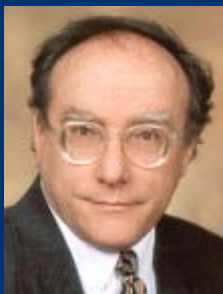




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IRS' New Offshore Bank Disclosure Program

The IRS has announced a new voluntary disclosure program for undisclosed foreign bank or brokerage accounts. This will allow taxpayers who have failed to disclose their ownership of such accounts, failed to file required information returns and/or failed to report income from such accounts, to correct those failures and thereby avoid criminal prosecution. In addition, civil penalties which otherwise potentially could be massive, are capped at lower amounts. The window for disclosure expires on September 23, 2009, and taxpayers who desire to participate in this program should immediately contact their tax advisors to guide them through the process which may present complex legal and tax issues.

Foreign Account Reporting Requirements

Taxpayers who have a financial interest or signatory control over one or more foreign bank accounts having a combined value of more than \$10,000 are required to disclose that fact on Schedule B of their Forms 1040. In addition, taxpayers must report detailed information about such accounts on IRS Form TD F 90-22.1, "Report of Foreign Bank and Financial Accounts" (the "FBAR" form). The FBAR form, revised last October, now requires disclosure of the maximum value of each account during the year, and must be filed by June 30 of the following year. Financial accounts that must be disclosed include not only ordinary bank accounts, but also brokerage accounts and pre-paid credit card accounts. A false statement on Form 1040 as to the existence of such accounts or failure to file the FBAR report could result in criminal prosecution. Even where criminal prosecution does not occur, civil penalties could be imposed for failure to file the FBAR form, which can be as much as the greater of \$100,000 or half the amount in the account each year. Where an FBAR has not been filed for multiple years, it is possible that such penalties could exceed the amount currently in the account.

The IRS Disclosure Program

Jan Stacey

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Recent events have disclosed that many U.S. taxpayers are not complying with the foreign account reporting requirements. The IRS has taken several actions to address the problem, including pursuing foreign banks in court to compel them to identify their U.S. clients. At the same time, the IRS has created a new offshore bank disclosure program. Under the program, U.S. taxpayers who are not yet subject to an audit or have not yet been identified for audit, may make a voluntary disclosure of unreported foreign bank accounts. Under the long-standing IRS "voluntary disclosure" policy, taxpayers may correct prior tax compliance failures and pay the resulting tax liability to the extent they are financially able. The official IRS policy is that it will "take into consideration" such voluntary disclosures in making a determination whether to recommend criminal prosecution of such taxpayers to the Justice Department. Although there is no written promise regarding non-prosecution, tax practitioners have found that eligible taxpayers who make good faith voluntary disclosures and pay the taxes or make bona fide efforts to pay those taxes, have not, in fact, been recommended for prosecution.

The foreign bank disclosure program includes a number of new features. First, participating taxpayers will pay only a 20 percent negligence or delinquency penalty on any unreported tax liabilities, in lieu of greater penalties such as a 75 percent fraud penalty. Even more significantly, participating taxpayers will pay a single penalty for failure to file the FBAR forms equal to 20 percent of the maximum balance in each account over the last six years. Although this is by no means a minor amount (and may even seem onerous where, for example, a brokerage account has significantly declined in value in recent years), it is modest compared to the huge penalties that the IRS could impose on multiple unfiled FBAR forms.

Immediate Action Required

The deadline for participating in the voluntary disclosure program is six months from its announcement, or September 23, 2009. Taxpayers interested in participating in the program should not delay for a number of reasons. First, it is possible that the IRS might commence an audit, even a routine audit, of the taxpayer, which would then disqualify him from participating. The same would be true if the IRS independently obtained information of the taxpayer's account and identified him for an examination. Second, it may take some time to gather all information necessary to comply with the disclosure requirements. Finally, taxpayers should consider the fact that the bank disclosure form for 2008 is due by June 30, 2009. The program procedures are complicated and require contact

with the IRS Criminal Investigation Division. We have found that each case presents its own unique issues that can take time to resolve.

Strasburger & Price, LLP has represented many taxpayers in voluntary disclosures, including the current offshore bank account program, and would be pleased to assist with any questions you might have. Contact [Farley P. Katz](#) at (210) 250-6007 or [Chad Muller](#) at (210) 250-6003.

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