

Offshore Collection  
Techniques  
for ATAT ROs  
Phase II

# Introduction

Welcome to Offshore Collection Techniques for ATAT Revenue Officers Part two.

According to a 2008 Senate report, non-compliance with our tax laws by U.S. taxpayers using secret offshore bank accounts costs the U.S. Treasury at least \$100 billion annually. Because of this, IRS programs that encourage offshore voluntary compliance continue to be a high priority. As long as LB&I and SBSE Exam include these projects in their work plans, ATAT Collection will be dealing with offshore issues in our cases.

In this course you will be hearing from subject matter experts and from revenue officers like yourself who have had some interesting experiences working ATAT cases with offshore issues.

**"Sizable tax matters without some international aspect are now probably the exception, not the rule."**

H. David Rosenbloom, former international tax counsel at the Treasury Dept., and now a partner at Caplin & Drysdale, and director of the international tax program at NYU International Tax Program

## Introduction - continued

In this course we will cover such topics as:

- Individual International Compliance (IIC) Offshore Compliance Initiatives (OCI)
- Offshore Compliance Initiative Collection Accounts
- Issues related to working Union Bank of Switzerland (UBS) cases
- A tangled web of offshore entities and bank accounts - UBS criminal conviction
- Offshore Compliance Initiative Database
- Researching International wire transfers
- Offshore Voluntary Disclosure Program (OVDP) - Initiatives and Procedures
- Negotiating case resolutions OVDP referrals
- What's a stiftung?
- Offshore Penalties
- An update to the writ ne exeat case example

# Objectives

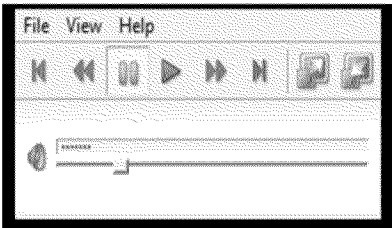
At the end of this course you will be able to:

- Identify offshore compliance initiatives (OCI) to promote voluntary compliance with U.S. tax and foreign information reporting laws.
- Locate OCI project codes.
- Identify the process for getting access to the information disclosed by UBS and determine the limitations on disclosure of the treaty information to the taxpayer/POA.
- Identify the type of data stored in the OCI database and how to request access to the OCI database.
- Interpret foreign wire transfer instructions sent by The Society for Worldwide Interbank Financial Telecommunication (SWIFT).
- Identify the importance of negotiating a payment resolution for OVDP taxpayers.
- Identify the different type of penalties associated with offshore activity.

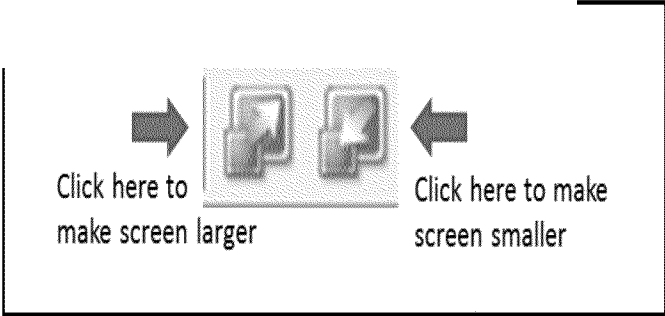


# Offshore Compliance Initiatives

# Centra Recording Instructions



**Volume**  
Position slider  
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Click [here](#) to download a copy of the powerpoint used for this lesson

# OCI Centra Presentation

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## Exercise 1

International Individual Compliance Program is found in what part of the IRS?

- ✓  a SBSE
- ✓  b BSA
- ✓  c LB&I
- ✓  d OIC

## Exercise 2

Which of the following are OCI projects? (Select all that apply)

- ✓  a Private Banking Project
- ✓  b Family Limited Partnerships Income Tax
- ✓  c Domestic Tax Shelters
- ✓  d Broker Initiative

# Offshore Compliance Initiatives Collection Accounts

# Introduction

How will you know if you are assigned a case that comes from one of the projects discussed here today? By the project code, of course!

You may have an Offshore Compliance Initiatives (OCI) collection case already assigned to you. Knowing if your balance due account comes from an OCI project can help focus your investigation in the right direction.

## OCI Exam Project Codes

- Offshore Credit Card Project - 0127
- Broker Initiative - 0020
- Electronic Payment Systems Initiative - (aka PayPal) - 0973
- Offshore Private Banking Initiative - 0971

that is the result of an AIAI examination.

### EXAMPLE:

TC424R 09292009 0.00 20094008 DLN SOURCE-CD SPCL-PROJ>0996

# Offshore Credit Card Cases

## Project Code 0127 - Offshore Credit Card Cases

- ROs should be looking in the OCI Database for available records.
- Most accounts are domestic taxpayers.
- Balance due from a high of \$10 million to low of \$28 thousand.
- Most over \$100 thousand.



# Offshore Private Banking

## Project Code 0971 - The Offshore Private Banking

- Also referred to as treaty cases.

Examinations in this project are based on information disclosed by a country under a tax treaty agreement.

## Union Bank of Switzerland (UBS)

Union Bank of Switzerland (UBS), the first of the Private Banking Compliance projects, provided IRS with information on 4500 accounts for U.S. taxpayers. This information led to examinations for those taxpayers that did not participate in the Offshore Voluntary Disclosure Program.

As with any large dollar audit assessment, you will want to look at the examination file early on. It may also be helpful to speak with the revenue agent who was or is assigned the case. If the UBS information is not included in the Examination file or obtained from the RA, it can be requested through GSC policy analysts.



## **Union Bank of Switzerland (UBS) - continue d**

### **Other Private Banks under Scrutiny.**

The United States has written to Switzerland to demand it hand over detailed information on its citizens using Swiss accounts to dodge tax.

Credit Suisse and nine other smaller banks face charges. Credit Suisse AG, Switzerland's second-largest bank, has begun notifying certain U.S. clients suspected of offshore tax evasion that it intends to turn over their names to the Internal Revenue Service, with the help of Swiss tax authorities

**"The IRS is seeking to refine and extend its efforts to identify unreported offshore bank accounts and is actively working on drafting new John Doe summonses..... The summonses will target more entities than just banks and will focus on places other than Switzerland"**

Quote from John McDougal, special trial attorney and division counsel, IRS SBSE, December 7, 2012.

## UBS CD Treaty Index

UBS files are generally very large files and may be shared by CD or sent via OC. Data may include ownership information, financial statements and communications to and from account owners. Parts may be in a foreign language. The financial statements may be shown as dollars or some other currency.

2.1	Monthly Balance	2.5	Credit Card Data
2.2	Revenue by Year and Type	3.1	Picturing VP – current
2.3	Wire Transfers	3.1.2	Picturing BO - current
2.4	Trades	3.1.3	Picturing VP – 12/31/2007
2.4.1	Trade Securities	3.1.4	Picturing VP – 12/31/2007
2.4.2	Trades	3.2	Contacts
2.4.3	Redemptions	4	Verification of Beneficial Owner, A/C Opening, Closing Docs, POA, Passport
2.4.4	Corporate actions	5	Dossier File, Payment Order (wire info), Correspondence
2.4.5	Dividends	6.1	Statement of Assets, Financial Market Report
2.4.6	Interest FKE	6.2	Accounts Statements
2.4.7	Interest BO	6.3	In German
2.4.8	Interests Cash A/C	6.4	Income Statement

## **Disclosure Constraints**

Since this information was obtained as the result of treaty provisions, there are some constraints what information can be disclosed to the taxpayer. The bank statement information can be disclosed but other information may be restricted especially copies of communications between the bank and taxpayer(s).

### **What can be Disclosed to Taxpayer and Power of Attorney?**

- Information included on the financial statements.

### **What can't be Disclosed to Taxpayer and Power of Attorney?**

- Any other information without checking with Exchange of Information Office or a GSC policy analyst.

## **Warning Statement**

The warning statement below is stamped on every page of the UBS disclosure.

**This information is furnished under the provisions of an income tax treaty with a foreign government. Its use and disclosure must be governed by the provisions of that treaty.**

**The information contained within must be used only for income tax cases under the terms of the Agreement between the United States of America and the Swiss Confederation.**

## Reminder

These accounts have been closed.

Although it is helpful to know the value of the UBS account, this is historical data.

It is just a starting point - you will need to "follow the money" to determine if the funds still exist and where they are now.

# UBS

## Case Example



# UBS Criminal Conviction

In a recent criminal prosecution case, a married couple from California were sentenced to 12 months and 1 day in prison for hiding millions of dollars in secret offshore bank accounts in Switzerland and other banks around the world. The taxpayers were also ordered to pay restitution to the IRS in the amount of \$709,675, and to pay more than \$2.5 million to resolve their civil liability with the IRS for failing to file the required FBARs.

According to court documents and statements made in court, the taxpayers filed false individual U.S. income tax returns for 2004 through 2008 in which they failed to report they had an interest in or a signature authority over several foreign accounts.

The taxpayers also failed to report any income earned on the foreign accounts and falsely deducted millions of dollars in transfers from their domestic business to the Swiss bank accounts on their corporate tax returns.

The transfers were deducted as interest payment on corporate tax returns as a sham aircraft loan.

The taxpayers also maintained numerous undeclared foreign bank accounts in New Zealand and South Africa held in their own names. Many of the financial transactions were done with the assistance of the same operator of the Swiss wealth management and tax advisory business.

In February 2009, UBS entered into a deferred prosecution agreement under which the bank admitted to helping U.S. taxpayers hide accounts from the IRS. As part of their agreement, UBS provided the U.S. government with the identities of, and account information for, certain U.S. customers of UBS's cross-border business, including the taxpayers.

End of Lesson One  
**Offshore Compliance Initiatives**

Please continue with Lesson Two  
**Offshore Research Tools**

# Offshore Compliance Initiative Database

# OCI Database - Centra Presentation

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## Exercise 3

How can revenue officers get access to the OCI database?

- ✓  a Ask your manager for access.
- ✓  b Revenue Officers can't have direct access.
- ✓  c Request access through online 5081. The application is titled, ASTARS - OCI Users (ASTARS)
- ✓  d Send an email to a Collection Policy analyst in GSC.



## Exercise 4

Taxpayer Identification Numbers (TIN) can be used as criteria for searching the OCI database?

TRUE

FALSE

# International Wire Transfers

# Introduction

Taxpayers may transfer funds to and from locations outside the United States.

There are two components to funds transfers:

1. The actual movement or transfer of funds.
2. The instructions, which contain information on the sender and receiver of the funds.



## **Movement or transfer of funds**

The actual movement of funds (payments):

- May be completed by the sending financial institution to the receiving financial institution directly. The Society for Worldwide Interbank Financial Telecommunication (SWIFT) message provides the specific transaction data.

A correspondent financial institution may be needed to carry out the transfer if a direct banking relationship does not exist between the sending and receiving financial institutions.

- The actual transfer of funds is accomplished using the systems particular to the relevant country like Fedwire, or CHIPS in the U.S.

# Instructions to sender and receiver of funds

The instructions may be sent in a variety of ways:

- Electronic access to networks operated by the Federal Reserves' Fedwire
- Privately operated CHIPS payment systems
- SWIFT international messaging system
- E-mail
- Facsimile
- Telephone

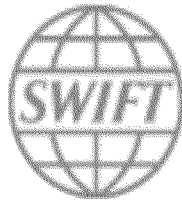
**Note:** See [ATAT Sharepoint site](#) for examples of Wire Detail Instructions

# SWIFT

The Society for Worldwide Interbank Financial Telecommunication (SWIFT)

- Is an international messaging service that is used to transmit payment instructions for the vast majority of international interbank transactions.

Has Business Identifier Codes (BICs) for banks in over 200 countries and standardized messages to facilitate the movement of money across the world.



The global provider of secure financial  
messaging services

## SWIFT continued

The SWIFT network is a messaging infrastructure, not a payments system.

- The SWIFT messaging network operates using a series of standardized message types (MT), which are identified by a three digit number. In order to send a SWIFT message, the banking officer, simply fills in the appropriate information in the appropriate fields and sends the message.
- MT-103's are the most commonly used form of SWIFT communication. They are used by the bank when its customers wish to make payment to customers of another bank in another country.
- 
- For most customers MT-103's are known as Wire Transfers.

# SWIFT Message Example

## MT-304

The first digit (3) represents the category.

A category denotes messages that relate to particular financial instruments or services such as Precious Metals (6), Treasury (3), or Travelers Cheques (8).

The category denoted by 3 is Treasury Markets.

The second digit (0) represents a group of related parts in a transaction life cycle.

The group indicated by 0 is a Financial Institution Transfer.

The third digit (4) is the type that denotes the specific message.

There are several hundred message types across the categories.

The type represented by 4 is a notification.

**Note:** A list of [SWIFT Message codes](#) can be found in the Foreign Wire Transfer folder in the ATAT Share Point.



## **Single Customer Credit Transfer with Reimbursement Through Two Institutions**

On May 26, 2003, Franz Holzapfel in Vienna orders Bank Austria, Vienna, to pay US Dollars \$1,121.50 to C. Klein, Bloemengracht 15, Amsterdam, whose account number 72 34 91 524 is with ABN Amro Bank, Amsterdam. The beneficiary is to be notified by phone at 20.527.19.60.

Bank Austria uses reference 394882.

This transfer may be sent via SWIFT using the following method of sending to the party closest to the beneficiary, through several reimbursement institutions.

### **SWIFT MT 103 to the Party Closest to the Beneficiary**

Bank Austria sends the following messages:

- A. A customer transfer to ABN Amro Bank, Amsterdam.
- B. A cover message for the US dollar payment, which is provided through Chase Manhattan Bank, New York, to ABN Amro Bank, New York.

## **Avenues to Locate Foreign Bank Accounts and Assets**

It is important for revenue officers to know where taxpayers may have foreign banking relationships since this is an indication they may have foreign assets and or bank accounts located outside the United States that can be used to pay their taxes.

### **Tax Returns:**

A revenue officers investigation of foreign accounts may include reviewing taxpayer's income tax returns to see if the taxpayer disclosed the existence of foreign accounts as required on Schedule A.

### **Domestic Bank Records:**

In addition, foreign accounts may be discovered when reviewing taxpayer's domestic bank accounts and other financial records which reveal deposits from outside the United States or withdrawals from taxpayers' account going overseas. When summoning for bank records be sure to include specific directions for wire transfers and related documents such as SWIFT messages. See [IRM exhibit 25.5.2-2](#) for suggested language.

### **CBRS Research:**

Research of Currency Banking Retrieval System (CBRS) for taxpayer required reports of Foreign Bank and Financial Accounts (FBAR) and existence of Suspicious Activity Reports (SAR) may yield valuable information about assets held by taxpayers outside the United States.

## Avenues to Locate Foreign Bank Accounts and Assets - continued

### **Treasury Enforcement Communications System (TECS):**

If a revenue officer has evidence that a taxpayer travels abroad frequently and or has family or business ties outside the USA requesting a record of taxpayers travel history through TECS may later be useful and further developed by questioning the taxpayer or investigating through other third party sources the possible ties the taxpayer has overseas.

TECS provides a travel history with dates the taxpayer arrived and departed the USA.

See [IRM 5.1.18.14](#)

**Note:** When dealing with taxpayers and discussing historical travel records that have been obtained from TECS, IRS employees **MUST NEVER** confirm or deny the existence of a TECS record. If a taxpayer persists with inquiries regarding TECS records, they must be advised that they are entitled to further information through a **WRITTEN REQUEST ONLY**.

## **Avenues to Locate Foreign Bank Accounts and Assets - continued**

### **Taxpayer Summons:**

If you have evidence the taxpayer may have offshore bank accounts or other offshore assets you should ask for records confirming the assets and or bank accounts from the taxpayer and if necessary issue a summons to the taxpayer for this information. Be sure to have specific questions ready, but not in the body of the summons, prior to the summons appointment in addition to the documentary evidence you have requested in the summons.

### **Obtaining Information and or Records Located Overseas**

You may also be able to use our authority in offshore jurisdictions to obtain information under treaties (TIEA, MCAR, etc) and utilize our Tax Attache to conduct further investigations overseas.

**Remember under no circumstances** should IRS employees contact a foreign government official in connection with an examination or investigation without first clearing the contact with the appropriate TA / RSR or Exchange of Information Group Manager in Washington, DC.

For more information, please read the [FAQ's](#) located on the LB&I web page - **Exchange of Information Programs**

End of Lesson Two  
**Offshore Research Tools**

Please continue with Lesson Three  
**Offshore Voluntary Disclosure Program**

# Offshore Voluntary Disclosure Program

## **OVDP - Centra Presentation**

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## Exercise 5

The proper sub code for all OVDP cases is:

- ✓  a 309
- ✓  b 310
- ✓  c 311
- ✓  d 312



## Exercise 6

When assigned an OVDP referral, your first action will be to:

- ✓  a Contact the TP/POA and make demand.
- ✓  b Make a field call.
- ✓  c Contact the referring revenue agent to determine collection issues.
- ✓  d File the NFTL.

## Exercise 7

If you receive an appeal request under IRC 6330 on a balance due module which was the result of an OVDP disclosure, you should

- ✓  a Process the appeal within 5 days.
- ✓  b Not process the appeal if it is determine the "non full pay Form 906" was executed by the Service.
- ✓  c Withdraw the Letter 1058 immediately.

**What is a Stiftung?**

# Offshore Penalties

# Introduction

In this next segment we'll be discussing the various penalties associated with offshore accounts.

These include the Report of Foreign Bank and Financial Accounts (FBAR) penalty and the miscellaneous penalty associated with the Offshore Voluntary Disclosure Program (OVDP). There are several other offshore penalties that are assessed for failure to timely file informational returns reporting interests in foreign trusts, corporations and partnerships and receipt of certain foreign gifts.

