



AUDIT NOTICE: Foreign Bank (& Brokeage) Account Holders Beware..Especially if you are INDIAN!

Volume 2, Issue 7

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April 8th, 2011

IRS Goes After Indian-Americans Holding Bank & Brokerage Accounts in India

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US Citizens..US Green Card Holders..and Even Those US filers holding H1Bs, J1s, L1Bs...ATTENTION!

If you are a US Citizen, a US Green Card Holder, and you are of Indian descent, your name could be on a list somewhere with the IRS and the Justice Department's Civil Tax Division.

If you are an H1B, L1B, a J1, or even an F1 visa holder living and working in the US filing US 1040 tax returns every year, and are of Indian descent, your name could also be on a list.

If you are an HSBC India account holder, your name is probably on a list somewhere...(with the IRS or Dept of Justice)...

If you are a wealthy Indian either residing in US or anywhere else, holding Premier account status with HSBC Bank India..then your name is at the top of this, and many other lists...

...But if your name is one Mr. Vaibhav Dahake, your name is **ALREADY on this list, and MANY MORE lists to come!** (he has been indicted for tax fraud stemming from this investigation...)

Tongue in cheek humour aside, if you haven't heard the news lately, then you probably do not know that the government is on the verge of shutting down indefinitely due to a looming debt crisis. You also probably do not know that the US Department of Justice just authorized the Internal Revenue Service (the US Treasury's enforcement arm) to seek out information on about 9,000 Indian-American account holders holding accounts at HSBC India. You can read the details here from the following two links from the [New York Times](#) or the [Times of India](#), depending on your choice of news sources. The Department of Justice's Civil Tax Division is not pulling out any stops against a current list of 9,000 "wealthy" Indian Americans holding accounts in HSBC India who did not report those balances to the IRS between 2002 through 2009. Here is the [original link](#) to the original press release by the US Justice Department.

If you have accounts at an Indian institution, such as Citibank India, HSBC India, HDFC, ICICI, ..or any "other bank offering NRI" or "NRE" accounts where they promise that your income is not taxable in the US, or that your name will not be released to the IRS or any other tax authority, then you have been duped to the Nth degree. The HSBC is NOW cooperating with the IRS to release ALL those Indian-American account holders' names for which the IRS is seeking information, much like UBS did with the IRS back in 2008.

I will not go into the details of that story here, as you can read the story for yourself. However, if you have foreign accounts..you must FIRST, AT LEAST check the box at the bottom of Schedule B of your interest income schedule which you would attach to your 1040 when you file your return. This checkbox indicates you have foreign accounts. By definition, if you are a US Citizen, a Green Card holder, or a US tax resident (defined below) who files a 1040, your "foreign" accounts also mean your Indian accounts which you may have at any Indian institution. If any of your foreign bank or brokerage balances ever REACHED \$10,000 during the year, or if they reached \$10,000 in combination, then those accounts are reportable on the Treasury form 90-22.1, and must be mailed to the US Treasury to Detroit by June of every year in which you have had those foreign accounts and balances.

Just because you do not have US income, US capital gain income, or US interest income, does not



absolve you of still filing a US 1040 with your foreign income and foreign interest income on the return. It does not necessarily mean you would pay US taxes if you reside in that foreign country full time throughout the year; however, [REPORTING YOUR WORLDWIDE INCOME ON A US TAX RETURN AND FOREIGN ACCOUNT BALANCES EVERY YEAR IS REQUIRED AND IS US LAW.](#)

- **Therefore, if you made money, from any source, and if you are at least a US Citizen, or a US Green Card Holder..you have a US filing obligation to show ALL foreign income on your US 1040, and report the account balances on the 90-22.1 if the balances are \$10,000 or greater, individually or in total).**
- **If you are an H1B, H4, L1B, L2, J1, or J2, visa holder working and living in the USA, and you filed a US 1040, you are obligated to include your Indian and any other foreign income, including interest and stock sales on your US 1040, and also report the account balances on the 90-22.1 (if the balances are \$10,000 or greater, individually or in total).** Those holding H1B and L1B visas are construed as US Residents if they meet the 183 "substantial presence test" rule and are filing a US 1040 return every year. This is a different "resident" definition than which is used by the Department of Homeland Security. The IRS says, if you hold the above visas (H4, L2 & J2 are also included in this definition, if married and filing joint with H1B, L1, & J1 respectively), are here in the USA for a minimum of 31 days in the tax year (2010, in this example), and are "substantially present in the US" according to the following formula, then you are a US resident. You would need to count the days you were here in the tax year (2010), add up one third of your days two years prior (2009), and add up just one sixth of days three years prior (2008). You can exclude departure and arrival days. If this summation adds up to 183 or more, you are "substantially present" in the USA and THUS are treated the SAME as a US Citizen and US Green card holders, IF you file a US 1040. This means if you hold one of the above visas, meet the substantial presence test, and then choose to file a US 1040 tax return, you MUST include your worldwide (foreign) income (which by definition includes interest income from all sources), your capital gains (property sales, stock sales, options, futures, etc. from all foreign and domestic accounts), and all other worldwide sources of income. Also of course, you would report your foreign balances on the 90-22.1 assuming the \$10,000 rule mentioned above. Granted there are some nuances to this rule which you can read up on in [IRS Publication 519](#) however, the above is exactly how the IRS treats the above Visa holders who file 1040s.
- **Those holding an F1 Visa (student) living and working here for more than 5 years automatically become US residents according to the IRS, and thus must report their worldwide income if they so choose to file a US 1040.** Even if F1 holders do not have US income and do not file a US 1040, but are here beyond their 5 years from their initial F1 visa date, they still must report their foreign accounts on the 90-22.1 unless they elect their nonresident status every year. F2 visa holders are exempt from all of the above rules.



