

Tax Amnesty in the USA (IRS), FATCA and the Impact for Brazilians



TTN CONFERENCE 2016

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Tax Amnesty in the USA (IRS) – Introduction



- Towards the controversies surrounding the Brazilian RFB amnesty tax program for the regularization of foreign assets, known as RERCT and the existence of international agreements for the exchange of tax information between Brazil and the United States, including the bilateral and automatic bilateral information exchange agreement known as FATCA.

Tax Amnesty in the USA (IRS) – Introduction



- Little disclosed in Brazil, the US already has a voluntary amnesty program for tax regularization of undeclared assets abroad by individuals since 2009. This program presents significant numbers, since already generated revenues of about US\$ 8 billion and an adhesion of more than 54 thousand taxpayers (Oct 16, 2016).

Tax Amnesty in the USA (IRS) – General Rules



According to the IRS (Commissioner John Koskinen):

- “The groundbreaking effort around automatic reporting of foreign accounts has given us a much stronger hand in fighting tax evasion”
- “People with undisclosed foreign accounts should carefully consider their options and use available avenues, including the offshore program and streamlined procedures, to come back into full compliance with their tax obligations.”

IRS Criminal Investigation Statistics



Statistical Data for Three Fiscal Years
Criminal Investigation (CI)

How to Interpret Criminal Investigation Data

Since actions on a specific investigation may cross fiscal years, the data shown in cases initiated may not always represent the same universe of cases shown in other actions within the same fiscal year.

	FY 2016	FY 2015	FY 2014
Investigations Initiated	3395	3853	4297
Prosecution Recommendations	2744	3289	3478
Informations/Indictments	2761	3208	3272
Convictions	2672	2879	3110
Sentenced*	2699	3092	3268
Percent to Prison	79.9%	80.8%	79.6%

*Sentence includes confinement to federal prison, halfway house, home detention, or some combination thereof.

A fiscal year runs from October 1 through September 30.

Data Source: Criminal Investigation Management Information System

[Criminal Enforcement Home Page](#)

IRS Criminal Investigation Cases

CARLSTADT ROOFER PLEADS GUILTY TO TAX EVASION

Trenton, N.J. –The owner of a roofing business based out of Carlstadt, N.J., pleaded guilty today to income tax evasion. Michael Tattoli, a resident of Carlstadt, N.J., entered his plea in Trenton federal court before U. S. District Judge Anne E. Thompson. Tattoli pleaded guilty to personal income tax evasion pertaining to his 2010, 2011 and 2012 tax returns. Sentencing is scheduled for October 5, 2016.

“IRS-Criminal Investigation is diligent when it comes to enforcing the laws directed at those who attempt to defraud our nation’s tax system,” stated Jonathan D. Larsen, Special Agent in Charge, IRS-Criminal Investigation, Newark Field Office. **“Those Americans who file accurate, honest and timely returns can be assured that the government will hold accountable those who do not.”**

According to court documents and statements made in court:

- Tattoli is the owner and operator of Mike’s All Seasons Roofing and Construction Company, LLC, located in Carlstadt, N.J. During the years 2010 through 2012, **Tattoli deposited approximately \$191,295 in checks payable to Mike’s All Seasons Roofing into his own personal bank account. Tattoli then used these funds to pay for personal expenses and intentionally did not report the \$191,295 as income on his tax returns**
- **The count of tax evasion carries a statutory maximum prison sentence of five years and a statutory maximum fine equal to the greatest of: (1) \$250,000; (2) twice the gross amount of any pecuniary gain derived from the offense; or (3) twice the gross amount of any pecuniary loss sustained by any victims of the offense.**

U.S. Department of Justice – Cases

Tax Divison

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New Jersey UBS Client Sentenced for Failing to Report More Than \$1 Million in Swiss Bank Account

- NEWARK, N.J. – An Oradell, N.J., man was sentenced today to three years of probation – including 12 months of home confinement with electronic monitoring – after admitting he failed to file a Report of Foreign Bank and Financial Accounts (FBAR), concealing more than \$1 million in Swiss bank accounts, U.S. Attorney Paul J. Fishman and Principal Deputy Assistant Attorney General John A. DiCicco of the Justice Department’s Tax Division announced. (May 2011)

Wisconsin Neurosurgeon Convicted of Filing False Tax Return and Failing to File Report of Foreign Bank Accounts