Although not common, these penalties are significant because of the large dollar amounts that can be assessed.

# Report of Foreign and Financial Accounts (FBAR)

The Form ID F 90-22.1 - FBAR

- Is used to report a financial interest in or signature authority over a foreign financial account.
- Is due no later than the June 30th of the year immediately following the calendar year being reported.
- There are NO extensions to file.

A U.S. person that has a financial interest in or signature authority over foreign accounts must file an FBAR if the aggregate value of the foreign account(s) exceeds \$10,000.00 at any time during the calendar year. A U.S. person can be an individual, a corporation, a partnership, LLC, trust, estate or any other entity in which the U.S. person may have more than a 50% interest directly or indirectly in foreign assets.

The FBAR is filed either by mail or electronically with the Department of the Treasury's Enterprise Computing Center at Post Office Box 32621, Detroit, MI 48232-0621. The FBAR should not be filed with the filer's federal income tax return.

For more information refer to [IRM 4.26.16](#)

## **FBAR Penalties**

Failing to properly file may subject a person who is required to file to a civil penalty not to exceed \$10,000.00 per violation. A person who willfully fails to report an account or account identifying information may be subject to a civil penalty of equal to the greater of \$100,000.00 or 50 percent of the balance in the account at the time of the violation. Willful violators may be subject to additional criminal penalties.

Although FBAR penalties are proposed and payment solicited by revenue agents, you will not see this penalty assessment on IDRS.

FBAR penalties are assessed under Title 31 of the U.S. Code; as such the IRS cannot use Title 26 administrative collection tools to collect the non-tax FBAR penalties.

Financial Management Service (FMS), a Treasury Department Bureau, which collects non-tax debts for the federal government, is responsible for collecting FBAR penalties.

## Offshore Voluntary Disclosure Program (OVDP)

The Offshore Voluntary Disclosure Program has provided a series of opportunities for taxpayers with previously undisclosed foreign accounts and assets may come forward to voluntarily report their offshore accounts and income. Participation in the program enables taxpayers with such accounts to become compliant, avoid substantial civil penalties and generally eliminate the risk of criminal prosecution.

**Note:** The terms OVDP and OVDI are both used to identify this program.



## Offshore Voluntary Disclosure Penalty

Participants in OVDP are assessed a miscellaneous Title 26 offshore penalty in lieu of other penalties, such as the FBAR penalty.

This penalty is computed on the highest aggregate balance in foreign bank accounts/entities or value of foreign assets during the period covered by the voluntary disclosure. The applicable percentage used to compute the penalty depends when the disclosure was submitted and on the case circumstances. A timely submission for the 2009 OVDP, the highest penalty amount will be 20% of the highest aggregate asset value. For 2011, the high-test penalty is 25% and for 2012, it is 27.5%. [See example.](#)

See the OVDP FAQs for circumstance when a lesser percent would apply.

The FAQs can be found on the IRWeb by searching for [2011 OVDP FAQs](#) or [2012 OVDP FAQs](#).

Additional penalties that may be assessed on OVDP disclosures include:

- a 20% accuracy-related penalty under IRC 6662(a) on the full amount of underpayments for all years in question,
- failure to file and failure to pay penalties under IRC 6651(a)(1) and (2)

## Other Offshore Penalties

Because of the emphasis on examinations of offshore issues, other offshore penalties may be seen more often. As mentioned earlier, there are several penalties that may be assessed for failing to file informational returns dealing with offshore income and assets.

These include:

Failure to file Form 3520, ***Annual Return to Report Transactions with Foreign Trusts and Receipt of Certain Foreign Gifts***.

Taxpayers must report various transactions involving foreign trusts, including creation of foreign trust by a U.S. person, transfers of property from a U.S. person to a foreign trust and receipt of distributions from foreign trusts under IRC 6048 and receipt of foreign gifts under IRC 6039(F). Filing an incomplete return or failing to file results in a penalty of the greater of \$10,000.00 or 35% of the gross reportable amount. For returns relating to gifts, the penalty is 5% of the gift per month to a maximum penalty of 25% of the gift.

## Other Offshore Penalties - continued

Failure to file Form 3520-A, *Annual Information Return of Foreign Trust with a U.S. Owner*:

Ownership interests and powers over these foreign trusts by U.S. persons is reported under this form which carries a penalty for failing to file of 5% of the gross reportable amount of trust assets.

Failure to file Form 5471, *Information Return of U.S. Persons with Respect to Certain Foreign Corporations*:

Certain U.S. persons who are officers, directors or shareholders in certain foreign corporations are required to report information under IRC sections 6035, 6038 and 6046. The penalty for failing to file each one of these information returns is \$10,000.00 with an additional \$10,000.00 added each month the failure continues, beginning 90 days after the taxpayer is notified of the failure, to a maximum of \$50,000.00.

## Other Offshore Penalties - continued

### Failure to file Form 5472, *Information Return of a 25% Foreign-Owned U.S. Corporation or a Foreign Corporation Engaged in a U.S. Trade or Business*

The penalty for failing to file under IRC 6038(A) and 6038(C) or for failing to keep certain records regarding reportable transactions is \$10,000.00 with an additional \$10,000.00 added each month the failure continues beginning 90 days after the taxpayer is notified of the failure to file.

### Failure to file Form 926, *Return by a U.S. Transferor of Property to a Foreign Corporation*

Taxpayers are required to report transfers of property to foreign corporations and other information under IRC 6038B. The failure to file penalty for this information return is 10% of the value of the property transferred up to a maximum of \$100,000.00 per return with no limit if the failure to report the transfer was intentional.

## Other Offshore Penalties - continued

Failure to file Form 8865, *Return of U.S. Persons with Respect to Certain Foreign Partnerships*

This form is used to report interests in and transactions of the foreign partnership, transfers of property to the foreign partnerships and various acquisitions and dispositions as well as changes in foreign ownership. The penalties for failing to file under the applicable IRC sections is \$10,000.00 for each failure to file with an additional \$10,000.00 added for each month the failure continues to a maximum of \$50,000.00 per return or 10% of the value of any transferred property that is not reported, subject to a \$100,000.00 limit, depending on the type of transaction that was not reported.

## Other Offshore Penalties - continued

### **IMPORTANT !!!**

There is a provision in the OVDI FAQs that waives the penalties for failure to file FBARs, F3520 ,F3520A or F5471 under certain circumstances. The provisions are included in question 17 and 18 of the 2011 OVDI FAQs. The FAQs state the IRS will not impose a penalty for the failure to file the delinquent informational returns if there are no underreported tax liabilities and the taxpayer was not previously contacted regarding an income tax examination or a request for delinquent returns.

If the taxpayer raises this defense to an assessed penalty, check with Global Strategic Compliance (GSC) analysts for additional direction whether the penalty should be abated.

## Exercise 8

The FBAR Form TD F 90-22.1 is filed as an attachment with either the Form 1040 or Form 1120.

TRUE

FALSE

## Exercise 9

Which Title 26 miscellaneous offshore penalty amount is incorrect?

- ✓  a OVDP 2009 = 20%
- ✓  b OVDI 2011 = 22%
- ✓  c OVDI 2012 = 27.5%



# End of Lesson Three

## OVDP

Please continue with an  
Update to the written example  
from Offshore Phase One

# Writ ne exeat Republica

Click [here](#) for 508 version  
of this presentation.

**Congratulations!**

You have completed *Offshore Collection Techniques for ATAT ROs Phase Two* .

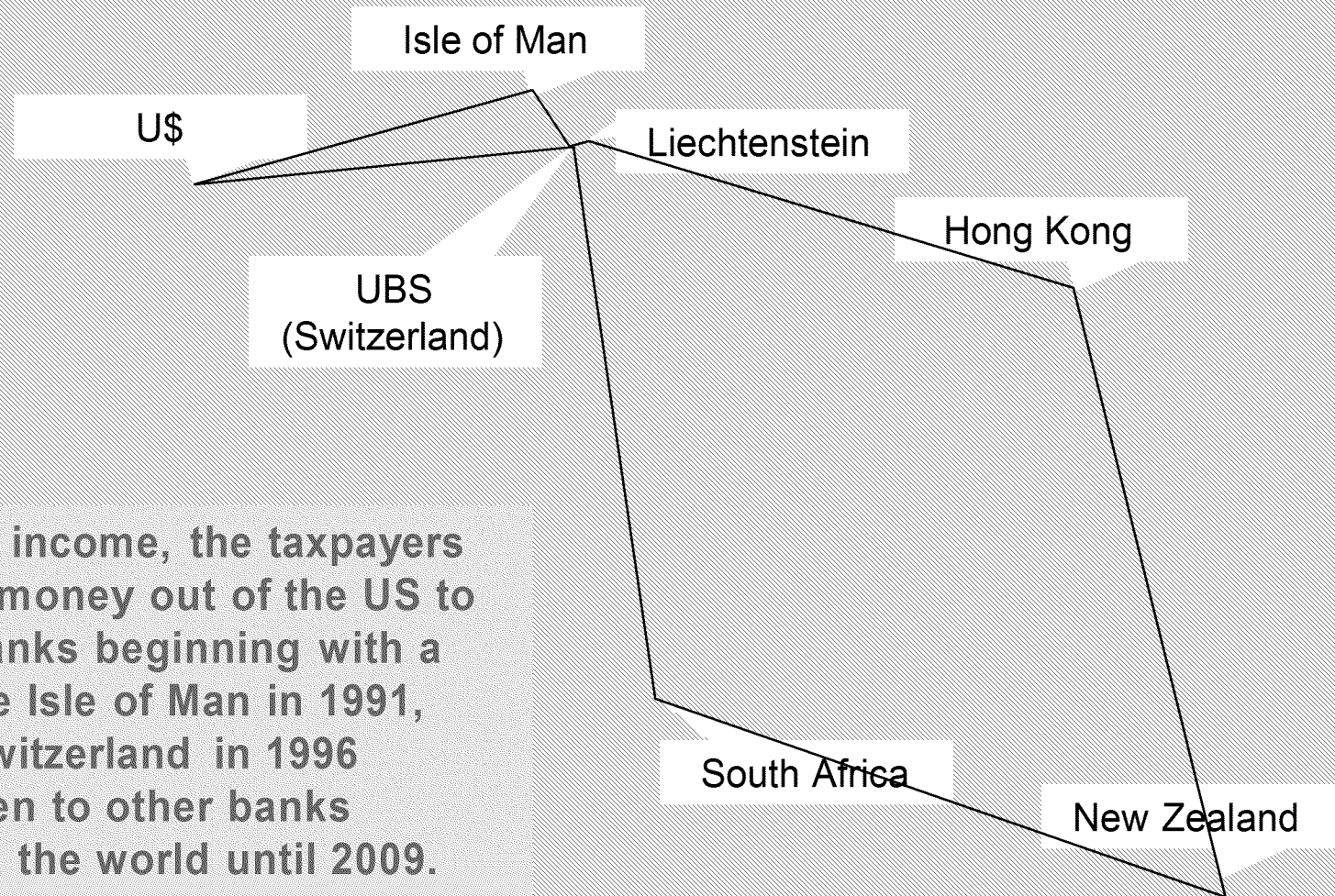
Please click exit to return to ELMS.

In a recent criminal prosecution case, a married couple from California were sentenced to 12 months and 1 day in prison for hiding millions of dollars in secret offshore bank accounts in Switzerland and other banks around the world.

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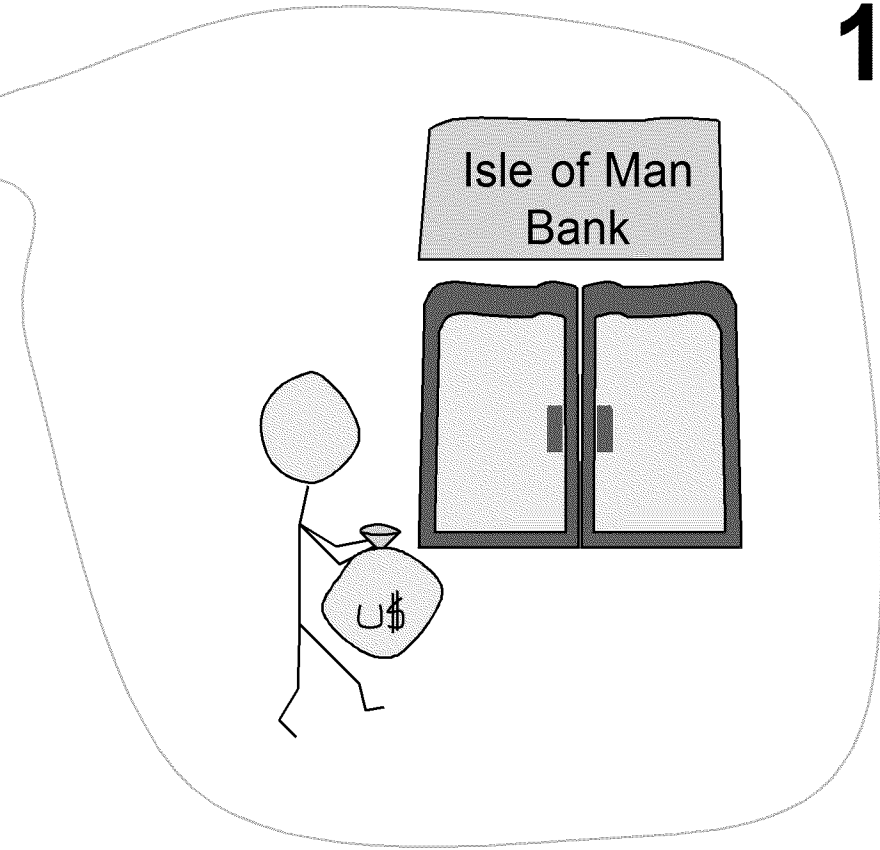
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The taxpayers also failed to report any income earned on the foreign accounts and falsely deducted millions of dollars in transfers from their domestic business to the Swiss bank accounts on their corporate tax returns. The transfers were deducted as interest payment on corporate tax returns as a sham aircraft loan.



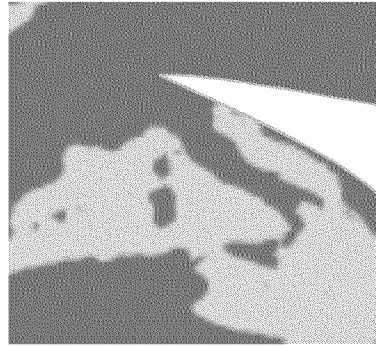
To hide their income, the taxpayers moved their money out of the US to offshore banks beginning with a bank in the Isle of Man in 1991, onto Switzerland in 1996 and then to other banks throughout the world until 2009.

# 1991

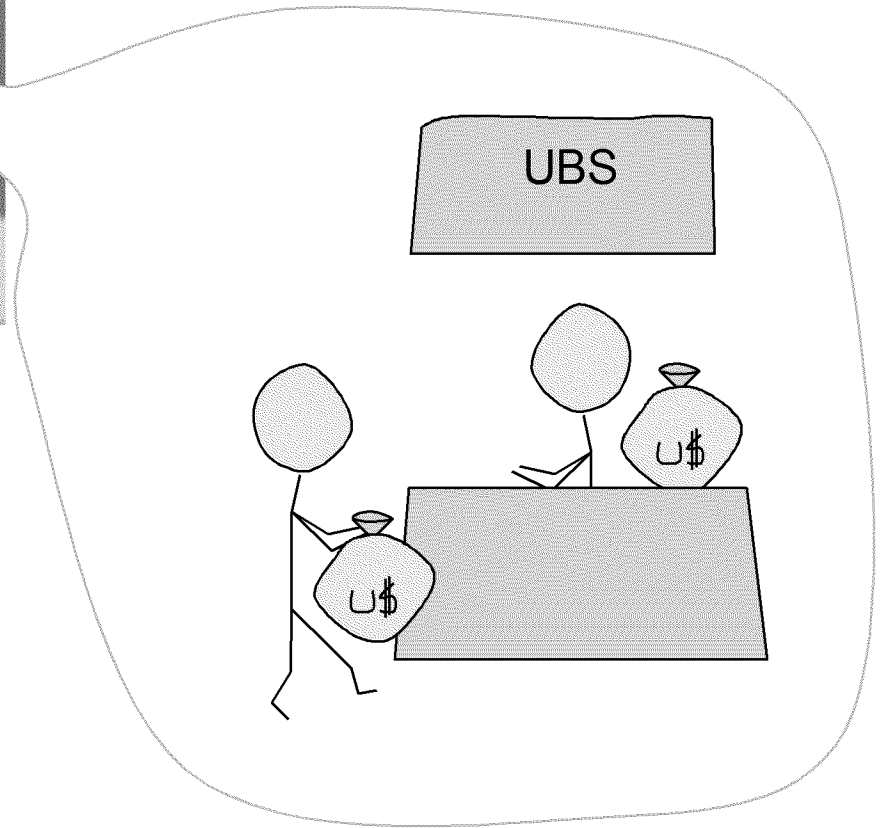


Taxpayers open a bank account at an Isle of Man branch of a United Kingdom bank, in the name of a nominee.

