It’s Not Too Late To Disclose Foreign Accounts

The latest IRS program to disclose foreign bank accounts and assets closed September 9, 2011. See IRS Extends Offshore Account Deadline. What if you missed the deadline? If you couldn’t pull the trigger to voluntarily send information to the IRS, you can still get your tax status resolved.

It might be a good idea, since the odds of avoiding detection seem to be getting worse. Governments and institutions are disclosing more and more. In addition, FATCA, the Foreign Account Tax Compliance Act, will soon add even more disclosure.

Even though the latest special IRS program closed September 9th, the IRS will still accept voluntary disclosures. The same situation existed after the 2009 IRS program. Many taxpayers stepped forward after the 2009 program ended on October 15, 2009, but before the 2011 OVDI program was announced February 8, 2011.

Historically, the IRS almost never prosecutes someone who steps forward before being caught. But this should be done through a tax lawyer so you’ll have attorney-client privilege in case something goes awry. If no criminal tax case is already underway, your case should be
referred to the civil branch of the IRS for processing amended tax returns and FBARs.

**Hobson’s Choice?** If this sounds too invasive or expensive, think again. A voluntary disclosure is likely to be far, far cheaper than getting caught and what could follow. Besides, there are few alternatives. Some taxpayers want to make a “quiet disclosure,” amending tax returns and filing past due FBARs without making a formal voluntary disclosure. See “Quiet” Foreign Account Disclosure Not Enough.

However, the IRS frowns on it and the risks are high. Another idea is to file proper tax returns and FBARs prospectively but not for the past. Most advisers don’t consider that a good solution either if any significant income was not reported in the past.

Making a voluntary disclosure outside the OVDI program is similar to doing it inside but without the guarantee of particular penalties. Special programs have formula penalties which may be lower or higher than the IRS would assess on an individual basis. See Some Foreign Account Penalties Unfair, Says Taxpayer Advocate.

In fact, some clients may fare better making a voluntary disclosure outside one of the IRS’s special programs. Some taxpayers who filed by the IRS deadline are “opting out,” believing they will pay smaller penalties when their individual facts are considered. See How Do You Opt Out Of IRS Voluntary Disclosure? and IRS Voluntary Disclosure A Mistake For Some.

Because clients have differing facts and risk profiles, there’s no one-size-fits-all solution. But because failing to report income or disclose foreign accounts is serious and penalties can be severe—even criminal—consider your risks and options and get some advice.

For more, see:

- Thousands Come Clean as IRS Gets $2.7 Billion
- IRS May Find “Innocent” FBAR Violation Willful
- Does IRS Amnesty Go Beyond Foreign Accounts?
Even U.S. Branch Accounts Abroad Trigger FBAR!

IRS Updates Voluntary Disclosure Amnesty: What You Should Know

Is Foreign Account Ignorance Bliss?

Mailing Is Not Enough For Sept. 9 OVDI Deadline

Tax Amnesty Goes Hollywood

Beware Foreign Trust Reporting to IRS

Are You Getting Enough FBAR?

Robert W. Wood practices law with Wood LLP, in San Francisco. The author of more than 30 books, including Taxation of Damage Awards & Settlement Payments (4th Ed. 2009, Tax Institute), he can be reached at Wood@WoodLLP.com. This discussion is not intended as legal advice, and cannot be relied upon for any purpose without the services of a qualified professional.