \$5 million in assets in Panamanian and Costa Rican financial institutions.

The OVDP is a voluntary disclosure program specifically designed for taxpayers with exposure to potential criminal and civil penalties due to a willful failure to report foreign financial assets and pay all tax due in respect of those assets. OVDP is designed to provide to taxpayers with such exposure (1) protection from criminal liability and (2) terms for resolving their civil tax and penalty obligations that are substantially less than for those who sit quiet and hope they never get caught.

As the Panama Papers' revelations work their way through the system, U.S. legislators will most certainly be looking for new ways to make it tougher to hide assets offshore. Introduced in the House earlier this year, the Incorporation Transparency and Law Enforcement Assistance Act would require companies to disclose their beneficial owners, providing law enforcement with information needed to fight corruption. This legislation, if passed, would require the Treasury Department to step in to collect beneficial ownership information in cases where U.S. states are failing to do so.

But whether this or any other legislation eventually passes, taxpayers should remember that their obligation is to disclose assets and report all income.