

Interviewing Clients with Foreign Financial Accounts

How To Properly Interview Clients

Presented By:

Abby Eisenkraft, EA, ATA, ATP, CRPC
CEO, Choice Tax Solutions

November 19, 2019



1

Agenda

- ☐ Introduction
- ☐ Definition of U.S. Person
- ☐ FFA (Foreign Financial Accounts)
- ☐ Ownership/Signature Authority
- ☐ Penalties & Amnesty
- ☐ Foreign Gift/Inheritance
- ☐ Summary



2

Introduction to Foreign Financial Accounts:
How to Properly Interview Clients



Abby Eisenkraft, EA
Choice Tax Solutions Inc.

2

Introduction

In today's global world, many people have foreign financial accounts or assets that require U.S. reporting. Your clients may be among them. Each and every client must be properly interviewed.



3

Abby Eisenkraft, EA
Choice Tax Solutions Inc.

3

Introduction

You can't ignore a client's foreign holdings.



4



Abby Eisenkraft, EA
Choice Tax Solutions Inc.

4

Which clients do we interview?

ALL OF THEM!



5

Abby Eisenkraft, EA
Choice Tax Solutions Inc.

5

Recent IRS Initiatives

- ☐ Offshore Private Banking Campaign (4/16/19)
- ☐ Expatriation (7/19/19)
- ☐ Cryptocurrency Reporting (July & August 2019)



6

Abby Eisenkraft, EA
Choice Tax Solutions Inc.

6

Recent IRS Initiatives

- ☐ Cryptocurrency Reporting - FinCEN said while virtual currency is not reportable on the FBAR, that may change.



7

Abby Eisenkraft, EA
Choice Tax Solutions Inc.

Definition of a U.S. Person

- ☐ For tax purposes, a U.S. Person is defined as:
 - ☐ A citizen or resident of the United States, or
 - ☐ Any domestic legal entity, such as a partnership, corporation, estate or trust



8

Abby Eisenkraft, EA
Choice Tax Solutions Inc.

Substantial Presence

In the U.S. for a minimum of 31 days during the current calendar year and a total of 183 days during the current calendar year + 2 preceding years.



9

Abby Eisenkraft, EA
Choice Tax Solutions Inc.

Substantial Presence Calculation

- ☐ 100% of current year
- ☐ 1/3 of the days in the prior year
- ☐ 1/6 of the days in the preceding year



10

Abby Eisenkraft, EA
Choice Tax Solutions Inc.

Substantial Presence

Example: Person in the U.S. for 7 months

31 days in the current tax year? Yes!

> 183 days in the current tax year, and prior 2 years? Yes!



11

Abby Eisenkraft, EA
Choice Tax Solutions Inc.

11

Substantial Presence

Example: Person in the U.S. for 140 days a year (less than 6 months)

Current Year: 140 days

Prior Year: $140/3 = 46.67$ days

Preceding Year: $140/6 = \underline{23.33}$ days
210 days

Substantial Presence? Yes!



12

Abby Eisenkraft, EA
Choice Tax Solutions Inc.

12

Foreign Financial Accounts

- ☐ Bank accounts – savings, checking, time deposits
- ☐ Securities accounts – brokerage, derivatives
- ☐ Insurance policies & annuities with a cash value
- ☐ Pensions / Retirement accounts
- ☐ Mutual Funds
- ☐ Any other accounts maintained in a foreign financial institution



13

Abby Eisenkraft, EA
Choice Tax Solutions Inc.

13

Account Ownership/Signature Authority

Does your client have a financial interest in or signature authority over any financial accounts outside of the U.S.?

Examples:

- ☐ Bank accounts for convenience and access
- ☐ Pensions earned in a foreign country while working overseas
- ☐ Signature authority on a parent's account
- ☐ Signature authority on account of a foreign entity



14

Abby Eisenkraft, EA
Choice Tax Solutions Inc.

14

Where do we report foreign accounts?

For starters:

- ☐ Schedule B
- ☐ FBAR – FinCEN 114
- ☐ FATCA – Form 8938



15

Abby Eisenkraft, EA
Choice Tax Solutions Inc.

15

Willfulness defined under FBAR:

The standard for willfulness under Title 31:

Civil willfulness standard, and that it includes not only knowing violations of the FBAR requirements, but **willful blindness** to, as well as **reckless** violations of, the FBAR requirements



16

Abby Eisenkraft, EA
Choice Tax Solutions Inc.

16

Willfulness Blindness:

An individual takes deliberate actions to avoid confirming a high probability of wrongdoing and when he can almost be said to have actually known the critical facts.



17

Abby Eisenkraft, EA
Choice Tax Solutions Inc.