# 1995



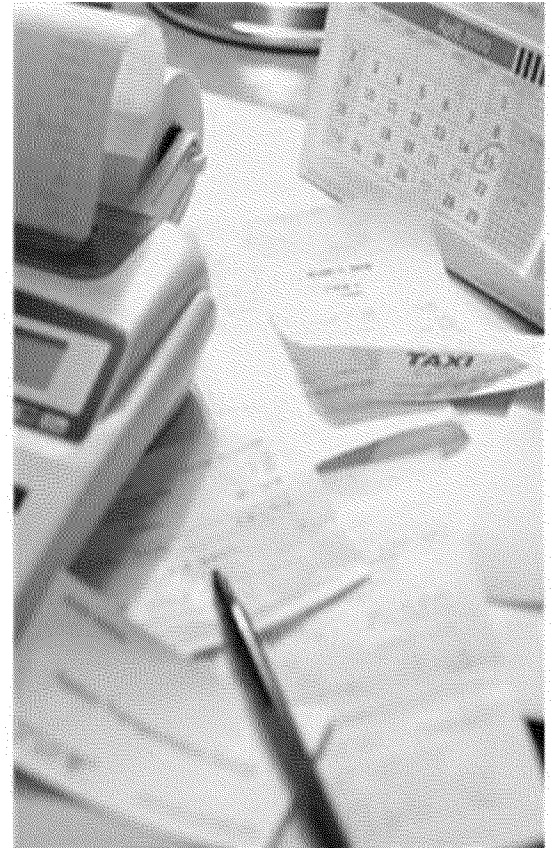
Taxpayers, with the assistance of a UBS banker, establish an account at UBS in Switzerland held in their own names.



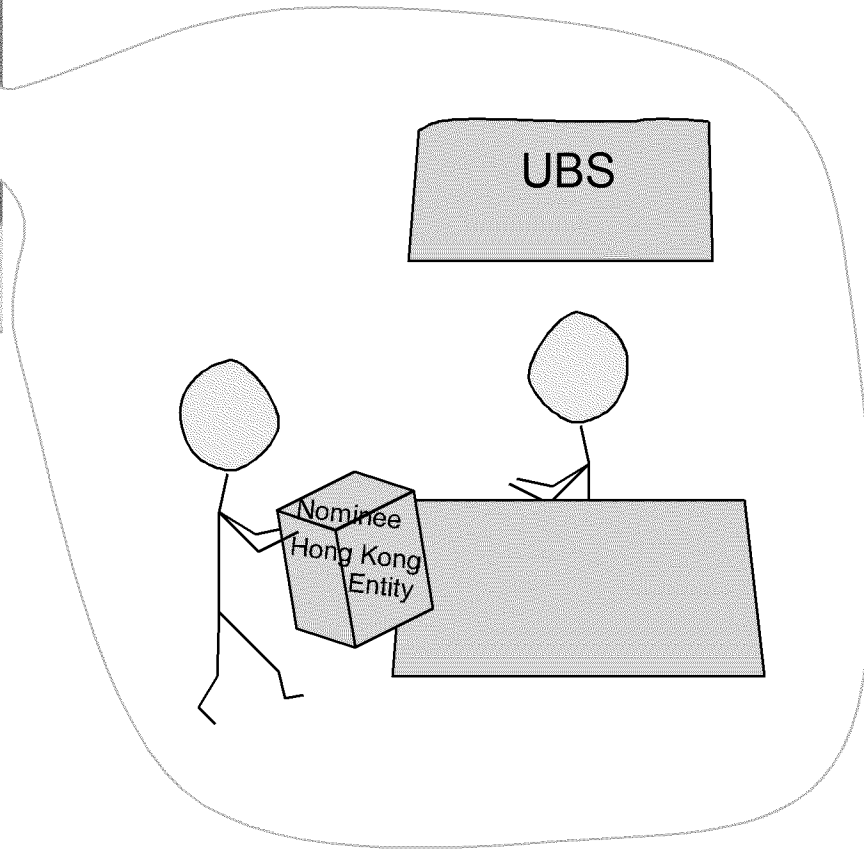
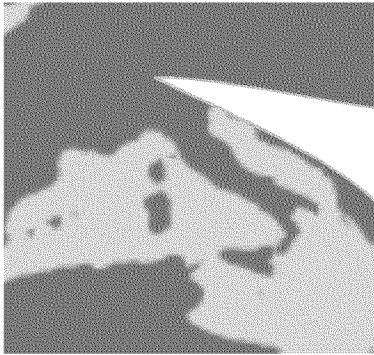


# From 2002 to 2004

Taxpayer transferred funds from their domestic company to offshore account then deducted transfers as interest payment on a sham aircraft loan.

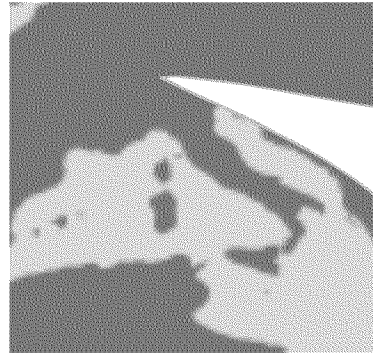


**2004**

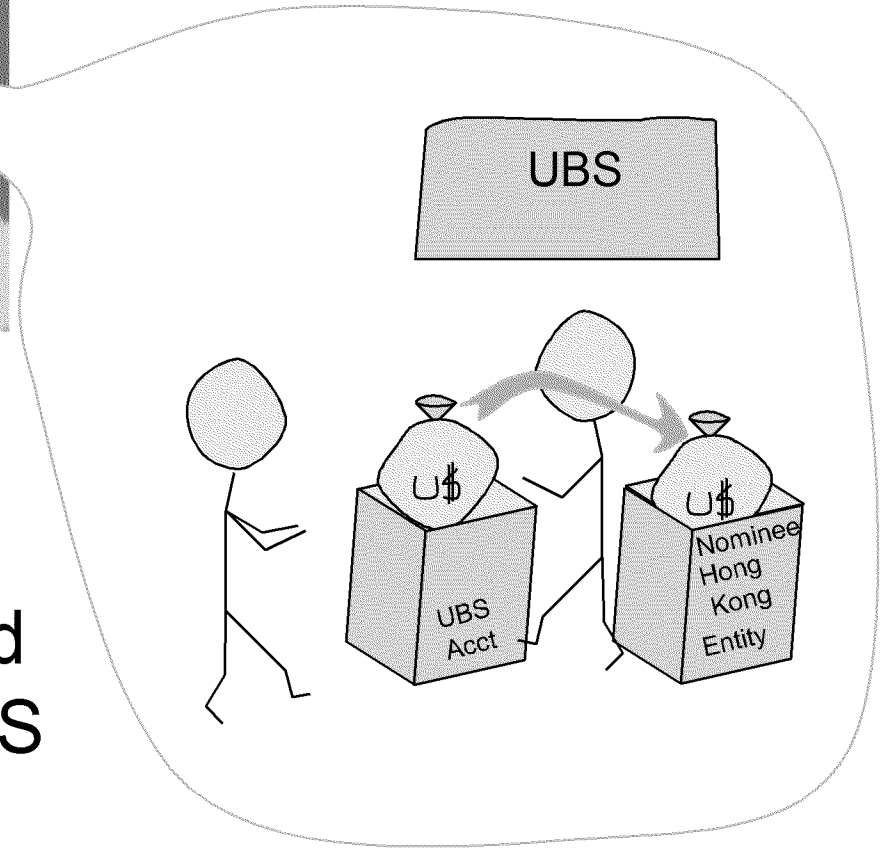


Taxpayers, with the assistance of a Swiss wealth Management business, acquire a nominee Hong Kong entity and open a new UBS account in the entity's name.

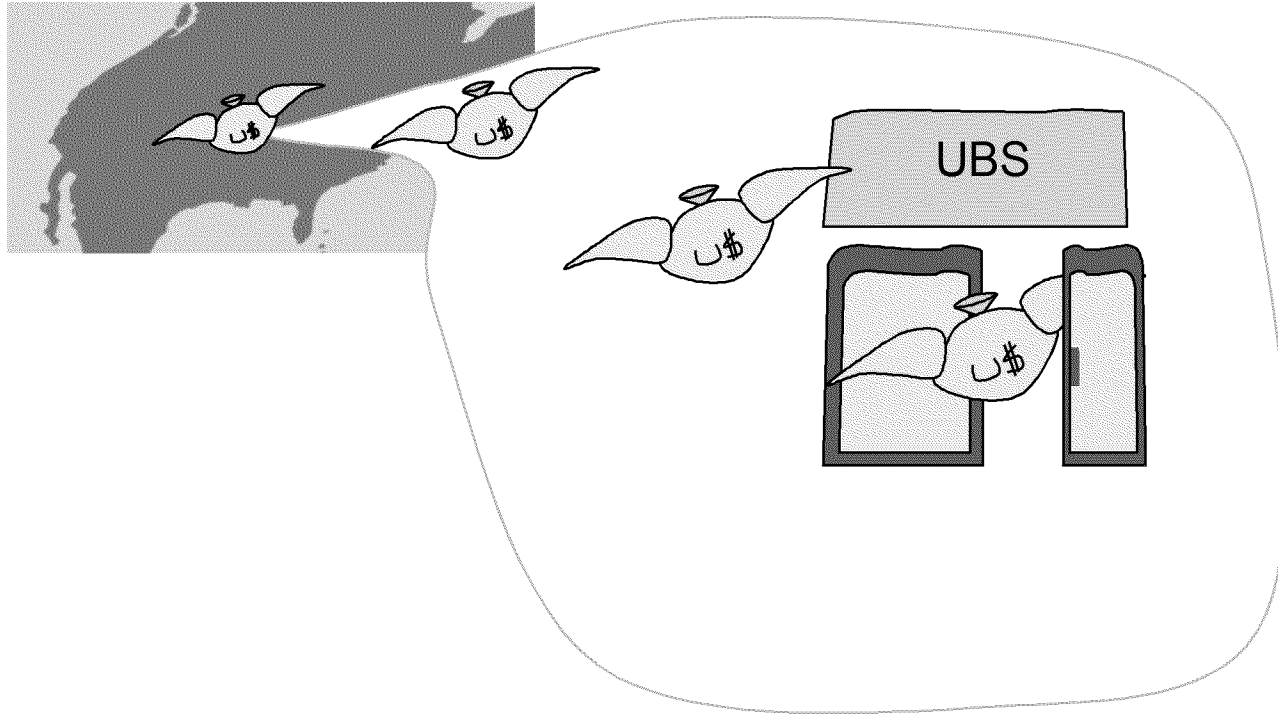
# July 2004



Taxpayers close the UBS account in their names and transfer the assets to a UBS nominee account.



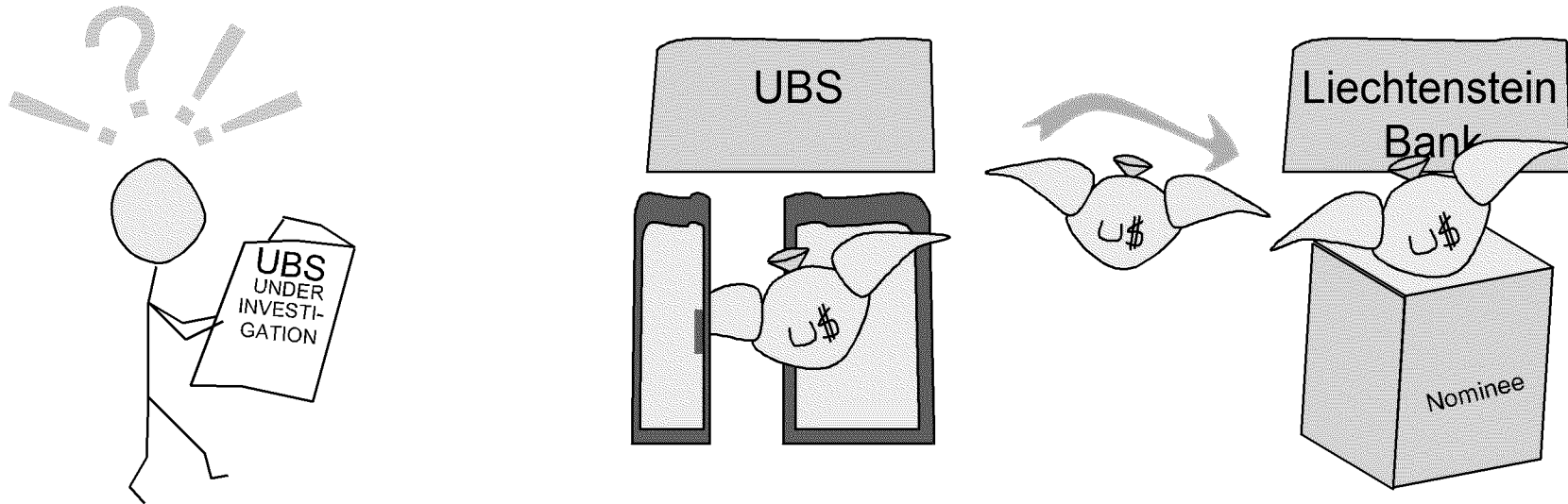
# Feb 2005



Taxpayers close the nominee Isle of Mann account and transfer the assets to the nominee UBS account.

# May 2008

Taxpayers close the UBS account and transfer over \$4.8 million to an account in the nominee's name at a Swiss branch of a Liechtenstein bank after learning UBS is under investigation.

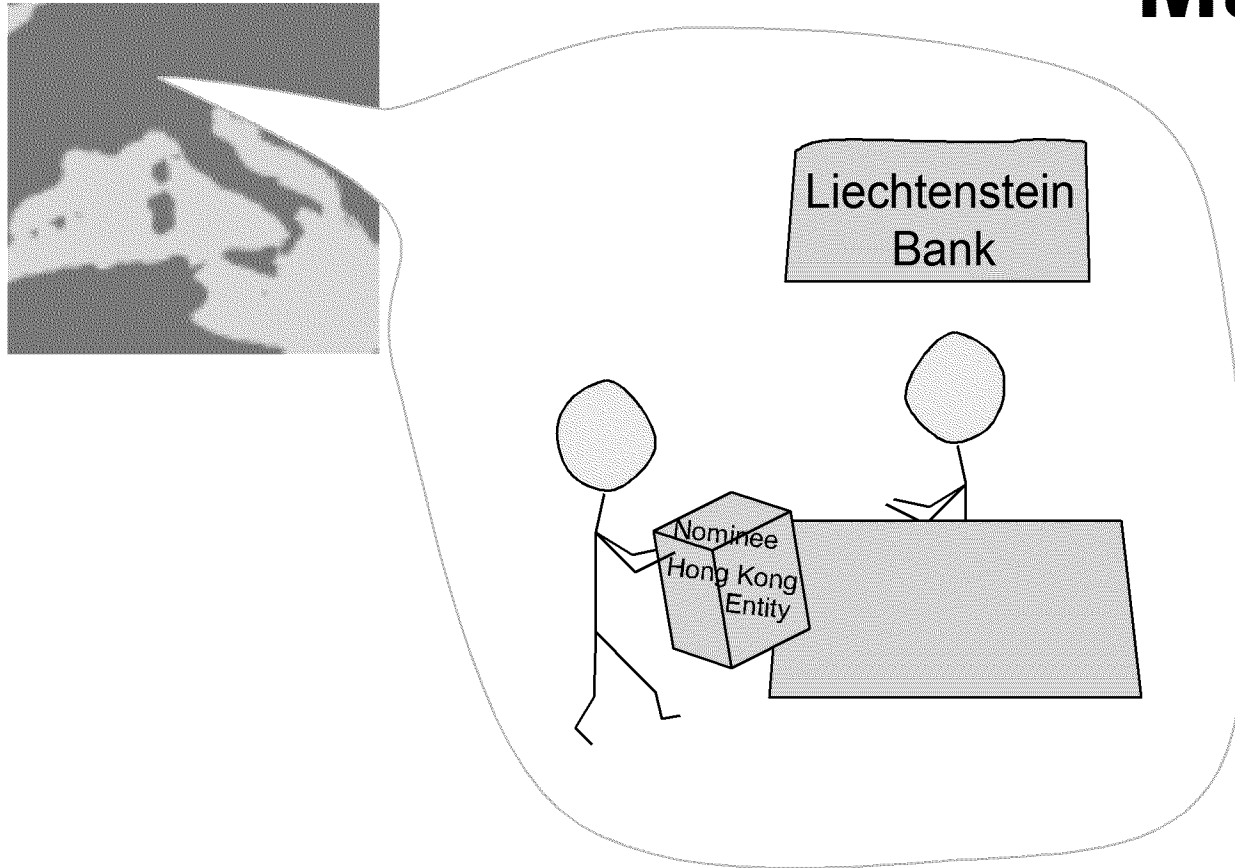


# From 2004 through 2008

From their domestic business the taxpayers transferred more than:

- \$1.2 million to the UBS account and
- \$1.4 million to the account in Liechtenstein

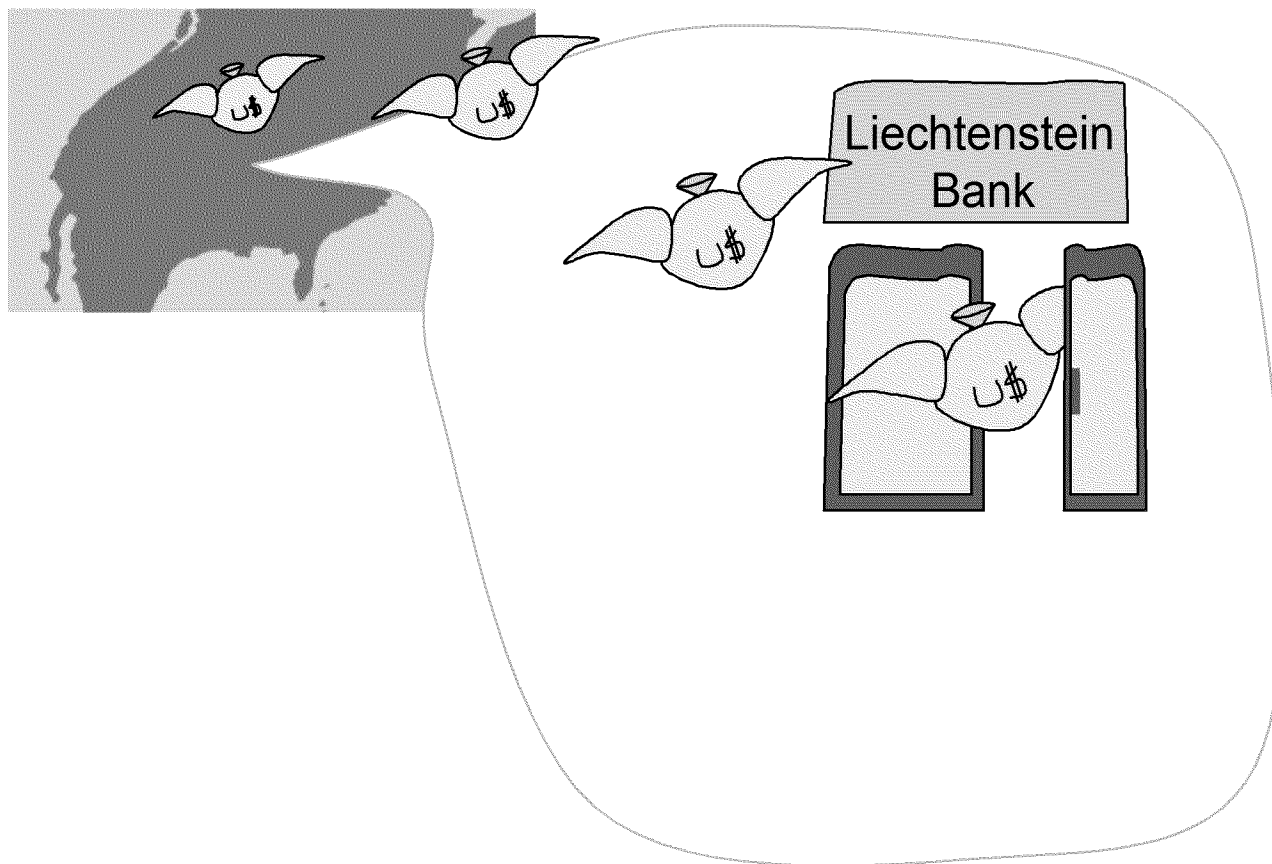
May 2008



Taxpayers open a bank account in the name of *another* nominee Hong Kong entity at the Liechtenstein bank.

