

# Q&A *with*



## ATTORNEY **STEVEN GOLDBURD**

## ABOUT OFFSHORE BANKING AND THE IRS

**There was big news last week about Bank Leumi's \$400 million deal with the Department of Justice due to allegations of tax evasion.**

Yes. It makes the offshore voluntary disclosure for many people keeping money in Israel more difficult, since it raises the penalty from 27.5% to 50% because Bank Leumi is now considered a "Category 1" bank.

**Let's start from the beginning. Could you please define an offshore account?**

An offshore account is an account held by a US citizen or resident located outside the United States. Even the Israeli bank account of an Israeli citizen living in the US is considered an offshore account.

**Other than for those who seek to avoid paying taxes, are there any benefits to having an offshore account?**

Yes. Absolutely. For example, in Israel most banks that

extend mortgages require you to have a bank account with them from which they automatically withdraw your mortgage payments every month.

**So having an account in Bank Leumi would help you get a mortgage from them?**

Correct. There is absolutely nothing wrong with having a bank account in a foreign country. The only thing the US government demands, and this has been in effect since 1976, is that if you have \$10,000 or more outside the US in a financial account, you have to file with the government through an FBAR (Foreign Bank Account Report) to let them know you have this money. And just like with any other account in the US, you have to pay taxes on the income.

There are two different forms involved. One is to report how much money you have in an overseas account. The other is for your tax returns to report the income you earned, similar to what you'd report from a US bank.

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## **In the past the government went after Switzerland. Now Israel seems to be a target.**

It started with a whistleblower from UBS in Switzerland. A Swiss banker actually gave the IRS a list of clients he had signed up for the express purpose of evading taxes. That's how this whole thing began in 2008, even though the laws had been around since 1976. Now they've gotten their claws into something they never were able to get into before.

## **Are there still any benefits to keeping money in Switzerland?**

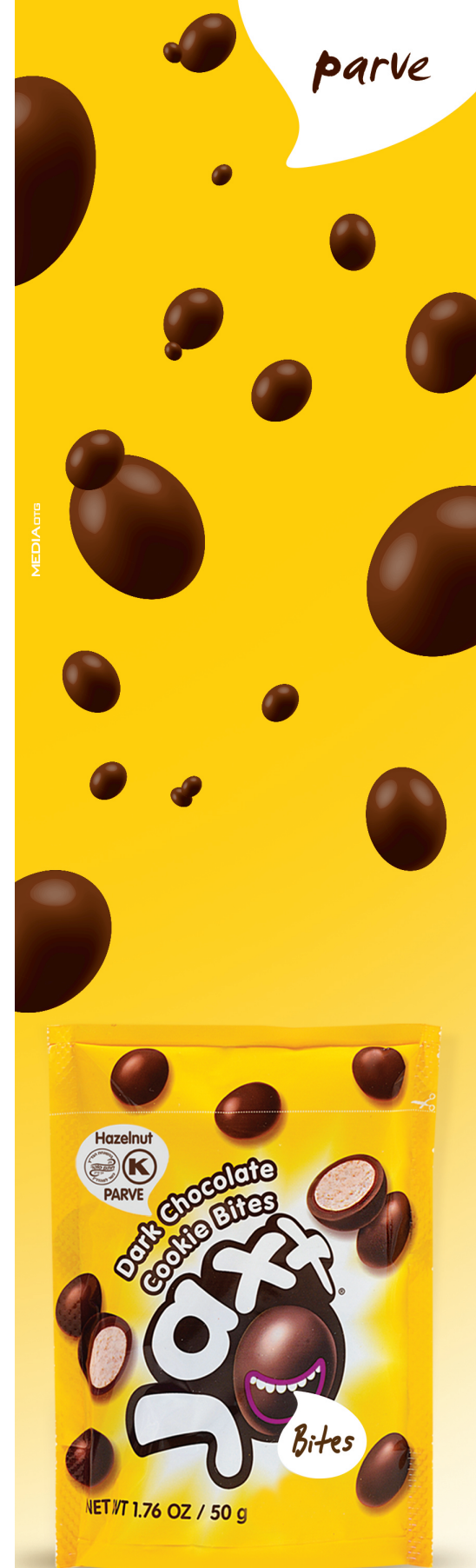
Sure. Many people, especially Holocaust survivors, kept money in Switzerland and other foreign countries because they were afraid that if, G-d forbid, something like that happened again, their money would be in more than one place. Obviously, each person has his own reasons for keeping money offshore. But many of my clients who have gone through the voluntary disclosure process told me that the reason they put money offshore was either directly related to German reparations, or it was money they made in the US and put there for safekeeping. The same holds true for accounts in Israel. People want money in Eretz Yisrael because it's Eretz Yisrael.

## **I understand that Bank Leumi announced through the Justice Department that they will no longer provide banking and investment services for all accounts held by US taxpayers. I don't understand the logic in that.**

I haven't looked into their agreement with the Department of Justice, but US banks do the same thing. If they feel that their bank will be jeopardized by having a certain kind of bank account they just stop servicing them, whether it's for a specific country, person or industry. If Bank Leumi receives a W-9 from every taxpayer who has an account with them it should be legitimate. But they might be figuring right now that it's just not worth their time and effort to deal with bank accounts held by US citizens as it involves so much extra reporting, and they've already been subjected to enough scrutiny.

## **If a person has an offshore account and did not disclose his assets, are there penalties involved in coming forward?**

Yes, but we have to differentiate between two categories of people: US citizens who live in the United States, and US citizens who live abroad. Each category has different rules. There are now certain streamlined procedures for those not living in the US, according to which the penalties can be as low as zero depending on how long you've been living outside the US. The likelihood of incurring a penalty is very small if you've been living



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overseas for at least a year and you filed taxes there. For example, I have one client who's been overseas since 1970 and has no US accounts; he just happens to be a US citizen. In a case like that, you just have to provide your foreign tax returns to prove that you paid taxes on this interest. You're still obligated to fill out a US income tax return, but you get a foreign income tax credit.