The IRS is very serious about going after tax evaders as the 2008 inquiry and subsequent investigation with UBS and current inquiry by the Justice Department into HSBC India shows.

So make sure you file your 1040 Tax return, file the Schedule B that goes with it, indicating you have foreign bank accounts, and also fill out the TD 90-22.1 with information for your foreign bank and brokerage accounts, and send that to Detroit (US Treasury address is mentioned on the TD 90-22.1 page 1). The following is the excerpt from my past news articles I have written regarding the IRS's recent and new Voluntary disclosure for those US Citizens, Green card holders (and even those Visa holders mentioned above filing a 1040) having foreign income and foreign accounts.

[From Past Issue: Check the Box Requirement \(Schedule B\) and TD 90-22.1](#)

The IRS just released another Special Voluntary Disclosure Initiative for all of you who have foreign bank accounts and are US citizens or US residents (I defined what a US "resident" is above, according to the IRS) who file US 1040 tax returns or who may not even file a US 1040, but may have a requirement nonetheless.

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The last open voluntary disclosure ended October 15th, 2009, but this one is new for 2011 and ends August 31st, 2011. [See this link here for more info.](#) All voluntary disclosure offices are usually handled by the local IRS Criminal office division in your area.

If you have had any foreign bank accounts during last year which total up to be \$10,000, (or any past year for that matter), or if any of those accounts reached \$10,000, or have had even any signatory authority (such as a power of attorney), then you have a foreign bank account reporting (FBAR) requirement. The reporting of these accounts does not necessarily mean you will pay US income tax on these accounts. The IRS just wants to know where your money is parked. The fact that you even have any foreign bank accounts (brokerage accounts included) or signatory authority over them means you must at least FIRST check the box at the bottom of Schedule B of your 1040 which asks if you have any foreign accounts last year. The moment those accounts added up to be \$10,000 or more during last year (or any past year) requires you to fill out a [Treasury Department 90-22.1](#), Report of Foreign Bank and Financial Accounts EACH year that you had a total balance of \$10,000 or more.

PENALTIES: The basic penalty for a simple, nonwillful failure to file a FBAR is \$10,000 PER YEAR for

2005 and later years. The IRS can subject you to criminal prosecution, and for 2005 and later years, impose **heavy civil penalties of up to 50% of the highest balance in the foreign account** for each year that the violation continues. If you have had foreign accounts for many years, the IRS currently has a voluntary disclosure program, but **you might be charged a penalty of at least 20%, and probably more, of the highest balance in your foreign account.** If your decision to not report your foreign accounts was not willful, then the penalty would be limited to \$10,000 per year, and it would not be possible to charge a penalty by the IRS based on a percentage of the balance in the account. There is a chance you can opt out of this voluntary disclosure program and contest the willfulness penalty that is imposed as part of the program. In all cases, the government has the burden of proving willfulness. But it is essential to first discuss this with a tax professional if you are in this situation. **REMEMBER, foreign interest income goes on your tax return, but the foreign account numbers and balances go on the 90-22.1 form and this latter form gets reported to Detroit.**



Bottomline being, check to see if you have any foreign bank accounts, or if you have inherited any ownership or signatory authority over such foreign bank and brokerage accounts, and be sure to report them appropriately on the [90-22.1](#) if necessary, and do check the box at the bottom of Schedule B when filing your tax return this year.

If you haven't filed your taxes yet..be sure to call our office or fill out the questionnaire available on the forms section of our [website](#) and download the [2010 Tax Questionnaire](#). This is a handy form for assembling your tax docs and submitting it to us at INFO@VIMLANTAX.COM if you wish to file with us..or even if you are filing on your own.

TEN DAYS LEFT! DONT MISS THE DEADLINE (18th of April this year due to Emancipation day in Washington D.C.).

Or at least, do the right thing and take the extension (but pay your taxes on or by the 18th if you are owing and not getting a refund).

Once you file your taxes, be sure to [check our website](#) to check the status of your refund, if applicable.

Have a SAFE and quick filing.

"Tax Tips" is brought to you free by:
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