# 2008 and 2009

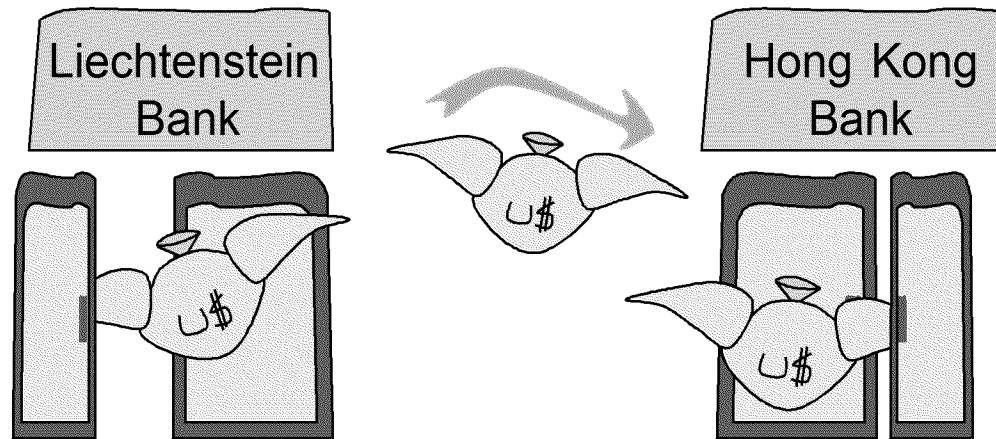
Taxpayers transfer funds from another domestic business to this new nominee account.





# 2009

Taxpayers transfer this Liechtenstein account to a bank in Hong Kong.



The taxpayers also maintained numerous undeclared foreign bank accounts in New Zealand and South Africa held in their own names. Many of the financial transactions were done with the assistance of the same operator of the Swiss wealth management and tax advisory business.

February 2009, UBS entered into a deferred prosecution agreement under which the bank admitted to helping U.S. taxpayers hide accounts from the IRS. As part of their agreement, UBS provided the U.S. government with the identities of, and account information for, certain U.S. customers of UBS's cross-border business, including the taxpayers.

## International Wire Transfers

### Introduction

Taxpayers may transfer funds to and from locations outside the United States. There are two components to funds transfers:

- (1) The actual movement or transfer of funds.
- (2) The instructions, which contain information on the sender and receiver of the funds.

The actual movement of funds (payments):

- May be completed by the sending financial institution to the receiving financial institution directly. The SWIFT message provides the specific transaction data.
- A correspondent financial institution may be needed to carry out the transfer if a direct banking relationship does not exist between the sending and receiving financial institutions.
- The actual transfer of funds is accomplished using the systems particular to the relevant country like Fedwire, or CHIPS in the U.S.

The instructions may be sent in a variety of ways:

Electronic access to networks operated by the Federal Reserves' Fedwire

Privately operated CHIPS payment systems

The Society for Worldwide Interbank Financial Telecommunication (SWIFT) international messaging system

E-mail

Facsimile

Telephone

**Note:** See ATAT Sharepoint site for examples of Wire Detail Instructions

## The Society for Worldwide Interbank Financial Telecommunication (SWIFT)

- is an international messaging service that is used to transmit payment instructions for the vast majority of international interbank transactions.
- SWIFT has Business Identifier Codes (BICs) for banks in over 200 countries and standardized messages to facilitate the movement of money across the world.

The SWIFT network is a messaging infrastructure, not a payments system.

- The SWIFT messaging network operates using a series of standardized message types (MT), which are identified by a three digit number. In order to send a SWIFT message, the banking officer, simply fills in the appropriate information in the appropriate fields and sends the message .
- MT-103's are the most commonly used form of SWIFT communication. They are used by the bank when its customers wish to make payment to customers of another bank in another country.
- For most customers MT-103's are known as Wire Transfers.

### MT-304

The **first digit (3)** represents the category.

A category denotes messages that relate to particular financial instruments or services such as Precious Metals (6), Treasury (3), or Travelers Cheques (8). The category denoted by 3 is Treasury Markets.

The **second digit (0)** represents a group of related parts in a transaction life cycle.

The group indicated by 0 is a Financial Institution Transfer.

The **third digit (4)** is the type that denotes the specific message.

There are several hundred message types across the categories.

The type represented by 4 is a notification.

NOTE: A list of SWIFT Message codes can be found in the Foreign Wire Transfer folder in the ATAT Share Point.

On May 26, 2003, Franz Holzapfel in Vienna orders Bank Austria, Vienna, to pay US Dollars \$1,121.50 to C. Klein, Bloemengracht 15, Amsterdam, whose account number 72 34 91 524 is with ABN Amro Bank, Amsterdam. The beneficiary is to be notified by phone at 20.527.19.60.

Bank Austria uses reference 394882.

This transfer may be sent via SWIFT using the following method of sending to the party closest to the beneficiary, through several reimbursement institutions.

#### **SWIFT Informative Flow**

### **SWIFT MT 103 to the Party Closest to the Beneficiary**

Bank Austria sends the following messages:

- A. A customer transfer to ABN Amro Bank, Amsterdam.
- B. A cover message for the US dollar payment, which is provided through Chase Manhattan Bank, New York, to ABN Amro Bank, New York.

### **Avenues to Locate Foreign Bank Accounts and Assets**

It is important for revenue officers to know where taxpayers may have foreign banking relationships since this is an indication they may have foreign assets and or bank accounts located outside the United States that can be used to pay their taxes.

#### **Tax Returns:**

A revenue officers investigation of foreign accounts may include reviewing taxpayer's income tax returns to see if the taxpayer disclosed the existence of foreign accounts as required on Schedule A.

#### **Domestic Bank Records:**

In addition, foreign accounts may be discovered when reviewing taxpayer's domestic bank accounts and other financial records which reveal deposits from outside the United States or withdrawals from taxpayers' account going overseas. When summoning for bank records be sure to include specific directions for wire transfers and related documents such as SWIFT messages. See IRM exhibit 25.5.2-2 for suggested language.

#### **CBRS Research:**

Research of Currency Banking Retrieval System (CBRS) for taxpayer required reports of Foreign Bank and Financial Accounts (FBAR) and existence of Suspicious Activity Reports (SAR) may yield valuable information about assets held by taxpayers outside the United States.

#### **Treasury Enforcement Communications System (TECS):**

If a revenue officer has evidence that a taxpayer travels abroad frequently and or has family or business ties outside the USA requesting a record of taxpayers travel history through TECS may later be useful and further developed by questioning the taxpayer or investigating through other third party sources the possible ties the taxpayer has overseas.

TECS provides a travel history with dates the taxpayer arrived and departed the USA.

-See IRM 5.1.18.14

**Note:** When dealing with taxpayers and discussing historical travel records that have been obtained from TECS, IRS employees **MUST NEVER** confirm or deny the existence of a TECS record. If a taxpayer persists with inquiries regarding TECS records, they must be advised that they are entitled to further information through a **WRITTEN REQUEST ONLY**.

**Taxpayer Summons:**

If you have evidence the taxpayer may have offshore bank accounts or other offshore assets you should ask for records confirming the assets and or bank accounts from the taxpayer and if necessary issue a summons to the taxpayer for this information. In addition to summoning for documentary evidence, summons for testimony from the taxpayer(s). Have specific questions prepared prior to the summons appointment but do not include them in the body of the summons..

**Obtaining Information and or Records Located Overseas**

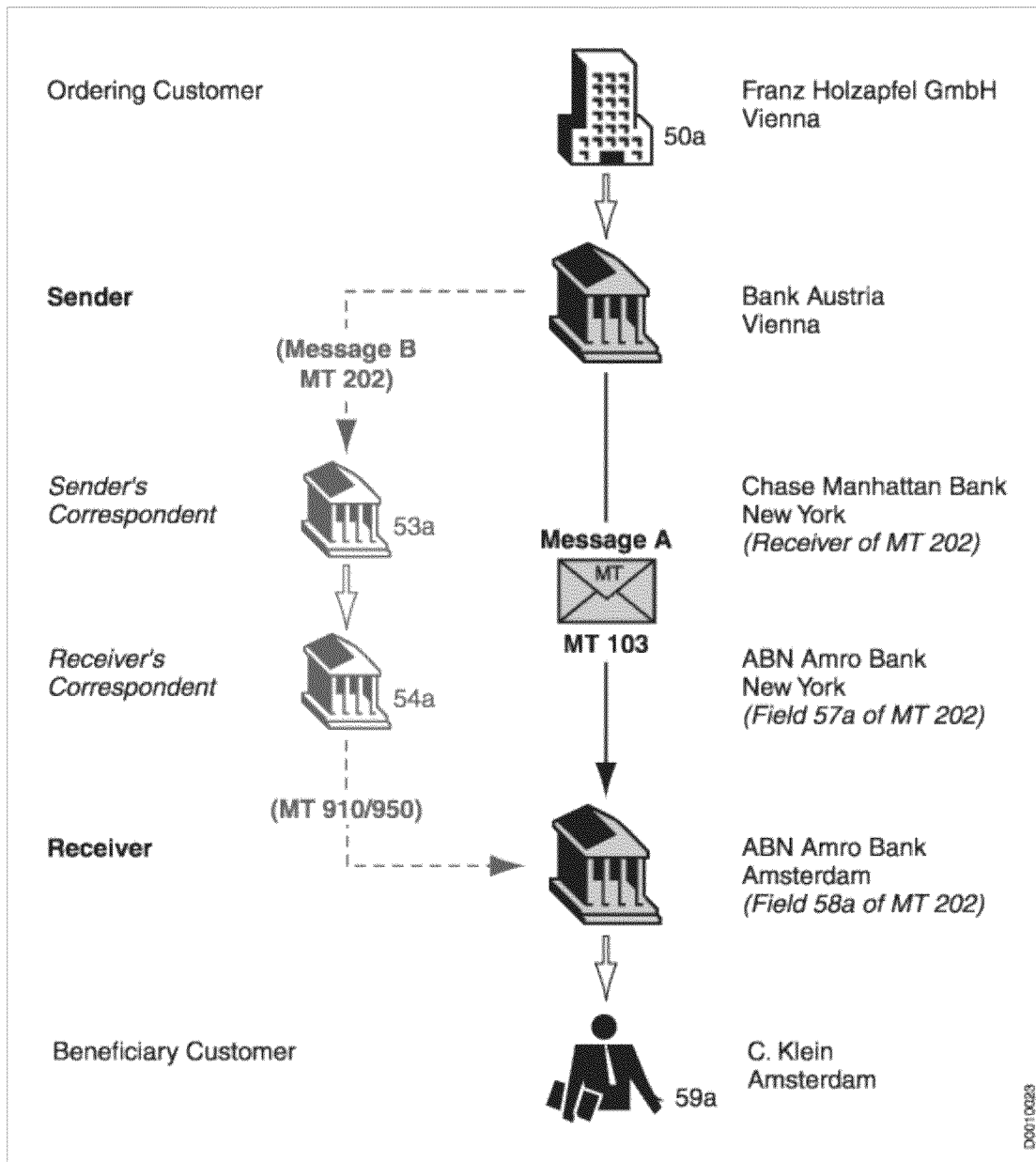
You may also be able to use our authority in offshore jurisdictions to obtain information under treaties (TIEA, MCAR, etc) and utilize our Tax Attaché to conduct further investigations overseas.

**Remember under no circumstances** should IRS employees contact a foreign government official in connection with an examination or investigation without first clearing the contact with the appropriate TA / RSR or Exchange of Information Group Manager in Washington, DC.

For more information, please read the FAQ's located on the LB&I web page - **Exchange of Information Programs**

# Message A SWIFT MT 103 Single Customer Credit Transfer

## Information Flow



SWIFT Message, MT 103 Explanation	Format
Sender	BKAUATWW
Message type	103
Receiver	ABNANL2A
Message text	
Sender's reference	:20:394882
Bank operation code	:23B:CRED
Instruction code	:23E:PHOB/20.527.19.60
Value date/currency/interbank settled amount	:32A:030526USD1121,50
Currency/Instructed amount	:33B:USD1121,50
Ordering customer	:50K:FRANZ HOLZAPFELI
Sender's correspondent <sup>(1)</sup>	:53A:CHASUS33
Receiver's correspondent <sup>(2)</sup>	:54A:ABNAUS33
Beneficiary customer	:59:/723491524 C. KLEIN BLOEMENGRACHT 15 AMSTERDAM
Details of charges	:71A:SHA
End of message text/trailer	

(1) Field 53A indicates the institution which is to provide the funds to the Receiver on behalf of the Sender.

(2) Field 54A is the receiver's correspondent - the institution which will receive the funds on behalf of the Receiver.



## IIC Offshore Compliance Initiatives

### Slide 1: Individual International Compliance (IIC)

Offshore Compliance Initiatives (OCI) is organized in LB&I in the Individual International Compliance (IIC) area

My name is Frank Bucci

### Slide 2: Offshore Compliance Initiatives

OCI is a civil enforcement program that promotes voluntary compliance with U.S. tax and foreign information reporting laws through strategic enforcement actions directed at identifying U.S. taxpayers involved in abusive offshore tax schemes and the banks, other financial institutions and third parties that provide, facilitate or enable their offshore financial arrangements and structures.

### Slide 3: Offshore Compliance Initiatives

- Director, International Individual Compliance, LB&I IIC - David Horton
- Program Manager, LB&I IIC – Bryan Stiernagle
- Philadelphia Offshore Identification Unit Manager (POIU) [REDACTED]
- Jacksonville Offshore Identification Unit Manager (JOIU) [REDACTED]

(b)(6)

In addition to identify offshore schemes and obtaining records to substantiate these transactions, the unit also provides field support with Technical Advisors to assist the field. These technical advisors have provided training classes, national conference calls with agents' assigned offshore cases and field support in the way of interviews, case development and closing procedures.

### Slide 4: Offshore Compliance Initiatives

- Identifies abusive offshore tax schemes being used by U.S. taxpayers
- Identifies external sources of records related to those schemes located in the United States
- Develops strategic initiatives and enforcement actions to identify U.S. taxpayers involved in offshore tax schemes
- Supports field examinations with Offshore Technical Specialists

### Slide 5: Offshore Compliance Initiatives

- Designed around the four components of an offshore scheme structured as questions
  - Who introduced the taxpayer to the offshore financial arrangements?
  - How are assets expatriated offshore?
  - How are offshore assets controlled?
  - How are offshore assets repatriated?

These four questions are the key to the examination of taxpayers with offshore activities.

### Slide 6: John Doe Summonses

- Primary tool used is the John Doe summons

- 26 USC §7609(f)
- Used to identify tax non-compliant persons whose identities are unknown
- Requires approval of federal district court

Our primary tool for the past few years has been the use of the John Doe summons. One of the most successful accomplishments of the OCI program was the John Doe summons issued to UBS bank in Switzerland. Dan Reeves, one of our senior technical advisors was one of the key players in that accomplishment

### **Slide 7: John Doe Summonses**

Requirements for issuing a John Doe summons

- Must relate to a particular person or ascertainable class of persons
- Must be a reasonable basis for believing the person, group or class of persons failed to comply with any internal revenue law
- Information sought is not readily available from other sources

As of today, these are the projects that we have developed over the past 10 years. I would like to review these projects briefly because they still have an impact on the collection of tax today.