It's different for an American citizen living in the US. As of earlier this year, there are now two different ways to come forward. In the past there was only the voluntary disclosure process, which involved paying a penalty of 27.5% on the highest value of the account over the last eight years.

### Even if you paid income taxes?

If you paid income taxes on those accounts and reported your interest but didn't file FBARS, there will usually be no penalty whatsoever. In that case you have to amend your tax returns and report your interest properly. If you did not report the income, then you may have to pay 27.5% of the highest value of your account.

### That's pretty hefty.

Correct. But now everything has changed. If you have an account with Bank Leumi and didn't come forward and decide to come forward now because Bank Leumi was just categorized as a Category 1 bank, which means that they agreed with the Department of Justice that they did something illegal, the penalty jumps to 50%.

### Bank Hapoalim is under investigation. So is Mizrahi-Tefachot.

But neither is a Category 1 bank as of yet.

### So you would urge people to file now, because once they become a Category 1 bank the penalty goes up to 50%?

Correct. But before we jump to that, there's one more thing US citizens and residents should know. The IRS has now streamlined its offshore compliance programs, which is a breakaway from the voluntary disclosure process. They realized that a lot of people were coming forward who either didn't know about their accounts or



## “IF YOU HAVE AN ACCOUNT WITH BANK LEUMI AND DIDN’T COME FORWARD THE PENALTY JUMPS TO 50%.”

legitimately didn't have control of them, such as in cases of inheritance or a trust in someone else's name, when that person designated you as a beneficiary. In cases like that you have to prove non-willfulness, meaning that the reason you didn't file your FBARs was that you didn't really know you were supposed to.

### How do you prove ignorance?

In my experience, some of the stories I've been told sounded fishy, and you could never convince the government that they were true. But plenty of other people just didn't know what was required, such as non-US citizens living in the US who were filing returns in their home country. In Israel, the government automatically deducts the tax on the interest for Israeli citizens, so if you just moved to the US and you only use your old Israeli account whenever you go back to visit, you've probably never even thought about it. These people just aren't aware that the US needs to know about money they made in Israel years ago.

### Is there any way for someone who moves to Israel to relinquish his citizenship so he won't be burdened by these tax issues?

Yes, but it's a very expensive and lengthy process.

### Does the disclosure process involve going to the IRS criminal investigation division?

Yes and no. Under voluntary disclosure, the first thing you do is send your request to IRS criminal investigations. Once you're accepted into the program, which means that the IRS does not yet have your name or information, the IRS promises no criminal prosecution. If, however, you go through the new streamlined process there's no guarantee anymore, and you can always be subject to an audit, just like with any other tax return. The IRS would then come down and ask you questions. If they found that what you did was willful, you might have to pay a 50% penalty, as imposed on Category 1 banks.

### Mr. Baravarian was prosecuted for helping people open offshore accounts and they wanted to put him behind bars. How many people are pursued on such charges?

I don't know the exact number but I'd say a lot. Still, the IRS has to be able to show that the reason you kept these offshore accounts was for tax evasion purposes only.



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## “THE OPTION OF OFFSHORE VOLUNTARY DISCLOSURE WILL SOON BE COMING TO AN END.”

### Or to assist others with that.

That's specifically for bankers.

### I would assume that the good old days of Swiss banking are over. No one will put money in a Swiss bank now unless there's a family connection.

Or a business connection. Some people have businesses overseas. Other times, it's just easier to do business from a foreign account, depending on the tax treaties.

### Some people who have tried to open an account in Israel for business reasons found it close to impossible.

As I said, a lot of banks just don't want to deal with the paperwork. Every bank is its own entity. But if you offer them your W-9 and all the correct paperwork and assure them you'll be reporting your FBARS every year, they might be more inclined to accommodate you. But yes, opening up an Israeli subsidiary might be something for a company doing business overseas to consider.

### Why would people need an attorney to get these things resolved? Why wouldn't an accountant be enough?

I work very closely with many accountants and a lot of the work is done by them. For example, amended returns are done by accountants. If an accountant is well-educated on the rules and pitfalls of each possibility then yes, he can technically deal with the offshore voluntary disclosure process. Many accountants do.

### When do people need an attorney?

They need an attorney when there's anything unusual in the case because they have to know all their options.

An accountant may be able to put together all the paperwork. Not all accountants are as well versed on tax law and the changes that are constantly being made. It may not be their cup of tea, but there are some accountants who deal with offshore accounts, especially in the bigger accounting firms. Still, many accountants just aren't interested because their hands are already full with regular audits and tax returns.

### And, of course, one would need a criminal attorney if he is under investigation.

A criminal tax attorney would be ideal and I believe that the criminal aspect of this is going to grow exponentially very soon. The option of offshore voluntary disclosure will soon be coming to an end, once the foreign banks actually start reporting their account holders under FATCA [Foreign Account Tax Compliance Act]. This is an agreement many countries have come to with the United States that any account over \$50,000 of a US citizen or resident will be reported if the account holder can't prove that he has already come forward. The bottom line is that people should act as quickly as possible to save a lot of grief and money.

Some people think that if you simply file your FBARS and amend your returns without going through the various processes laid out by the IRS and Treasury it's enough. But the IRS actually has a team of people reviewing these FBARS and subjecting them to scrutiny.

So it could be that you made money in the US and paid taxes on it and then sent it to an account in Israel. But if you don't disclose it here, that in and of itself is a crime. ●

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