- **Doctor Hid \$8 Million in Secret Offshore Accounts in India** - A jury convicted Arvind Ahuja yesterday on federal tax charges stemming from his failure to disclose offshore bank accounts maintained in India and the Bailiwick of Jersey, the Justice Department and Internal Revenue Service (IRS) announced. Trial began on Aug. 15, 2012 before U.S. District Judge Charles N. Clevert, Jr., in Milwaukee. Ahuja, a prominent neurosurgeon in Milwaukee, was convicted of one count of filing a false 2009 individual income tax return and one count of failing to file a Report of Foreign Bank and Financial Accounts (FBAR). (August 2012)

Emeritus Professor Pleads Guilty to Conspiring to Defraud the United States and to Submitting False Expatriation Statement

- **Hid Account Containing \$200 Million Also Paying \$100 Million Civil FBAR Penalty** - A Rochester, New York emeritus professor of business administration pleaded guilty today to conspiring with others to defraud the United States and to submitting a false expatriation statement to the Internal Revenue Service (IRS), announced Principal Deputy Assistant Attorney General Caroline D. Ciruolo, head of the Justice Department’s Tax Division, and U.S. Attorney Dana J. Boente of the Eastern District of Virginia, after the plea was accepted by U.S. District Judge T.S. Ellis III. (November 2016)

Tax Amnesty in the USA (IRS) – General Rules



Tax Amnesty program includes:

- (i) Individual Income Tax Return (IR);
- (ii) The Statement of Bank Accounts and Financial Investments Abroad (known as FBAR).

In 2012, said program has been expanded and divided into two modalities:

- a) OVDP
 - b) Streamlined
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- Programs still open to new filings, although it can be terminated at any time by the IRS
 - Taxable Income: worldwide taxation.
 - FATCA and worldwide network of exchange information
 - ✦ **Crosschecking BR Tax Return X U.S. Tax Return = RELEVANT**

IRS Offshore Voluntary Disclosure Program (OVDP)



- OVDP is a modality specifically designed for taxpayers with exposure to potential criminal liability and/or substantial civil penalties due to a willful failure to report foreign financial assets and pay all tax due in respect of those assets.
- Designed to provide to taxpayers with such exposure protection from criminal liability and terms for resolving their civil tax and penalty obligations.
- Requires approval from the IRS
- **Coverage: 8 prior years of FBARs and Tax Returns**
- **Penalty: 27.5% of the maximum aggregate value of the assets**
- Possibility to move to the Streamlined process in certain cases

IRS Streamlined Program



- Streamlined is a modality used by taxpayers that do not need criminal protection
 - It covers Taxpayers residing inside and outside the U.S.
- Need to certify that their failure did not result from willful conduct on their part.
 - Non-willful conduct is conduct that is due to negligence, inadvertence, or mistake or conduct that is the result of a good faith misunderstanding of the requirements of the law.
- Do not require approval from the IRS but in the case of noncompliance the IRS may exclude the taxpayer from the program and it will be subject to all applicable penalties (including criminal liability).
 - Example: If the taxpayer initially provides incomplete, false or untrustworthy banking or patrimonial information and attempts to amend the tax return later to correct it
- **Coverage: 6 prior years of FBARs and 3 prior years of Tax Returns**
- **Penalty:**
 - Taxpayers residing **OUTSIDE U.S. (e.g. Brazil): NO PENALTY**
 - Taxpayers residing **INSIDE U.S.: 5% of the maximum aggregate value of the assets**

Tax Amnesty in the USA (IRS) – Common Issues



- Not possible to suspend the tax obligations because taxpayer leaving outside U.S.
- Common situations:
 - Dual Citizen (e.g., Brazil and U.S.)
 - Greencardholders
 - Foreigners but Involuntary U.S. tax residents (e.g., meet the Substantial Presence Test)
 - Brazilians married to US citizens or taxpayers
 - Brazilians donating to family members residing in the U.S.
- Common Issues:
 - Exempt income in Brazil (e.g., Dividends)
 - Financial Income from Brazil (e.g., Fixed Rate Income)
- Ordinary income subject to 43.5% Federal Tax Rate
 - Includes non-qualified dividends and financial income from Brazil
- Opportunity for the taxpayer to regularize their tax situation by taking advantage of reduced penalties and, if necessary, with the guarantee of avoiding potential unfolding criminal proceedings.
 - In the U.S. the payment of the tax due does not necessarily extinguish criminal liability.
- Whistleblower Informant Award program

Thank You!



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