### **Slide 8: Projects Developed to Date**

- Offshore Credit Card Project
- Broker Initiative
- Electronic Payment Systems Initiative
- Offshore Merchant Account Initiative
- Offshore Private Banking Initiative

### **Slide 9: Offshore Credit Card Project**

#### **The Compliance Issue**

U.S. taxpayers use debit cards and credit cards linked to offshore bank accounts to access untaxed funds on deposit

#### **The Enforcement Strategy**

Use John Doe summonses to secure information on U.S. persons with offshore accounts from U.S. based processors of credit card transactions

The offshore credit card project (OCCP) was our initial step into the world of offshore banking.

### **Slide 10: Offshore Credit Card Project**

- Offshore cards are an easy and covert way to access offshore funds
- Offshore cards are either secured cards or they are tied to a minimum "relationship balance"
- Behind every offshore debit card or credit card there exists one or more offshore bank

accounts

Offshore credit cards were issued to taxpayers who had credit or debit cards linked to offshore bank accounts. Offshore credit cards were different than credit cards issued by domestic banks. To obtain a credit card offered by an offshore bank, you were required to maintain a balance in the offshore bank equal to 1 ½ to 2 times the credit limit requested on your credit card. You determined the credit limit of the card based on the balance you maintained in the offshore bank account. So if we identified someone with a credit card linked to an offshore bank, we know they had an account balance in relationship to their credit card limit.

**Slide 11: Offshore Credit Card Project**

- While the banks are located offshore, the bank's account records are often processed within the United States
- VISA and MasterCard process all worldwide transactions on computer systems located in the United States as are some third-party card processors that service offshore banks

**Slide 12: Offshore Credit Card Project**

- John Doe Summonses served
  - American Express
  - MasterCard International
  - VISA International
  - Credomatic of Florida, Inc.
  - Tecnicard, Inc.
  - First Data Corporation
  - Total Systems, Inc. (T-Sys)
  - Various U.S. merchants

Using a John Doe summons issued to the domestic credit card processor, we were able to identify a population for case building and eventually examination. This slide lists the various companies who received a John Doe summons as a result of our offshore credit card project

**Slide 13: Offshore Credit Card Project**

- Over 150 John Doe summonses served on card processors and US merchants
  - More than 25,000 U.S. owners of offshore accounts were identified
  - More than 7,500 civil examination cases were put into the field
  - More than 600 successful criminal prosecution cases resulted
  - Information obtained from these summonses are input into our OCI database

Summarizes some of the results of the offshore credit card project. The most important of which is the 600 successful criminal prosecutions. Just as a reminder, all of the information that we obtained as a result of our John Doe summons are maintained in our OCI database which can be accessed. We will discuss this later in the presentation.

**Slide 14: Broker Initiative**

**The Compliance Issue**

- U.S. taxpayers use International Business Companies (IBCs) formed in offshore financial centers to disguise ownership of brokerage accounts, often funded with unreported income, and avoid taxation of securities transactions
- An IBC is an offshore company formed under the laws of a foreign jurisdiction as an untaxed company that is not allowed to do business within the jurisdiction in which it is incorporated.

### **Slide 15: Broker Initiative**

#### **The Enforcement Strategy**

Use dual-purpose examinations and promoter investigations of brokers to identify U.S. beneficial owners of domestic accounts claiming foreign status

### **Slide 16: Broker Initiative**

- US taxpayer establishes an IBC in an offshore financial center
- Taxpayer opens a domestic or foreign brokerage account in the name of the IBC
- The IBC files a W-8BEN with the brokerage firm claiming foreign status and an exemption from withholding on securities transactions.
- A W-8BEN is a form that foreign persons/entities issue to the US income payor to claim exemption from US taxation on the income and avoid withholding on the income.

A second initiative in OCI was the Broker Initiative. Taxpayers used disguised ownership of brokerage account to avoid taxation. So the brokerage account was set up to look like it was owned by a non US individual or entity.

### **Slide 17: Broker Initiative**

- Dual purpose examinations focused on clearing brokers to concurrently examine:
  - Form 1042 liability of withholding agent
  - Form 1040 liability of US beneficial owner of brokerage account
- Promoter investigations focused on brokers who market such structures specifically for abusive tax avoidance purposes

A US taxpayer would establish an International Business Company (IBC) in an offshore jurisdiction and opens a brokerage account using the name of the IBC. Thru the use of a W8-BEN, the individual (filing as and IBC) would claim foreign status and the brokerage firm would not withhold on any of the gains on the security transactions.

### **Slide 18: Electronic Payment Systems Initiative**

#### **The Compliance Issue**

- U.S. taxpayers use offshore debit cards, credit cards and bank accounts to fund their U.S. based electronic payment accounts with untaxed income

#### **The Enforcement Strategy**

- Use John Doe summonses to secure information on U.S. persons with offshore accounts from U.S. based Electronic Funds Transfer and Payment Systems

### **Slide 19: Electronic Payment Systems Initiative**

- EPS accounts must generally be linked to or funded by a debit card, credit card or bank account
- Often used by e-commerce businesses as a merchant account
- Debit/credit cards often available that are secured by the account

The Electronic Payment System Initiative evolved as a result of the Offshore Credit Card project. The easiest way to describe this is the use of a Pal Pal account. By linking an offshore bank account to your Pay Pal account, you can buy and sell (generally on the internet) using an offshore bank account.

### **Slide 20: Electronic Payment Systems Initiative**

- John Doe summons served on PayPal to identify US accounts linked to offshore debit cards, credit cards or bank accounts
- Received information on thousands of accounts that met the summons criteria
- A large percentage of the accounts received were identified as business accounts

IRS issued a summons to Pay Pal to identify accounts linked to offshore banks. The Pay Pal summons resulted in quite a lead into the e-commerce area. And of course this information is included in the OCI database.

### **Slide 21: Offshore Merchant Account Initiative**

#### **The Compliance Issue**

- U.S. businesses establish merchant accounts in offshore locations to divert business proceeds from debit card and credit card sales so as to improperly avoid or evade taxation

#### **The Enforcement Strategy**

- Use John Doe summonses and promoter investigations to secure information on U.S. merchants with offshore merchant accounts from U.S. based card processors and providers

### **Slide 22: Offshore Merchant Account Initiative**

- Because of the worldwide acceptance of VISA, MasterCard & American Express, the merchant account can be established anywhere in the world
- US merchants can transact business in the United States but arrange to have their daily net proceeds from charge sales deposited directly into a merchant account located in an offshore secrecy jurisdiction

The Offshore Merchant Account Initiative grew out of both the OCCP and Electronic Payment Initiatives. This project was aimed at domestic businesses that accept credit cards from customers. However the domestic business has the credit card sale diverted to an unreported offshore bank account. This is kind of the reverse of the OCCP. In OCCP, we looked for individuals with credit cards linked to offshore accounts. In the Merchant project, we are looking at

merchants who have multiple business accounts and one or more of them are located in an offshore jurisdiction.

### **Slide 23: Offshore Merchant Account Initiative**

- [www.panama-offshore-services.com/panama\\_offshore\\_services.htm](http://www.panama-offshore-services.com/panama_offshore_services.htm)  
“Offshore Merchant Accounts ... provide you with the ability to collect fees beyond the jurisdiction of federal tax authorities.”
- [www.finance11.com/12655.html](http://www.finance11.com/12655.html)  
“Some of the advantages of offshore credit card processing include zero taxation. Since your bank is in another country, the normal taxation rules do not apply to your business.”
- [www.global-payment-services.com/offshore+merchant+account.html](http://www.global-payment-services.com/offshore+merchant+account.html)  
“The offshore merchant account will provide a place for the credit card payments to be placed, while allowing the individual merchant to be free of tax liabilities when it comes to the amount of income they store in their offshore merchant account.”

You could have a restaurant in Philadelphia that has its credit card sales deposited into a bank account in the Cayman Islands. So depending on the “swipe machine” in the restaurant, once your credit card is swiped, the proceeds can be directed anywhere in the world.

This is a sample of some of the website advertisement directed to merchants to open an offshore merchant account with using their services.

### **Slide 24: Offshore Merchant Account Initiative**

- John Doe summons served on First Data Corporation of Denver, CO for records of offshore merchant accounts that
  - Are beneficially owned by US persons, and
  - Involve any business connection to First Atlantic Commerce, a Bermuda corporation
- First Atlantic Commerce markets OMA to U.S. ecommerce merchants in part as a way to avoid paying U.S. taxes

Once again, thru use of the John Doe summons, we obtained information from various domestic companies that offer this service to merchants.

### **Slide 25: Offshore Private Banking Initiative**

#### **The Compliance Issue**

- High wealth U.S. taxpayers use private banks to establish accounts, investments and entities in offshore locations to improperly avoid or evade U.S. taxation and disguise ownership of financial assets

#### **The Enforcement Strategy**

- Use John Doe summonses to secure information from private banks operating in the U.S. that are involved in providing abusive offshore tax avoidance or evasion products

### **Slide 26: Offshore Private Banking Initiative**

- Identify U.S. licensed banks and private banks with subsidiaries, operating divisions or branch offices in offshore locations that are being promoted to U.S. taxpayers for abusive tax avoidance

- Identify offshore banks and private banks in such offshore locations that maintain subsidiaries or operate within the U.S.
- Use John Doe summonses to secure records

Our most successful project and also the one that resulted in extensive media coverage, even today, is our Offshore Private Banking Initiative. Many banks offer services to their wealthy clients and provide private banking services (similar to MR. Drysdale in the Beverley Hillbillies, if you are old enough to remember that TV series). Just a note, if you summons a bank for information be sure that your summons requests “private banking records” because some banks consider this a separate account and will not always supply these documents unless specifically requested.

#### **Slide 27: Offshore Private Banking Initiative**

Initial John Doe summons served on UBS AG of Switzerland

- Based on information developed from an individual who had worked as a private banker for UBS in Switzerland
- Unlicensed Swiss Client Advisors secretly traveled to the US to conduct banking and securities business with US clients and develop new clients on US soil

Once again, the use of a John Doe summons provided vital information for this project

#### **Slide 28: Offshore Private Banking Initiative**

- Agreement reached between IRS and Swiss Government on August 20, 2009 after IRS went to court to enforce the summons
- Swiss agreed to provide account records of approximately 4,450 UBS accounts owned by U.S. taxpayers in response to a treaty request (“Treaty Cases”)

The UBS John Doe summons was the beginning of our Offshore Voluntary Disclosure programs of 2009, 2011 and the most recent announcement of a 2012 program. To date, this program has brought in over 4 Billion in tax, interest and penalties. Once the John Doe summons served on UBS hit the media, the IRS was the beneficiary of amended returns from taxpayers with offshore accounts going back as far as 2003.

#### **Slide 29: Offshore Private Banking Initiative**

John Doe summons served on other financial institutions

- OCI is continuing its efforts in this area and multiple summonses have been issued (ex. HSBC). We expect to issue more summonses in the future.
- This has been an extremely successful project in the identification of high wealth individuals utilizing offshore accounts to conceal income

UBS agreed to turn over records of over 4,000 UBS accounts and we are currently working cases in the field today as a result of that information. These cases are referred to as treaty cases by the revenue agents involved in those examinations.

#### **Slide 30: Initiatives under Development**

- Foreign Trust Providers
- Offshore Hedge Funds
- Offshore Insurance Products
  - Captive Insurance
  - Insurance Wrappers

- Cross-Border Wire Transfers
- Correspondent Bank Accounts

Due to the success of the UBS summons, OCI is continuing its efforts in the use of a John Doe summons on other financial institutions with offshore implications.

**Slide 31:**  
OCI Information Database

**Slide 32: OCI Information Database**

**Slide 33: OCIDB User Community**

- Offshore Identification Units
  - <http://vci.enterprise.irs.gov>
  - Identify US taxpayers with offshore banks accounts and other offshore financial assets
  - Develop and case build IRS inventory of offshore workload delivery for field examination
- Revenue Agents, Revenue Officers, Special Agents
- Technical Specialists and Analysts



## **Offshore Compliance Initiatives - Collection Accounts**

### **Introduction**

How will you know if you are assigned a case that comes from one of the projects discussed here today? By the project code, of course. You may have one of the OCI Collection Cases already assigned to you and knowing if your balance due account comes from an OCI project can help focus your investigation in the right direction.

### **OCI Exam Project Codes**

Offshore Credit Card Project - 0127

Broker Initiative - 0020

Electronic Payment Systems Initiative - (aka PayPal) - 0973

Offshore Private Banking Initiative - 0971

Exam project codes can be found on TXMOD for modules with a deficiency that is the result of an ATAT examination.

### **EXAMPLE:**

TC424R 09292009 0.00 20094008 DLN SOURCE-CD SPCL-PROJ>0996

### **Project Code 0127 – Offshore Credit Card Cases.**

- ROs should be looking in the OCI Database for available records.
- Most accounts are domestic taxpayers
- Balance due from a high of \$10 million to low of \$28 thousand
- Most over \$100 thousand.

### **Project Code 0971 - The Offshore Private Banking**

- Also referred to as treaty cases.
- Examinations in this project are based on information disclosed by a country under a tax treaty agreement.

**Union Bank of Switzerland (UBS)**, the first of the Private Banking Compliance projects, provided IRS with information on 4500 accounts for U.S. taxpayers. This information led to examinations for those taxpayers that did not participate in the Offshore Voluntary Disclosure Program.

As with any large dollar audit assessment, you will want to look at the examination file early on. It may also be helpful to speak with the revenue agent who was or is assigned the case. If the UBS information is not included in the Examination file or obtained from the RA, it can be requested through GSC policy analysts.

### **Other Private Banks under Scrutiny.**

The United States has written to Switzerland to demand it hand over detailed information on its citizens using Swiss accounts to dodge tax. Credit Suisse and nine other smaller banks face charges.

Credit Suisse AG, Switzerland's second-largest bank, has begun notifying certain U.S. clients suspected of offshore tax evasion that it intends to turn over their names to the Internal Revenue Service, with the help of Swiss tax authorities

*“The IRS is seeking to refine and extend its efforts to identify unreported offshore bank accounts and is actively working on drafting new John Doe summonses..... The summonses will target more entities than just banks and will focus on places other than Switzerland”*

Quote from John McDougal, special trial attorney and division counsel, IRS Small Business and Self-Employed Division, December 7, 2012.

### **UBS Tax Treaty**

UBS files are generally very large files and may be shared by CD or sent via OC. Data may include ownership information, financial statements and communications to and from account owners. Parts may be in a foreign language. The financial statements may be shown as dollars or some other currency.

2.1 Monthly Balance	3.1 Picturing VP – current
2.2 Revenue by year & Type	3.1.2 Picturing BO - current
2.3 Wire Transfers	3.1.3 Picturing VP – 12/31/2007
2.4 Trades	3.1.4 Picturing VP – 12/31/2007
2.4.1 Trade Securities	3.2 Contacts
2.4.2 Trades	4 Verification of Beneficial Owner, A/C Opening, Closing Docs, POA, Passport
2.4.3 Redemptions	5 Dossier File, Payment Order (wire info), Correspondence
2.4.4 Corporate actions	6.1 Statement of assets, financial Market Report
2.4.5 Dividends	6.2 Accounts Statements
2.4.6 Interest FKE	6.3 In German
2.4.7 Interest BO	6.4 Income Statement
2.4.8 Interests Cash A C	
2.5 Credit Card Data	

**Picturing** may include

- Nationality
- Domicile
- Client Since
- Birth Date
- Partner class
- Partner sensitivity
- Sitzgesellschaft (domicile company)
- Number of BO
- Number of POA
- Means of Acquisition
- Details
- Total assets Composition
- Job status
- Function
- Employer company
- Activity
- Industry
- Family situation

Since this information was obtained as the result of treaty provisions, there are some constraints what information can be disclosed to the taxpayer. The bank statement information can be disclosed but other information may be restricted especially copies of communications between the bank and taxpayer(s).

### **What can be disclosed to Taxpayer and Power of Attorney?**

- Information included on the financial statements - 6.1 to 6.

6.1 Statement of assets, financial Market Report
6.2 Accounts Statements
6.3 In German
6.4 Income Statement

### **What can't be disclosed to Taxpayer and Power of Attorney?**

- Any other information without checking with Exchange of Information Office or a GSC policy analyst.

### **This warning statement is stamped on every page of the UBS disclosure**

"This information is furnished under the provisions of an income tax treaty with a foreign government. Its use and disclosure must be governed by the provisions of that treaty.

The information contained within must be used only for income tax cases under the terms of the Agreement between the United States of America and the Swiss Confederation."

### **Reminder**

These UBS bank accounts have been closed.

Although it is helpful to know the value of the UBS account, this is historical data.

It is just a starting point - you will need to "follow the money" to determine if the funds still exist and where they are now.

## Offshore Compliance Initiative Database

### Slide 1

Hello we are talking to today with [REDACTED] and Mike Boyle who manage the offshore compliance initiative database. Mike Boyle is an application developer and serves as the Technical lead for OCI development.

(b)(6)

[REDACTED] is an analyst in the Offshore Compliance Initiative Unit of LB&I International Individual Compliance operations and is responsible for managing the administration of the database.

### Slide 2

[REDACTED] can you explain what the OCI database is?

Yes I can Pat. The OCI database is a web based application that contains financial information on taxpayers that have offshore accounts; the term offshore is synonymous with tax haven countries.

### What is the purpose of having the data base?

Well Pat that's a really good question. The offshore application was developed to assist the Service to mine through financial data to identify taxpayers that are involved in hiding their income offshore to avoid paying federal income taxes.

