

# Taxation of Transferring Funds from Abroad

February 27, 2020

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# Pedram Ben-Cohen, Esq., CPA

**Pedram Ben-Cohen** is an **Attorney-at-Law** and a **Certified Public Accountant (CPA)** who specializes in civil and criminal tax controversy and litigation. Mr. Ben-Cohen is also a **Certified Taxation Law Specialist**, certified by the State Bar of California Board of Legal Specialization. Mr. Ben-Cohen represents clients in civil and criminal tax matters, including **voluntary disclosures, offshore matters, audits, appeals, litigation, and collection defense.**

Prior to establishing the Ben-Cohen Law Firm, PLC in 2009, Mr. Ben-Cohen was associated with the international law firms of **Latham & Watkins, LLP** and **Gibson, Dunn & Crutcher, LLP**. He also gained tax controversy experience working at **Deloitte & Touche, LLP** and the Tax Division of the U.S. Attorney's Office. Mr. Ben-Cohen was admitted to the California Bar in 2003.

Mr. Ben-Cohen graduated from **Georgetown Law School** and earned a B.S. degree from the **University of Southern California**, where he majored in accounting.

# Three Typical Sources of Funds

1. Gifts from Family
2. Sale of Real Estate
3. Bank Accounts

# Gifts from Family

## a. Gifts from Non-U.S. Persons

- i. Form 3520, *Annual Return to Report Transactions with Foreign Trusts and Receipt of Certain Foreign Gifts*
- ii. Failure to timely file Form 3520 may result in a **penalty of up to 25%** of the gift

## b. Gifts from U.S. Persons

- i. Annual exclusion
  - \$15,000 in 2020
- ii. Unified lifetime exemption
  - \$11.18 million until 2025 (*\$22.36 million if filing jointly*)
- iii. Form 709, *United States Gift (and Generation-Skipping Transfer) Tax Return*

# Sale of Real Estate

## a. Cost Basis

- i. Purchase price
- ii. Fair market value at time of inheritance
- iii. Carryover basis if gift

## b. Schedule D, Capital Gains and Losses

### i. Federal Capital Gains Tax

- ❖ 15% if income is between \$40,001 and \$441,450 (*\$80,001 to \$496,600 if filing jointly*)
- ❖ 20% if income is over \$441,450 (*\$496,601 if filing jointly*)
- ❖ **Obamacare Capital Gains Tax**
  - Additional 3.8% if income is over \$200,000 (*\$250,000 if filing jointly*)

### ii. California Capital Gains Tax

- ❖ Taxed as ordinary income, up to 13.3%

## c. Sale documents translated in English

# Bank Accounts

## a. Non-Willful vs. Willful

- i. **Disclosure** of the accounts to accountant or others
- ii. Source of the funds: **unreported income**, inherited funds, gifts
- iii. Taxpayer's **education, profession**, command of English language
- iv. Level of involvement in **investment activity** and account mgmt.
- v. Reasons for opening the foreign account
- vi. Manner account was held
  - ❖ In name of taxpayer, numbered account, **nominee entity** such as trust/corporation, hold mail
- vii. Amount of money in the account
  - ❖ \$100,000 vs. \$100 million

# Bank Accounts

## a. Non-Willful

### i. Streamlined Domestic Offshore Procedures

- ❖ FBARs for 6 tax years
- ❖ **Amended** tax returns for 3 tax years
- ❖ **5% miscellaneous offshore penalty** of highest aggregate foreign asset value
- ❖ Taxes owed plus interest

### ii. Streamlined Foreign Offshore Procedures

- ❖ FBARs for 6 tax years
- ❖ **Original or amended** tax returns for 3 tax years
- ❖ **No penalties**
- ❖ Taxes owed plus interest

# Bank Accounts

## b. Willful

### i. Criminal Clearance

- ❖ Form 14457, *Voluntary Disclosure Practice Preclearance Request and Application*

### ii. Automatic Examination

- ❖ Tax returns and FBARs for 6 tax years
- ❖ **50% FBAR penalty**
- ❖ Accuracy-related penalty applied to 5 tax years
- ❖ **Civil fraud penalty** applied to 1 tax year