



FREEMAN

TAX LAW

# Offshore Account Disclosures

## UNDERSTANDING YOUR OPTIONS

**JEFFREY S. FREEMAN, J.D., LL.M.**

COPYRIGHT © 2015 FREEMAN TAX LAW



FREEMAN

TAX LAW

# DISCLAIMER

*These slides and written materials do not constitute legal advice and should not be relied on as such. No statement, position or opinion set forth in any of these materials should be cited as precedent or construed as reflecting a position of the government or this law firm.*



FREEMAN

TAX LAW

# ABOUT US

**INTERNATIONAL TAX  
TAX CONTROVERSY**



FREEMAN

TAX LAW

# IRS PERSPECTIVE

**“...NO END IN SIGHT...”**



FREEMAN

TAX LAW

# WHY DISCLOSE NOW?

# FATCA



FREEMAN

TAX LAW

# LEGAL HISTORY

**Bank Secrecy Act and  
Internal Revenue Code**



FREEMAN

TAX LAW

# BANK SECRECY ACT

## FBAR



FREEMAN

TAX LAW

# PENALTIES

**CIVIL**

**CRIMINAL**





FREEMAN

TAX LAW

# U.S. TAX LAW

## WORLDWIDE INCOME INFORMATION REPORTING



FREEMAN

TAX LAW

**“WILLFUL”**

**WHAT IS IT REALLY?**



FREEMAN

TAX LAW

# “WILLFUL FACTORS”

- \* FAILURE TO ADVISE TAX PREPARER OF ACCOUNTS
- \* WILL PREPARER CONFIRM BAD ADVICE
- \* IMPACT OF BEING IN A TAX HAVEN
- \* SOURCE OF FUNDS AND YOUR ACCESS TO FUNDS
- \* INHERITED ASSETS VS. UNREPORTED INCOME
- \* RESIDENCE OF TAXPAYER OUTSIDE THE U.S.
- \* EXISTENCE OF FOREIGN ENTITIES TO HOLD TITLE TO ACCOUNT
- \* HOLDING FUNDS IN COUNTRY WHERE TAXPAYER DOES NOT RELATIONSHIP
- \* UNFILED VS. PARTIALLY FILED FBARS
- \* POA AS SUBSTITUTE FOR ACCOUNT/BENEFICIAL OWNER
- \* DID YOU GET INTO FULL COMPLIANCE AFTER THE BANK NOTIFIED YOU?
- \* ARE YOU A “LEAVER”? (I.E., DID YOU TRANSFER ASSETS TO ANOTHER FFI?)
- \* PERCEIVED DEGREE OF BUSINESS AND FINANCIAL SOPHISTICATION
- \* HOLD MAIL INSTRUCTIONS



FREEMAN

TAX LAW

# YOUR OPTIONS

- ✱ **OVDP**
- ✱ **STREAMLINED PROCEDURE**
- ✱ **TRANSITIONAL RULES**
- ✱ **NOISY/TRADITIONAL DISCLOSURE FOLLOWING IRM PROCEDURES**



FREEMAN

TAX LAW

# OVDDP

- \* **COST VS. BENEFIT ANALYSIS**
- \* **WHAT IF THE U.S. GOVERNMENT HAS TAKEN ACTION AGAINST YOUR BANK? 27.5% GOES TO 50%**



FREEMAN

TAX LAW

# “REASONABLE CAUSE”

- \* **IGNORANCE OF LAW**
- \* **RELIANCE ON A PROFESSIONAL**
- \* **EXERCISED ORDINARY BUSINESS CARE AND PRUDENCE**



FREEMAN

TAX LAW

# STREAMLINED PROCEDURE

- \* **5% PENALTY**
- \* **REQUIRES NON-WILLFUL CERTIFICATION**
- \* **NO REASONABLE CAUSE ARGUMENTS ALLOWED**



FREEMAN  
TAX LAW

# TRANSITIONAL RULES

- \* **FOR THOSE WHO ENTERED OVDP PRIOR TO JULY 1, 2014 AND NOT WILLFUL**
- \* **NOT AUTOMATIC**
- \* **IRS MUST FIRST AGREE THAT THE TAXPAYER IS ELIGIBLE FOR TRANSITIONAL TREATMENT BEFORE ALLOWING THEM INTO THIS PROCESS**
- \* **EXAMINER WORKING OVDP WILL MAKE THE INITIAL DETERMINATION AND THIS WILL BE CONFIRMED BY THE MANAGER**





FREEMAN

TAX LAW

# TRADITIONAL DISCLOSURE

- ✱ **IRS POLICY IN I.R.M.**
- ✱ **COSTS VS. BENEFIT**
- ✱ **POTENTIAL RISKS**



FREEMAN

TAX LAW

# QUESTIONS TO ASK YOURSELF

- ✱ **WAS THIS OMISSION INTENTIONAL?**
- ✱ **WHAT WILLFUL FACTORS APPLY?**
- ✱ **WHAT WOULD THE BANK TELL THE IRS ABOUT YOUR INTERACTION WITH THEM?**
- ✱ **WHAT WOULD THE RETURN PREPARER SAY?**



FREEMAN

TAX LAW

# NEXT STEPS

**CONSULT WITH US**

**LET US FIX PROBLEM**

**OUR PROCESS**



FREEMAN

TAX LAW

# CONTACT US

[jeff@freemantaxlaw.com](mailto:jeff@freemantaxlaw.com)

**OFFICE: 1.855.935.5945**



FREEMAN

TAX LAW

**THANK YOU!**