### Slide 3

#### Mike, How is this information gathered?

Sure, in general, the IRS identifies a potential source of foreign financial records held by a U.S. company. For example, the first data received were VISA credit card transactions, processed and stored in the US, for bank accounts in tax haven countries. The IRS works with the Department of Justice to serve the U.S. Company with a John Doe summons, the company then negotiates with DOJ, and comes to a settlement. The company then delivers the data to DOJ; most often on CD, but the IRS has received paper, tapes and external hard drives.

When DOJ is satisfied that the company met the John Doe Summons, they generally deliver the original media to the SME's of the OCI Program. The SME's work with the development team who decide how to add the new data to the OCI application.

## **Slide 4**

### **What are some of the sources and how current is this data?**

The current production database was just released this past December. It contains information from UBS AG (Data from 2001-2007) and Stanford International Bank. Stanford International contains data from 2003-2009

The older data in the system is third-party credit card processors, such as First Data, Technicard, TSYS and Credomatic. Generally, this data covers account activity from 2003 to 2007 In addition to summonsed information from third-party credit card processors; there is information from over 40 merchant accounts which includes information from Visa and MasterCard. The original Visa and MasterCard transactions cover 1998-2002

## **Slide 5**

### **Can you tell us what you do with the data sets?**

In general, we try to load and present the data as it is given to us. We analyze and perform Quality Control of the data, look for relationships within the data, and attempt to exclude any data which clearly does not meet the intent of the system. For example, accounts that have been proven to not be from foreign banks have been excluded. We extract and standardize data for consistent searching, but make every attempt to present and preserve the data, and the relationships between the data.

The date field might be a good example for us to look at. We might get date data in any of these formats. 2001-01-21, or 21-Jan-2001, or 01/21/01. But we will take that data and put it in a common format so we can search it. The format we will use is the year the month and the day. 20010121 You would have to use that format when you are searching for a date of birth in the system.

### **Is the only source of data from a John Doe summons?**

No, in addition to obtaining data through the issuance of a John Doe summons, information is received from an exchange of information with other government agencies such as the Security Exchange Commission. Or we might get data from a treaty with a foreign government such as the Swiss government.

## **Slide 6**

### **Does the data in the system only relate to offshore credit cards?**

No, we have data that does not have any relationship to credit cards at all. The latest data that we have the UBS data is not related to credit cards it is just related to Swiss accounts for UBS AG.

## **How much information is in the data base?**

Quite a bit actually we have about 1.4 million primary account numbers and about 1.1 million names. We have about 116 gigabytes of data.

### **Slide 7**

That's a lot of information

## **How do you index all that information on the data base?**

Probably easiest to look at our search screen to give you an idea of the fields that we have created for search capability. You can search for Names, Addresses, Account Numbers, Telephone Numbers, e-Mail addresses, and bank information, such as a bank name, or the country the bank is located in.

## **You can't search by SSN or EINs?**

No typically we receive data which does not contain SSN's or EIN's. If the data does not contain it we can't create the ability to search for it.

## **Can you share some tips for how best to search the database?**

Sure probably the best thing to do would be to start with a broad search, and narrow it down as needed. If a last name is unusual, just enter a last name. If it is more common, try including a first name. You might also try just using the advanced search. If you just use the advanced search the box on the top of the search screen. Whatever string you're searching for is going to search through all of the search fields we have at one time.

Good point

## **I know we can't show an actual search because of disclosure issues, but can you give some examples of how you would search?**

Let's say you are searching for the name "Lawrence Johnson". Last name is fairly common I would try a first name search Lawrence the last name search Johnson but let's say we come up with no hits for that. You may try other variations of his first name you might try to search for Larry Johnson. If you know the person is married and you know the spouses name you might try combining the spouses name in the search as well. If you know their street address, try a bit of their street address with the last name Johnson or if you know the person is associated with a company you might want to try putting the company name into the search criteria.

Well that's helpful –

**What sort of information would you get back if you actually got a hit?**

The search results screen by itself contains a lot of information. First off, the top box, the search box shows you the criteria that you used to do your search and that's handy because let's say the search was close but it gave you an idea that it was something else you wanted to do. You can just change it right here you don't have to go back to the search screen.

The information returned on the search – the first thing is just the number of accounts which hit your search criteria it might be 1,000 it might be two. If its two you can probably just look at them and see if you can figure out which one you might want to go to but if it was a thousand you might want to narrow down your search criteria.

But the info that is returned is the primary account number. Bank, account was drawn under. Country associated with that bank. Source of the data – did it come from UBS AG, first Data. That sort of thing. List of all the names and date of births that are associated with the account if we have them. Addresses associated with account and all phone numbers associated with account.

Well that's a lot of information if you get a hit.

**Slide 8**

(b)(6)  **what information here might be helpful for a revenue officer**

The database will be helpful in assisting Revenue Officers determine if a taxpayer has or had funds or other offshore assets hidden in offshore accounts.

**Are there certain Exam Projects that might be more indicative of finding information in the data base?**

Yes there are Pat there is project code 0127 – which is offshore credit card cases. But in addition to that there are 0971 which is the offshore private banking that is the project code UBS cases are under. There is also PayPal which is 0973; there were not a lot of cases that were sent to the field that originated from PayPal so you are not going to find that many cases under PayPal. To sum this up there is three project codes 0127 – Offshore credit card cases, 0971 – offshore private banking and 0973 PayPal.

Now Finally our final question and probably most important,  
**How can a revenue officer get access to this database?**

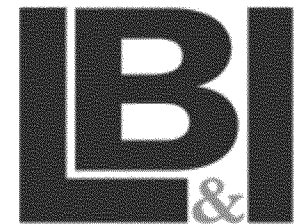
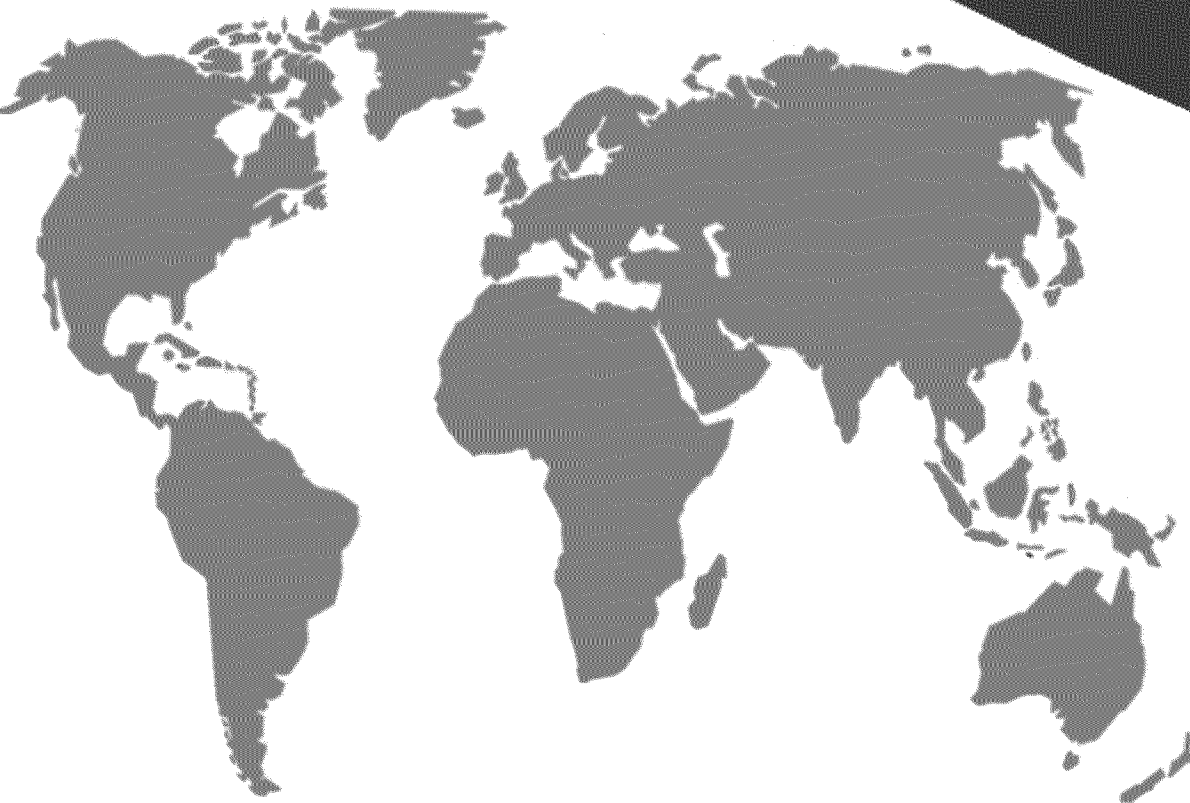
A revenue officer requests access to the OCI Application through the 5081 process. The application is titled, ASTARS - OCI Users (ASTARS).

If you have problem obtaining access to the system, please contact me,   
 through e-mail or by calling

**Our thanks to  and Mike Boyle for take time to share their expertise with us. I hope you found the information useful. Thanks**

# Individual International Compliance (IIC)

## Offshore Compliance Initiatives (OCI)



IRS LARGE BUSINESS AND  
INTERNATIONAL DIVISION



# Offshore Compliance Initiatives

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OCI is a civil enforcement program that promotes voluntary compliance with U.S. tax and foreign information reporting laws through strategic enforcement actions directed at identifying U.S. taxpayers involved in abusive offshore tax schemes and the banks, other financial institutions and third parties that provide, facilitate or enable their offshore financial arrangements and structures

# Offshore Compliance Initiatives

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- Director, International Individual Compliance, LB&I IIC - David Horton
- Program Manager, LB&I IIC – Bryan Stiernagle
- Philadelphia Offshore Identification Unit Manager (POIU) –
- Jacksonville Offshore Identification Unit Manager (JOIU) –  (b)(6)

# Offshore Compliance Initiatives

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- Identifies abusive offshore tax schemes being used by U.S. taxpayers
- Identifies external sources of records related to those schemes located in the United States
- Develops strategic initiatives and enforcement actions to identify U.S. taxpayers involved in offshore tax schemes
- Supports field examinations with Offshore Technical Specialists

# Offshore Compliance Initiatives

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- Designed around the four components of an offshore scheme structured as questions
  - Who introduced the taxpayer to the offshore financial arrangements?
  - How are assets expatriated offshore?
  - How are offshore assets controlled?
  - How are offshore assets repatriated?

# John Doe Summonses

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- Primary tool used is the John Doe summons
  - 26 USC §7609(f)
  - Used to identify tax non-compliant persons whose identities are unknown
  - Requires approval of federal district court

# John Doe Summonses

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- Requirements for issuing a John Doe summons
  - Must relate to a particular person or ascertainable class of persons
  - Must be a reasonable basis for believing the person, group or class of persons failed to comply with any internal revenue law
  - Information sought is not readily available from other sources

# Projects Developed to Date

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- Offshore Credit Card Project
- Broker Initiative
- Electronic Payment Systems Initiative
- Offshore Merchant Account Initiative
- Offshore Private Banking Initiative

# Offshore Credit Card Project

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## **The Compliance Issue**

- U.S. taxpayers use debit cards and credit cards linked to offshore bank accounts to access untaxed funds on deposit

## **The Enforcement Strategy**

- Use John Doe summonses to secure information on U.S. persons with offshore accounts from U.S. based processors of credit card transactions



# Offshore Credit Card Project

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- Offshore cards are an easy and covert way to access offshore funds
- Offshore cards are either secured cards or they are tied to a minimum “relationship balance”
- Behind every offshore debit card or credit card there exists one or more offshore bank accounts

# Offshore Credit Card Project

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- While the banks are located offshore, the bank's account records are often processed within the United States
- VISA and MasterCard process all worldwide transactions on computer systems located in the United States as are some third-party card processors that service offshore banks

# Offshore Credit Card Project

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- John Doe Summonses served
  - American Express
  - MasterCard International
  - VISA International
  - Credomatic of Florida, Inc.
  - Tecnicard, Inc.
  - First Data Corporation
  - Total Systems, Inc. (T-Sys)
  - Various U.S. merchants

# Offshore Credit Card Project

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- Over 150 John Doe summonses served on card processors and US merchants
  - More than 25,000 U.S. owners of offshore accounts were identified
  - More than 7,500 civil examination cases were put into the field
  - More than 600 successful criminal prosecution cases resulted
  - Information obtained from these summonses are input into our OCI database

# Broker Initiative

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## The Compliance Issue

- U.S. taxpayers use International Business Companies (IBCs) formed in offshore financial centers to disguise ownership of brokerage accounts, often funded with unreported income, and avoid taxation of securities transactions
- An IBC is an offshore company formed under the laws of a foreign jurisdiction as an untaxed company that is not allowed to do business within the jurisdiction in which it is incorporated.

# Broker Initiative

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## **The Enforcement Strategy**

Use dual-purpose examinations and promoter investigations of brokers to identify U.S. beneficial owners of domestic accounts claiming foreign status

# Broker Initiative

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- US taxpayer establishes an IBC in an offshore financial center
- Taxpayer opens a domestic or foreign brokerage account in the name of the IBC
- The IBC files a W-8BEN with the brokerage firm claiming foreign status and an exemption from withholding on securities transactions.
- A W-8BEN is a form that foreign persons/entities issue to the US income payor to claim exemption from US taxation on the income and avoid withholding on the income.

# Broker Initiative

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- Dual purpose examinations focused on clearing brokers to concurrently examine:
  - Form 1042 liability of withholding agent
  - Form 1040 liability of US beneficial owner of brokerage account
- Promoter investigations focused on brokers who market such structures specifically for abusive tax avoidance purposes



# Electronic Payment Systems Initiative

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## **The Compliance Issue**

- U.S. taxpayers use offshore debit cards, credit cards and bank accounts to fund their U.S. based electronic payment accounts with untaxed income

## **The Enforcement Strategy**

- Use John Doe summonses to secure information on U.S. persons with offshore accounts from U.S. based Electronic Funds Transfer and Payment Systems

# Electronic Payment Systems Initiative

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- EPS accounts must generally be linked to or funded by a debit card, credit card or bank account
- Often used by e-commerce businesses as a merchant account
- Debit/credit cards often available that are secured by the account

# Electronic Payment Systems Initiative

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- John Doe summons served on PayPal to identify US accounts linked to offshore debit cards, credit cards or bank accounts
- Received information on thousands of accounts that met the summons criteria
- A large percentage of the accounts received were identified as business accounts

# Offshore Merchant Account Initiative

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## **The Compliance Issue**

- U.S. businesses establish merchant accounts in offshore locations to divert business proceeds from debit card and credit card sales so as to improperly avoid or evade taxation

## **The Enforcement Strategy**

- Use John Doe summonses and promoter investigations to secure information on U.S. merchants with offshore merchant accounts from U.S. based card processors and providers

# Offshore Merchant Account Initiative

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- Because of the worldwide acceptance of VISA, MasterCard & American Express, the merchant account can be established anywhere in the world
- US merchants can transact business in the United States but arrange to have their daily net proceeds from charge sales deposited directly into a merchant account located in an offshore secrecy jurisdiction

# Offshore Merchant Account Initiative

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- [www.panama-offshore-services.com/panama\\_offshore\\_services.htm](http://www.panama-offshore-services.com/panama_offshore_services.htm)  
“Offshore Merchant Accounts ... provide you with the ability to collect fees beyond the jurisdiction of federal tax authorities.”
- [www.finance11.com/12655.html](http://www.finance11.com/12655.html)  
“Some of the advantages of offshore credit card processing include zero taxation. Since your bank is in another country, the normal taxation rules do not apply to your business.”
- [www.global-payment-services.com/offshore+merchant+account.html](http://www.global-payment-services.com/offshore+merchant+account.html)  
“The offshore merchant account will provide a place for the credit card payments to be placed, while allowing the individual merchant to be free of tax liabilities when it comes to the amount of income they store in their offshore merchant account.”

