Forbes

Robert W. Wood

THE TAX LAWYER

Feb. 16 2011 — 8:43 am

Tax Amnesty: IRS Voluntary Disclosure Part Deux

You may be in the midst of tax season, but don't ignore the IRS announcement of it's latest "come on down" program, an open door policy for taxpayers who are noncompliant with the maze of tax and reporting required for foreign bank accounts. True, tax cheats are invited, but many unwittingly violated these rules and truly had no idea of the reach of these rules. The new IRS program seems well received so far. See IRS Offers New Amnesty For Offshore Tax Cheats.

It will surely cause some people to step forward with the relative (but not absolute) assurance they won't end up being criminally prosecuted for failing to declare the existence of (and income on) a foreign bank account. But there's lots about the program that's ***slightly different*** from the program the IRS put in place in 2009.

Everything is Due August 31, 2011! You may think August is a long way off and you have plenty of time. Beware! Dealing with a foreign bank, getting bank records and amending many tax returns will take time. Even hiring counsel and getting organized takes time.

Unlike the IRS program that had an October 15, 2009 deadline, this isn't an ***entrance*** deadline, but a ***final*** deadline. If you think of it like college applications, all of your materials including letters of recommendation are due by that date. Considering that many people who entered the October 15, 2009 IRS program are still midstream in their paperwork, that was a very different program. This 2011 program requires quick action.

25% Not 20%. One of the big points of confusion in the first IRS program was the separate tax and FBAR penalties. Foreign bank account holders must generally file an FBAR annually (Treasury Form TD F 90-22.1, Report of Foreign Bank and Financial Accounts). Separate from tax returns, FBARs are due each June 30 for the preceding year. The penalties for failure to file are worse than tax penalties—potentially including up to $500,000 and up to ten years in prison for each failure!

The IRS's 2011 program requires you to pay back taxes, penalties and interest on any money you didn't report. Plus, you pay a compromise FBAR penalty. To make sure taxpayers coming forward in 2011 are not treated *better* than those in 2009, the program's FBAR penalty went up from 20% to 25%.

This FBAR penalty is equal to 25% of the amount in the foreign account(s), as opposed to 20% that applied to taxpayers in the 2009 program. See Q&A 8. You base that 25% on the year with the highest balance from 2003 through 2010. You'll need bank records to compute this, so don't wait.

12.5% Reduced Penalties. Even though the 2011 program ramps up the FBAR penalty from 20% to 25%, reduced FBAR penalties are possible now. There's a reduced 12.5% penalty for those whose offshore accounts or assets did not surpass $75,000 in any calendar year between 2003 and 2010. See Q&A 53.

5% Penalty. Taxpayers who inherited a foreign account and never withdrew money from it and foreign residents who didn't even know they were US citizens might face only a 5% FBAR penalty.

Penalty Abatement. Sensitive to the perception that these reduced penalties might seem unfair to a taxpayer who has already paid a higher penalty, there's a kind of "me too" provision. If you qualify for the 5% or 12.5% penalty now but you came in under the 2009 voluntary disclosure program, you may get a rebate. See Q&A 52 and 53.

For more, see:

Still Have A Foreign Bank Account?

What To Do If Your Foreign Account Is A PFIC

Still More Foreign Account Worries!

Six Questions About Secret Foreign Bank Accounts

Ten Things To Know About Offshore Bank Accounts

Robert W. Wood practices law with Wood & Porter, 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@woodporter.com. This discussion is not intended as legal advice, and cannot be relied upon for any purpose without the services of a qualified professional.