

Foreign Income, Bank and Financial Accounts - IRS Voluntary Disclosure Program August 2009

The program for offshore voluntary disclosure offers a uniform penalty structure for taxpayers who voluntarily come forward. Under the program, which will not apply in its present form after September 23, 2009, taxpayers with undisclosed foreign accounts or entities can make a voluntary disclosure that enables them to become compliant, avoid substantial civil penalties, generally eliminate the risk of criminal prosecution and calculate, with a reasonable degree of certainty, the total cost of resolving all offshore tax issues. The program requires taxpayers to make a voluntary disclosure of previously unreported foreign income for the tax years 2003 through 2008. If the submission is accepted, the taxpayer must pay any tax on unreported income during these periods along with the following interest and penalties:

- Interest on the tax due (if applicable)
- An accuracy related penalty of 20% on the tax due (if applicable)
- An additional 20% penalty on the highest aggregate foreign account balance during the six year timeframe (2003 through 2008).

Normally penalties for not complying with these provisions are as follows:

- Civil: penalty of \$10,000 for non-willful non-compliance or \$100,000 or 50% of the account balance for willful non-compliance
- Criminal: \$250 fine and five years imprisonment or \$500,000 fine and ten years imprisonment if in tandem with the violation of another federal law.

Some taxpayers have properly reported all taxable income (worldwide income), but only recently learned that they should have been filing Form TD F 90-22.1 (Report of Foreign Bank and Financial Accounts [FBAR]) in prior years to report a personal foreign bank account or the fact that they have signature authority over bank accounts owned by an employer. The purpose for the voluntary disclosure practice is to allow taxpayers who didn't report taxable income to voluntarily come forward and resolve their tax matters. Thus, those who reported and paid tax on all taxable income but didn't file FBARs, shouldn't use the voluntary disclosure process and should instead file the delinquent FBAR reports according to the instructions and attach a statement explaining why the reports are filed late. Copies of the delinquent FBARs should be sent, together with copies of tax returns for all relevant years, by September 23, 2009.

The IRS continues to uncover abusive tax-avoidance schemes involving offshore activity (e.g. Union Bank of Switzerland (UBS) recent activities). Below we have included the link to the IRS Website which includes a detailed discussion of this program. (Voluntary Disclosure: Questions and Answers):

<http://www.irs.gov/newsroom/article/0,,id=210027,00.html>

If you would like to know more about participating in this program or about other issues relating to your tax status, please contact us for more information.