# Offshore Merchant Account Initiative

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- John Doe summons served on First Data Corporation of Denver, CO for records of offshore merchant accounts that
  - Are beneficially owned by US persons, and
  - Involve any business connection to First Atlantic Commerce, a Bermuda corporation
- First Atlantic Commerce markets OMA to U.S. ecommerce merchants in part as a way to avoid paying U.S. taxes

# Offshore Private Banking Initiative

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## **The Compliance Issue**

- High wealth U.S. taxpayers use private banks to establish accounts, investments and entities in offshore locations to improperly avoid or evade U.S. taxation and disguise ownership of financial assets

## **The Enforcement Strategy**

- Use John Doe summonses to secure information from private banks operating in the U.S. that are involved in providing abusive offshore tax avoidance or evasion products



# Offshore Private Banking Initiative

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- Identify U.S. licensed banks and private banks with subsidiaries, operating divisions or branch offices in offshore locations that are being promoted to U.S. taxpayers for abusive tax avoidance
- Identify offshore banks and private banks in such offshore locations that maintain subsidiaries or operate within the U.S.
- Use John Doe summonses to secure records

# Offshore Private Banking Initiative

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- Initial John Doe summons served on UBS AG of Switzerland
  - Based on information developed from an individual who had worked as a private banker for UBS in Switzerland
  - Unlicensed Swiss Client Advisors secretly traveled to the US to conduct banking and securities business with US clients and develop new clients on US soil

# Offshore Private Banking Initiative

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- Agreement reached between IRS and Swiss Government on August 20, 2009 after IRS went to court to enforce the summons
- Swiss agreed to provide account records of approximately 4,450 UBS accounts owned by U.S. taxpayers in response to a treaty request (“Treaty Cases”)

# Offshore Private Banking Initiative

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- John Doe summons served on other financial institutions
  - OCI is continuing its efforts in this area and multiple summonses have been issued (ex. HSBC). We expect to issue more summonses in the future.
  - This has been an extremely successful project in the identification of high wealth individuals utilizing offshore accounts to conceal income

# Initiatives Under Development

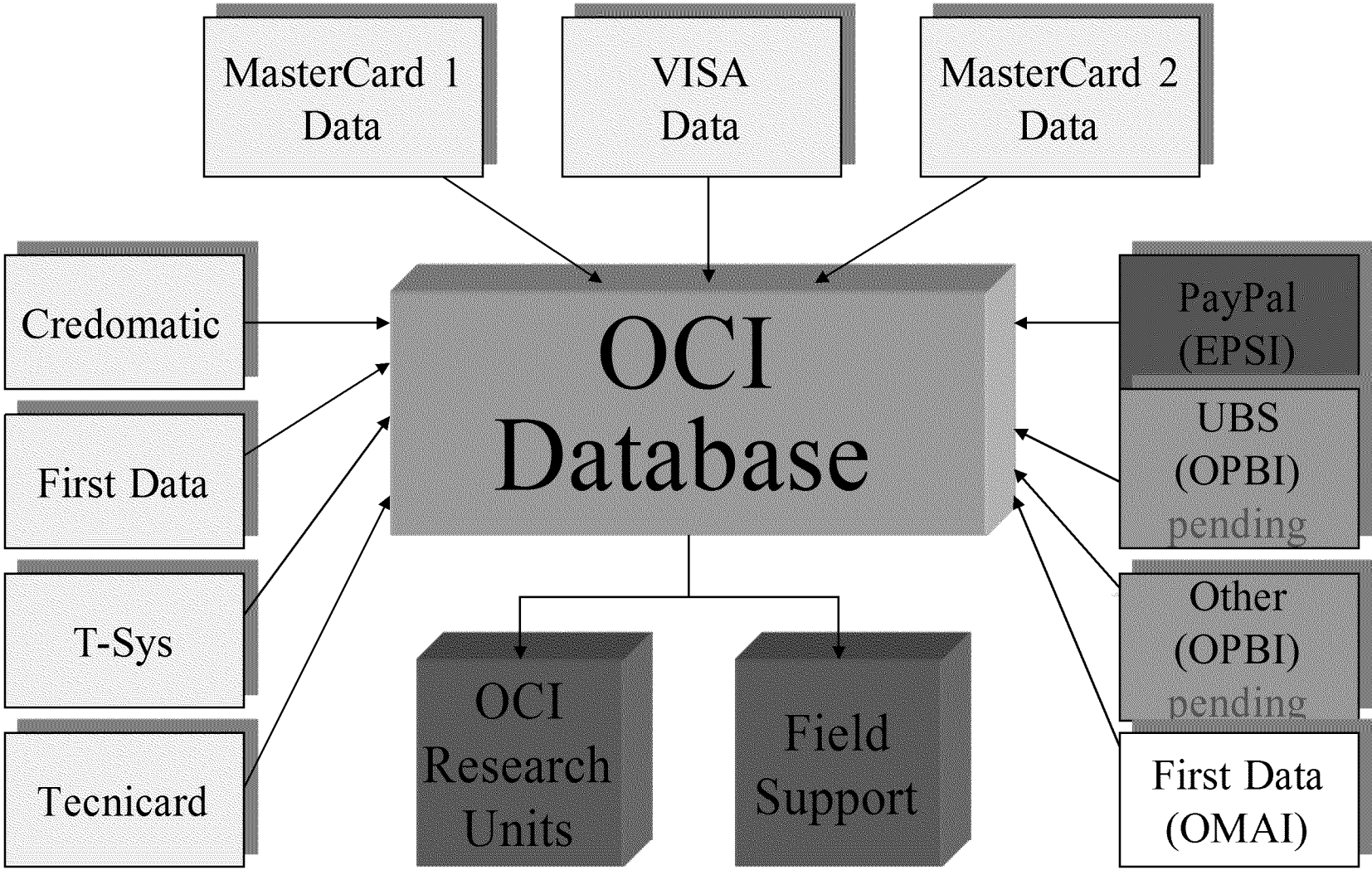
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- Foreign Trust Providers
- Offshore Hedge Funds
- Offshore Insurance Products
  - Captive Insurance
  - Insurance Wrappers
- Cross-Border Wire Transfers
- Correspondent Bank Accounts

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# **OCI Information Database**

# OCI Information Database



# OCIDB User Community

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- Offshore Identification Units
  - <http://vci.enterprise.irs.gov>
  - Identify US taxpayers with offshore banks accounts and other offshore financial assets
  - Develop and case build IRS inventory of offshore workload delivery for field examination
- Revenue Agents, Revenue Officers, Special Agents
- Technical Specialists and Analysts



## Offshore Penalties

### Introduction

In this next segment we'll be discussing the various penalties associated with offshore accounts.

These include the Report of Foreign Bank and Financial Accounts (FBAR) penalty and the miscellaneous penalty associated with the Offshore Voluntary Disclosure Program. There are several other offshore penalties that are assessed for failure to timely file informational returns reporting interests in foreign trusts, corporations and partnerships and receipt of certain foreign gifts.

Although not common, these penalties are significant because of the large dollar amounts that can be assessed.

### Report of Foreign Bank and Financial Accounts (FBAR)

The Form TD F 90-22.1 - FBAR

- Is used to report a financial interest in or signature authority over a foreign financial account.
- Is due no later than the June 30<sup>th</sup> of the year immediately following the calendar year being reported.
- There are NO extensions to file.

A U.S. person that has a financial interest in or signature authority over foreign accounts must file an FBAR if the aggregate value of the foreign account(s) exceeds \$10,000.00 at any time during the calendar year. A U.S. person can be an individual, a corporation, a partnership, LLC, trust, estate or any other entity in which the U.S. person may have more than a 50% interest directly or indirectly in foreign assets.

The FBAR is filed either by mail or electronically with the Department of the Treasury's Enterprise Computing Center at Post Office Box 32621, Detroit, MI 48232-0621. The FBAR should not be filed with the filer's federal income tax return.

For more information refer to IRM 4.26.16

Failing to properly file may subject a person who is required to file to a civil penalty not to exceed \$10,000.00 per violation. A person who willfully fails to report an account or account identifying information may be subject to a civil penalty of equal to the greater of \$100,000.00 or 50 percent of the balance in the account at the time of the violation. Willful violators may be subject to additional criminal penalties.

- Although FBAR penalties are proposed and payment solicited by revenue agents, you will not see this penalty assessment on IDRS.
- **FBAR penalties are assessed under Title 31 of the U.S. Code; as such the IRS cannot use Title 26 administrative collection tools to collect the non-tax FBAR penalties.**
- Financial Management Service (FMS), a Treasury Department Bureau, which collects non-tax debts for the federal government, is responsible for collecting FBAR penalties.

**The Offshore Voluntary Disclosure Program** has provided a series of opportunities for taxpayers with previously undisclosed foreign accounts and assets may come forward to voluntarily report their offshore accounts and income. Participation in the program enables taxpayers with such accounts to become compliant, avoid substantial civil penalties and generally eliminate the risk of criminal prosecution.

Note: the terms OVDP and OVDI are both used to identify this program.

Participants in OVDP are assessed a miscellaneous Title 26 offshore penalty in lieu of other penalties, such as the FBAR penalty.,

This penalty is computed on the highest aggregate balance in foreign bank accounts/entities or value of foreign assets during the period covered by the voluntary disclosure. The applicable percentage used to compute the penalty depends when the disclosure was submitted and on the case circumstances. A timely submission for the 2009 OVDP, the highest penalty amount will be 20% of the highest aggregate asset value. For 2011, the high-test penalty is 25% and for 2012, it is 27.5%.

For example:

Assume a taxpayer had an offshore account until 2008 when the account was closed. The highest balance in the account was \$1,400,000. If the taxpayer in the above example came forward in 2012 and their voluntary disclosure was accepted by the IRS, their miscellaneous OVDP penalty would be: \$385,000 (i.e., \$1,400,000 x 27.5%).

See the OVDP FAQs for circumstance when a lesser percent would apply. The FAQs can be found on the IRWeb by searching for 2011(or 2012) OVDI FAQs.

Additional penalties that may be assessed on OVDP disclosures include:

- a 20% accuracy-related penalty under IRC 6662(a) on the full amount of underpayments for all years in question,
- failure to file and failure to pay penalties under IRC 6651(a)(1) and (2),

Because of the emphasis on examinations of offshore issues, other offshore penalties may be seen more often. As mentioned earlier, there are several penalties that may be assessed for failing to file informational returns dealing with offshore income and assets.

These include:

Failure to file Form 3520, ***Annual Return to Report Transactions with Foreign Trusts and Receipt of Certain Foreign Gifts.***

Taxpayers must report various transactions involving foreign trusts, including creation of foreign trust by a U.S. person, transfers of property from a U.S. person to a foreign trust and receipt of distributions from foreign trusts under IRC 6048 and receipt of foreign gifts under IRC 6039(F). Filing an incomplete return or failing to file results in a penalty of the greater of \$10,000.00 or 35% of the gross reportable amount. For returns relating to gifts, the penalty is 5% of the gift per month to a maximum penalty of 25% of the gift.

Failure to file Form 3520-A, ***Annual Information Return of Foreign Trust with a U.S. Owner:***

Ownership interests and powers over these foreign trusts by U.S. persons is reported under this form which carries a penalty for failing to file of 5% of the gross reportable amount of trust assets.

Failure to file Form 5471, ***Information Return of U.S. Persons with Respect to Certain Foreign Corporations:***

Certain U.S. persons who are officers, directors or shareholders in certain foreign corporations are required to report information under IRC sections 6035, 6038 and 6046. The penalty for failing to file each one of these information returns is \$10,000.00 with an additional \$10,000.00 added each month the failure continues, beginning 90 days after the taxpayer is notified of the failure, to a maximum of \$50,000.00.

Failure to file Form 5472, ***Information Return of a 25% Foreign-Owned U.S. Corporation or a Foreign Corporation Engaged in a U.S. Trade or Business***

The penalty for failing to file under IRC 6038(A) and 6038(C) or for failing to keep certain records regarding reportable transactions is \$10,000.00 with an additional \$10,000.00 added each month the failure continues beginning 90 days after the taxpayer is notified of the failure to file.

Failure to file Form 926, ***Return by a U.S. Transferor of Property to a Foreign Corporation***

Taxpayers are required to report transfers of property to foreign corporations and other information under IRC 6038B. The failure to file penalty for this information return is 10% of the value of the property transferred up to a maximum of \$100,000.00 per return with no limit if the failure to report the transfer was intentional.

Failure to file Form 8865, ***Return of U.S. Persons with Respect to Certain Foreign Partnerships***

This form is used to report interests in and transactions of the foreign partnership, transfers of property to the foreign partnerships and various acquisitions and dispositions as well as changes in foreign ownership. The penalties for failing to file under the applicable IRC sections is \$10,000.00 for each failure to file with an additional \$10,000.00 added for each month the failure continues to a maximum of \$50,000.00 per return or 10% of the value of any transferred property that is not reported, subject to a \$100,000.00 limit, depending on the type of transaction that was not reported.

## IMPORTANT !!!

There is a provision in the OVDI FAQs that waives the penalties for failure to file FBARs, F3520, F3520A or F5471 under certain circumstances. The provisions are included in question 17 and 18 of the 2011 OVDI FAQs. The FAQs state the IRS will not impose a penalty for the failure to file the delinquent informational returns if there are no underreported tax liabilities and the taxpayer was not previously contacted regarding an income tax examination or a request for delinquent returns.

If the taxpayer raises this defense to an assessed penalty, check with Global Strategic Compliance (GSC) analysts for additional direction whether the penalty should be abated.

## OVDP procedures

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### Slide 1:

Hello, my name is Pat Medina, I am here with [redacted]. We are analysts with Collection Policy in the Global Strategic Compliance group. [redacted] and I have oversight responsibilities for the offshore voluntary disclosure programs. In this lesson we will be discussing Collection's role and responsibilities for this very important program. Let's start by clarifying the name - OVDP and OVDI are both used to identify these programs. The 2009 and 2012 programs are official titled Offshore Voluntary Disclosure Program or OVDP, the 2011 program is officially titled Offshore Voluntary Disclosure Initiative or OVDI.

### Slide 2: Offshore Voluntary Disclosure Program

SBSE Field Collection has supported the Offshore Voluntary Disclosure Programs by ensuring taxpayers who participate meet the payment requirements for OVDP

As ATAT revenue officers you may be assigned an OVDP referral from exam or balance due account.

### Slide 3: Offshore Voluntary Disclosure Program

This program has had a significant impact on voluntary compliance. In addition to encouraging voluntary compliance by more than 30,000 taxpayers and bringing an additional 4.4 billion into the US Treasury, the OVDP has provided investigators with a wealth of data regarding dozens of banks around the world and their employees, outside investment advisers, and other third parties that aided Americans in hiding money abroad.

### Slide 4: Offshore Voluntary Disclosure Program

It is important to point out Participants in OVDP are not audited. They voluntarily file amended or original returns.

The returns are submitted as voluntary disclosure.

The participants enter into settlement agreement via Form 906.

Form 906 is used for several purposes, including waiving assessment statute periods and collection appeal rights, if applicable.

### Slide 5: Offshore Voluntary Disclosure Program

In March of 2009, IRS Commissioner Shulman announced the first of three opportunities for taxpayers to come forward to disclose unreported offshore income. The 2009 OVDP had a deadline of October 2009 with over 14,000 applications. The participants were required to file amended or original returns for up to 6 years with a maximum penalty amount of 20%.-

There were many taxpayers who submitted applications after the October deadline, so, in early 2011, the second program was announced. The 2011 OVDI was also very successful with over 12,000 applicants. This initiative came on the heels of DOJ action against UBS and other foreign banks who were believed to be marketing financial services to US

citizens as a way of tax avoidance.

Taxpayers were required to provide amended or original returns for up to eight year with a maximum penalty of 25%.

In January 2012, the Service reopened OVDP following continued strong interest from taxpayers and tax practitioners. This program will be open for an indefinite period until otherwise announced. The overall penalty structure for the new program is the same for 2011, except for taxpayers in the highest penalty category which is now 27.5%.

The different penalty reference codes and project codes can be found in the OVDP procedures which are posted to the ATATSharePoint.

Now  will discuss what you actually do if get a referral on an OVDP.

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**Slide 6:**

This is  I'm going to highlight some of the key points of the OVDP collection procedures.

The written procedures can be found on the ATATSharePoint in the OVDP folder.

If you're assigned an OVDP case and are unsure how to proceed, first review the procedures.

**Slide 7: 2011 OVDI Collection Referral Form**

Your OVDP case is created from a referral form sent to the ATATCollection Coordinator by the RA who received the offshore voluntary disclosure.

You will receive a copy of the referral form, which you will complete and return to the RA after you've made your collection determination.

The form and collection determination are required for the RA to complete the Form 906 closing agreement with the taxpayer.

**Slide 8: OVDP Collection Procedures**

OVDP referrals from Exam are generally assigned to you by your manager as a CIP.

The ICS sub code for all OVDP cases is 311

OVDP referrals from Exam are generally collection determinations for cases where the taxpayer stated that they were unable to full pay.

The taxpayer is expected to be fully cooperative and provide all the information requested. The potential OVDP liability may include up to eight years amended returns plus the OVDP penalty.

Most OVDP referrals to Collection will result in an Installment Agreement.

However, all available collection options, including full payment, OIC and CNC may be considered. Contact the ATATCollection Policy analyst with any determinations other than IA or FP.

**Slide 9: Which is the appropriate collection determination?**

OVDP is intended to bring taxpayers back into tax compliance with offshore requirements. You should consider the payment terms offered by the taxpayer, especially if it will full pay all liabilities in a relatively short period. (for example: when the taxpayer is requesting 60 days to liquidate investments which will full pay the liabilities).

The collection determination will result in an agreement of how the liabilities will be paid; which could include: an installment agreement, or, full payment of the proposed liability.

A less likely, but possible determination could include reporting the account currently-not-collectible or an Offer-in-Compromise.

A failure to reach an agreement can result in recommendation for removal from the program.

**Slide 10:**

When you receive a OVDP referral from Exam, contact the initiating RA when you receive the case assignment. Discuss what the collection issues are.

The taxpayer told the RA that they would be unable to full pay, so the RA has some information that may be beneficial to you when you contact the taxpayer.

You'll have some indication why the taxpayer is unable to full pay, and can determine how to approach the taxpayer with a resolution.

**Slide 11: Next....Contact TP or POA**

You should contact the taxpayer or their representative as soon as possible after discussing the case with the revenue agent. Ask the taxpayer what their proposed method for payment is and how they will fulfill the agreement. You should consider the taxpayer's proposed method of payment.

Although guidelines regarding financial analysis and expense allowances on the Collection Information Statement (CIS) apply, circumstances may warrant consideration of a resolution that may not otherwise be considered. (We will hear from an RO who had such a case a little later on) If you need to secure financial information from the taxpayer, a specially-worded Form 9297 may be used to provide deadlines. A template for the Form 9297 is in the OVDP folder in the ATATSharePoint.

Financial information will be reviewed upon receipt. An initial collection determination should be made within 30 days of receipt of all necessary financial information.

**Slide 12: Agreement Reached?**

If the case results in an agreement of the terms of payment have your group manager approve the agreement and contact the RA to advise that the terms of payment have been

established and that execution of the Form 906 may proceed.

The executed Form 906 will include language whereby the taxpayer waives collection appeal rights.

If an installment agreement is made, email the Form 433-D with a copy of the Collection Referral Sheet to the RA and the ATATProgram Analyst.

For other collection resolutions, complete the bottom section of the collection referral sheet and email it to the RA and ATATProgram Analyst.