17

Recklessness Standard:

- ☐ The taxpayer clearly ought to have known;
- ☐ Taxpayer was in a position to find out very easily



18

Abby Eisenkraft, EA
Choice Tax Solutions Inc.

18

Penalties

- ☐ FBAR: Starting at \$10,000 if not willful; \$100,000 or 50% of the account if willful
- ☐ Willful penalties apply to Reckless Disregard
- ☐ The Standard of Proof is “Preponderance of the Evidence” (the government bears the burden of proving liability by a preponderance of evidence)



19

Abby Eisenkraft, EA
Choice Tax Solutions Inc.

19

RIPPED FROM THE HEADLINES:

December 2018

Schoolteacher's failure to file FBAR results in \$800,000 penalty

Norman, No. 15-872T (Fed. Cl. 7/31/18)



20

Abby Eisenkraft, EA
Choice Tax Solutions Inc.

20

RIPPED FROM THE HEADLINES:

August 27, 2019

*Former CPA Indicted for Failing to Report Foreign Bank
Accounts and Filing False Documents with the IRS*

Brooker, No. 19-60152-CR-SCOLA(s) 8/22/19



21

Abby Eisenkraft, EA
Choice Tax Solutions Inc.

21

RIPPED FROM THE HEADLINES:

June 2019

IRS Assesses 13 Non-Willful FBAR Penalties in One Year

United States of America vs. Jane Boyd



22

Abby Eisenkraft, EA
Choice Tax Solutions Inc.

22

Court Case #1

U.S. v. Colliot 5/16/2018

District Court grants Colliot's summary motion holding that the IRS cannot assess a willful penalty in excess of \$100,000 despite the statute allowing a penalty assessment of the higher of \$100,000 or 50% of the maximum amount in the unreported foreign account(s).



23

Abby Eisenkraft, EA
Choice Tax Solutions Inc.

23

Court Case #2

U.S. v. Bussell, (CA 9 10/24/2017) 120 AFTR 2D 2017-6379, cert denied 4/30/2018

Million dollar FBAR penalty decision upheld by Supreme Court

- ☐ Court found Taxpayer guilty of willful failure to file FBAR (including conspiracy to defraud, false statements, false oaths, concealed assets in bankruptcy, among others)
- ☐ Maximum authorized penalty for willful criminal FBAR violation – 5 year sentence and a \$250,000 fine. In this case, the FBAR penalty was \$1,221,806 (unreported account of \$2.4 million).



24

Abby Eisenkraft, EA
Choice Tax Solutions Inc.

24

Court Case #3

U.S. v. Burga (Case No: 5:19-cv-03246-EJD)

FBAR Penalty of \$120,000,000

- ☐ Defendants had at least 294 foreign bank accounts in various countries. They told the foreign banks to hold all mail that related to those accounts.
- ☐ Defendants did not file FBARs or disclose the accounts on Schedule B.



25

Abby Eisenkraft, EA
Choice Tax Solutions Inc.

25

Amnesty

- ☐ **OVDI Program ended September 28, 2018**
- ☐ Streamlined Domestic Offshore
- ☐ Streamlined Foreign Offshore
- ☐ Delinquent FBAR Submission
- ☐ Relief Procedures for Former Citizens (September 2019)



26

Abby Eisenkraft, EA
Choice Tax Solutions Inc.

26

Foreign Gift/Inheritance

- ☐ Gifts from family members who are nonresident aliens
- ☐ Inheritances -- cash (any currency), property, etc.
- ☐ Reporting document – Form 3520



27

Abby Eisenkraft, EA
Choice Tax Solutions Inc.

27

Summary

Best Practices

- ☐ Be aware of the reporting requirements
- ☐ Interview your clients carefully
- ☐ Document client responses to questions
- ☐ Be aware of potential issues
- ☐ Refer your work to another practitioner if you need help



28

Abby Eisenkraft, EA
Choice Tax Solutions Inc.

28

**F
R
E
E**

Fast Action Checklist:

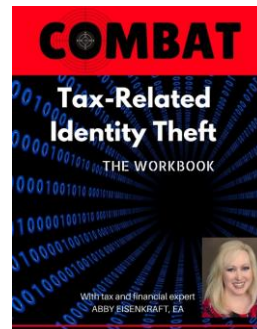
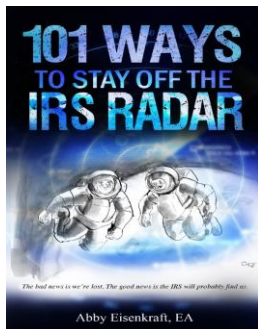
Go To: **www.TaxSmartTraining.com/free**



***3 pages of
informative
material!***

29

Thank you for attending today's webinar!



30