### **Slide 13: Can't come to an Agreement?**

If you cannot reach an agreement with the taxpayer of POA, determine if there is alternative resolution (liquidate asset, etc.) not previously proposed or suggested by the taxpayer. There may be assets that the taxpayer did not consider but could be used to satisfy the liability.

Attempt an alternate resolution. We can only recommend that taxpayer be removed from the OVDP program; we do not have the authority to make the final determination.

If you are unable to reach a payment agreement with the taxpayer, contact the ATAT Analyst – prior to recommending that the taxpayer be removed from the program. Issues that would not have mattered had an agreement been reached – such as assessment statutes – have to be considered prior to recommending that the taxpayer be removed from the program.

Additionally, If the taxpayer requests an installment agreement that the RO determines is not acceptable, the RO will forward the pending I/A to the Independent Reviewer. As long as there is no assessed liability, the taxpayer will not have CAP appeal if the Independent Reviewer upholds the denial of the installment agreement.

### **Slide 14:**

Sometimes in these cases, normal collection tools may not be very effective and negotiation is the RO's best collection tool. Let's hear from an RO who was able to successfully negotiate full payment for a deceased taxpayer.

### **Negotiating resolutions**

Hi my name is Tim Lyons and I am from Mesa, Arizona.

I received a very interesting OVDP case in which the taxpayer, a non US Citizen had passed away several years earlier and his wife, also a non US Citizen resided in Mexico. They had a daughter living in Brazil and a son who lives in New Mexico.

The taxpayer's wife was nearly 90 years old and both she and her deceased husband were Columbian citizens.

The taxpayer owed more than \$200,000 in 1040 taxes and approximately \$750,000 in Offshore Penalties. A review of IDRS indicated that his wife did not owe any taxes and that a Social Security Number had never been assigned to her.

The taxpayer had created a Trust and that Trust had created several Foreign Corporations and those Corporations owned a Multimillion Dollar home and Farm Property that was leased to a Nursery.



The wife and the two children were all equal beneficiaries of the Trust.

After it was explained to the Attorney for the taxpayer, that a Nominee Lien could reach those assets, it was agreed to allow the taxpayer sufficient time to sell all of the US assets held by those Corporations and to full pay the liability.

A meeting was held that included the Revenue Agent, the Revenue Agents Manager, my Group Manager and the Policy Analysts and it was agreed that we would offer a manually created installment agreement to the taxpayer that allowed her to begin making installment agreement payments and as each of the properties were sold, she would remit 100 per cent of the amount she received to the IRS until the balance was paid in full.

This agreement was submitted to the taxpayer's wife who signed the Form 433D and returned it to me.

The taxpayer's wife began making monthly payment of \$5000. Within a couple of months the Nursery was sold and the proceeds applied first to the 1040 balances due, and the remainder applied to the OVDP Penalty.

The taxpayer's wife then began making monthly payments of \$500 per month until she was able to sell the residence and full paid the account.

#### **Slide 15: Back to....Agreements....I/As**

Thanks Tim - That was a good example of a negotiated resolution, when it appeared that you could not come to an agreement with the taxpayer.

Generally, installment agreements will be made in accordance with IRM procedures.

Here are some reminders when processing an OVDP I/A:

Advise the RA that an agreement has been reached, and send them a copy of the F433-D with the completed Collection Referral sheet. This will allow the RA to forward the case for assessment.

Advise the taxpayer a Notice Federal Tax Lien will be filed (IRM 5.12.1) once the liability is assessed. (You may have to open an OI after you've closed the CIP referral and monitor the case for assessment to file the NFTL).

OVDI cases for \$50,000 or less may be processed according to regular IA procedures, and less than six months may be monitored in the group.

For agreements greater than \$50,000 and more than 6 months to pay will be manually monitored by the Centralized Case Processing in Philadelphia. The Form 433-D should contain in the "Additional Conditions/Terms" block: OFFSHORE VOLUNTARY DISCLOSURE INITIATIVE, in red ink.

#### **Slide 16: Other Case Resolutions**

For any OVDP collection case determination other than full payment or installment

agreement, contact the Collection Policy Analyst for OVDP.

These determinations include:

OIC  
CNC  
PPIA

Or if you're recommending that the TP be removed from the OVDP program Complete guidance for these determinations may be found in the OVDP Collection procedures, but they all require the concurrence of the OVDP Collection Policy Analyst.

Pat will next discuss additional OVDP issues.

### **Slide 17: OVDP balance due?**

How could you get a balance due for an OVDP participant? The RA can't close their case until they can show the proposed assessments have been paid or evidence of an agreement to pay. There have been a few situations where the RA closed their case believing the liabilities were paid in full but that was not the case. Most of these have been caused by processing problems that created unexpected and unpaid liabilities.

### **Slide 18: OVDP balance due?**

If you are unsure if your account is from an OVDP disclosure:

First look for an OVDP project code - A list is posted in the ATATSharePoint, OVDP folder. You will find the project code in TXMOD next to TC 424.

Look to see if the taxpayer was assessed an offshore penalty. This can be determined from the offshore penalty reference codes found in the OVDP folder in the ATAT SharePoint. If you see an offshore penalty, the taxpayer had to have been a participant of OVDP.

Look at the ICS archive case history for the exam referral to collection – How was the referral resolved by RO?

If you are still unsure, you can ask the OVDP collection policy analyst who can verify participation with Exam.

### **Slide 19: Processing Errors?**

There have been numerous processing issues related to OVDP. Here are some of the more common problems.

It may be a computation issue with P&I. Contact RA.

Look out for duplicate TC 290 assessments – Contact RA

Missing payments – check unidentified remittance or excess collection.

### **Slide 20: OVDP Returns**

The returns which are usually amended but can be original are required to be submitted with the disclosure application for OVDP

Most often they are held until the RA is assigned but sometimes they get assessed before

the TC 420 goes on the module.

So if the POA or taxpayer tells you they are a participant, ask for the name of the RA they are working with or contact the OVDP Collection Policy analysts for help. We can check to verify if they are participants.

In most cases, collection actions are deferred until after the disclosure process has been completed by the RA

**Slide 21: Defaulted IA?**

Defaulted IAs will be returned to the originating Collection group manager for assignment and appropriate collection action.

If you are assigned one of these, it is critical to determine if the signed F906 included the waiver of collection appeal rights.

Archived ICS history should indicate if payment terms were negotiated by an ATAT RO and if the “non full pay 906” was used.

The term “Non Full Pay” can be misleading. It simply means the taxpayer was unable to full pay at the time the revenue agent was closing the case for processing and assessment. The RA is required to have the taxpayer sign a Form 906 which includes the waiver language if they do not full pay at the time the case is forwarded to technical support for processing.

By signing the Form 906 with the waiver language, the taxpayer waives all CDP, CAP, I/A, and OIC rejection appeal rights.

The waiver language included in the Form 906 was approved by Counsel and by Collection Policy. A copy of the F906 with the waiver language can be found in the ATAT SharePoint.

If you anticipate some sort of legal action, contact the PSP that processed the closed OVDP disclosure case for a copy of the executed Form 906.

**Slide 22: Waived Collection appeal rights**

A post-NFTL CDP notice advising the taxpayer of collection appeal rights will be sent automatically after a NFTL is filed because the notices are computer-generated and cannot be stopped manually. If the TP files a CDP, advise the taxpayer that appeal rights were waived when the “not full pay” form 906 was signed. Do not forward their appeal.

If filing the lien manually using Form 12636, you can request the CDP notice be suppressed on the form.

Do not include Pub 1660 and Form 12153 with Letter 1058, instead include a cover letter to the TP explaining they waived IRC 6330 appeal rights.

**Slide 23: HOWEVER.....**

HOWEVER there is language in the 906 that allows the taxpayer to ask that their collection agreement (or the default of the agreement) be revisited based on “an unforeseen significant economic hardship due to circumstances beyond the taxpayer’s control or the

result of procedural or computational error on the part of the service”. The taxpayer should make the case first to the RO and then GM, TM and finally the AD. There is no appeal to the AD’s decision.

**Slide 24: Opt out or removed?**

Remember taxpayers who are removed or withdraw from the program retain their appeal rights because Form 906 waiving collection appeal rights was not executed.

**Slide 25: Questions?**

IF or when you have questions about OVDP cases, your first stop should be the OVDP Folder in the ATATSharePoint. It contains collection procedures and additional information about OVDP.

If you can’t find answers there, contact the Collection Policy Analysts with oversight for the Offshore Voluntary Disclosure Program.

## UBS case example

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Hello, my name is [REDACTED] and I'm an ATAT Revenue Officer in the White Plains post of duty. I am assigned substitute for return (SFR) balance due accounts on a taxpayer who had a bank account with UBS. Currently, a Revenue Agent is examining additional tax years based on information provided by UBS.

The information we are to discuss here pertains to UBS cases that have balance due accounts – not courtesy investigations. These UBS cases can be very challenging.

For example:

- The Taxpayers have been identified as having a UBS account but have NOT voluntarily joined the OVD program.
- The Taxpayers usually are not cooperative.
- The Taxpayers may not be aware they are part of the UBS project and will be audited. Also,
- The investigation itself can be very time-consuming.

Prior to my initial contact with the taxpayer, I discussed with the Revenue Agent handling the UBS case, what information could be disclosed to the taxpayer. The RA requested I not inform the taxpayer that he is part of this program or that he may be audited. One of the reasons NOT to advise the taxpayers is, they could be referred to Criminal Investigation by the RA.

There are several sources of information the Revenue Officer can use in the investigation such as yK1, CBRS, IDRS. In my case, the Revenue Agent who is handling the audit on the UBS case was my first and most important source of information.

- The Revenue Agent had pertinent background information concerning the Taxpayers. This is especially helpful to the Revenue Officer when the Taxpayers are uncooperative.
- The Revenue Agent had already issued summonses or had some asset information.
- The Revenue Agent shared the information received from UBS.

The UBS information contains a variety of documents, statements and Taxpayers' data pertinent to the Revenue Officer's investigation.

- The account name is given which may or may not be in the Taxpayers' name. The account name can be in the name of their business entity.

- A “snapshot” index provides profiles of the Taxpayers. The profiles can include:
  - ... Nationality
  - ... Domicile
  - ... Client status
  - ... Asset composition
  - ... Job status
  - ... The date taxpayers became clients and the
  - ... Birth date of the taxpayers
- Contact information provides dates of contact, contact person, media used and notes on the contact. However, this information may be in a foreign language and will need to be translated.
- Income information statements list the years involved, the revenues and the types of account, for example a Money Market account.
- Account Statements are similar to our bank statements. They show the monthly deposit and credit activity; types and amounts of withdrawals, transfers, and account balances.
- A composite Monthly Balance Statement details the monthly account balances for all the years involved in the 2009 OVDP which usually includes 2001 through 2008. This statement provides you with crucial information “when” the Taxpayers had the money so that you have the timeframe needed to “follow the money”.

The Revenue Agent has a guide to help decipher the UBS statements and Treaty CD Files which may contain hundreds of pages of information. This guide is now also included in the ATAT sharepoint.

It is very important to remember when working these UBS cases, the UBS information is furnished under the provisions of an income tax treaty with a foreign government. Its use and disclosure must be governed by the provisions of that treaty.

The information contained within must be used only for income tax cases (not employment tax issues) under the terms of the Agreement between the United States of America and the Swiss Confederation. It is a good idea to always check with the Revenue Agent if one is currently assigned or an ATAT analyst to verify what information can be disclosed under the treaty provisions.

## What's a stiftung?

My name is Maury Hill and I am a Revenue Officer in Norfolk, Virginia. I recently worked an Offshore Voluntary Disclosure case that contained some unusual issues and had a very interesting outcome.

I was assigned an OVDP referral with an existing estate tax balance due of about 1.5 million. There were also amended income tax returns reporting additional income tax liabilities for 2003 through 2008. These returns were submitted with the 2009 OVDP application. The estate had only 1.2 million in remaining assets so there were not sufficient assets to full pay the OVDP liabilities.

The original estate tax return had showed no tax due but in late 2009 the trustee of the estate received a call from a trustee in Liechtenstein advising him of the existence of two Stiftungs valued at around 5 million dollars. The value of the Stiftungs hadn't been included in the estate and the income earned hadn't been reported on the taxpayer's personal 1040 tax returns. The power of the Attorney for the estate then filed a request to be accepted into the 2009 OVD Program the day before the deadline.

My first action was to find out what a Stiftung is. Through internet research and discussions with the POA for the estate, I discovered that a Stiftung is a foundation, in this case a charitable foundation that can be used as part of a wealth management strategy.

I received a copy of the Stiftung which outlined the details of the foundation including the local representative, board of directors, and the bank for the Stiftungs. The deceased died at age 92 and had no family. The initial documents also listed several beneficiaries; however all were whited out except two. The ones listed were animal rights agencies with one being located in nearby Richmond. The Richmond charity was to receive annual payments of 1% or 2% of the value of the Stiftungs.

At this point what were the collection options?

A direct levy to the trustee of the foundation was not possible as there is not a MCAR agreement with Liechtenstein.

A decision was made to look at the beneficiaries for transferee liability. Only two were known. One received a minimal amount and was a nationally known charitable organization.

The other, located in Richmond, had received the proceeds from the sale of the deceased's residence. At the time of the distribution the known estate tax liability was zero. Given the unusual events that led to the assessment and the public relations issues enforcement action could cause, the decision was made to forego any kind of transferee liability against the charity. However, the head of the organization agreed to honor a levy for any future distributions received. Although the Stiftungs indicated distributions were to have been made, none had been received.

Since I needed to know the names of other beneficiaries, I contacted the attaché in Frankfurt, Germany for additional information and guidance. I was trying to see if there was a way to compel the Stiftungs' trustee to disclose the other beneficiaries. The request by POA for this information wasn't honored so I asked if I could issue a summons through the TIEA process. The attaché' indicated, for the request to be honored, an audit would have to be in process. That would require removing the taxpayer from OVDP. Exam did not want to do that and leave the 1.2 million that was in the Estate on the table.

Later, through repeated requests by the POA, I did receive additional information on all of the beneficiaries except for two. The names provided were charitable organizations located outside of the United States. It is likely that the two not provided were foreign citizens that the trustee was protecting.

Based on this new information, I made a recommendation to Exam to accept the proceeds that remained in the Estate and I would CNC the remaining balance. Since this was a rare resolution for an OVDP case, I had to write a memo outlining the circumstances for the CNC determination which was forwarded to both Collection and Exam OVDP management teams.

As I was going through this process I remained in contact with the POA. I repeatedly expressed my opinion that the trustee for the Stiftungs had an obligation to resolve the tax liability even if we could not do anything directly. The deceased was a citizen of the United States and its tax laws should be honored. The POA agreed and conveyed this message several times to the Liechtenstein trustee through his liaison.

At one point I thought that was all there was going to be. However, about a year later I was contacted and advised a settlement was going to take place. I do not know if what was said prior had made an impression or whether the POA had some additional conversations but a settlement via a closing agreement was reached whereby the trustee for the Stiftungs agreed to make a voluntary 2 million dollar payment. This was in addition to the funds the estate trustee already had.

Nearly all of the estate tax was paid as well as the additional 1040 liability. In this case, the negotiated settlement was far better than we could have expected to collect using our collection enforcement tools.



## Update of writ ne exeat case example

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### **Repatriation and Writ of Ne Exeat Republica**

I am [redacted] – you may remember a case I discussed in the first Offshore Class involving a Repatriation Order and Writ of Ne Exeat Republica. Historically, Writ of ne Exeat is used to prevent a taxpayer from leaving the country. In my case, the writ was put in place after the taxpayer had moved his family and money out of the country. We are hoping the taxpayer will return to the United States so that the writ can be used to compel the taxpayer into honoring the Repatriation Order.

So far, the taxpayer has yet to return to the United States, but we have had some interesting developments occur while we've been waiting.

The taxpayer applied for a replacement passport in Ecuador. A Special Agent with the Diplomatic Security Service for the United States Consulate General in Ecuador – or the State Department for short – saw the Writ of Ne Exeat Republica on the TECS system while he was processing the passport request. He decided to investigate the Writ before granting the taxpayer his replacement passport.

The Special Agent contacted DOJ, who provided background information about the writ. The Special Agent then conferred with his counsel attorneys to see about using the writ to deny the taxpayer's replacement passport. Without a valid passport, the taxpayer could be deported from Ecuador and returned to the United States. We were very excited about this possibility, but ultimately the State Department chose not to deny the passport issuance. The passport could have been denied if the writ were related to a criminal case versus civil, but this case is civil in nature.

The taxpayer qualified to apply for Ecuadorian citizenship in November, 2012. DOJ authorized the State Department to share the writ with the Ecuadorian Minister of Foreign Affairs, which resulted in the denial of the taxpayer's Ecuadorian citizenship petition.

During discussions between the State Department, DOJ and IRS, the State Department did share some interesting information about the taxpayer's activities in Ecuador. We were previously aware that the taxpayer had set up several businesses and websites advertising how he could help people interested in moving to Ecuador. This "assistance" allegedly also involved visa fraud and other illegal activities that the Ecuadorian Government is currently prosecuting the taxpayer for.

The taxpayer also branched out into advertising a tax deduction scheme targeting American citizen clients moving to Ecuador. The scheme involves setting up shell corporations that are then used as a basis for clients to illegally obtain residency visas in Ecuador. The scheme then uses the shell corporations to qualify for Resident Alien Abroad tax deductions on their US federal income tax returns. The scheme includes deducting expenses for air flight, housing, and moving to Ecuador.

The State Department was able to secure a client list, which I then sent to the Lead Development Center with a referral.

The State Department continues to keep us updated. The criminal trial in Ecuador against the taxpayer which began on September of 2012 is moving forward. We are anxiously awaiting the outcome.