



Tax Alert

April 2009

Uncle Sam Offers “Amnesty” for Unreported Offshore Income

On March 26, 2009, IRS Commissioner Doug Shulman announced a new voluntary disclosure program aimed at getting taxpayers hiding assets offshore back into the system. IRS leadership is instructing its agents to draw a clear line between individual taxpayers with offshore accounts who voluntarily come forward and “get right” with the government, and those who continue to fail (in their view) to meet their tax obligations. “Getting right” with the government is a process, involves a deadline, and comes with a price.

The Process:

All voluntary disclosure requests will be initially screened by the IRS’s Criminal Investigation (“CI”) division to determine if the taxpayer is eligible to make a voluntary disclosure. [Note: Due to CI’s involvement, it would probably be prudent to involve the taxpayer’s legal counsel in the process.] In general, a taxpayer will be eligible to make a voluntary disclosure if the taxpayer (1) is cooperative and makes good faith arrangements to pay in full their tax, interest, and any applicable penalties, (2) is not currently under civil or criminal investigation by the IRS, and (3) has not been notified that the IRS intends to commence an examination or investigation. Once eligibility is favorably determined, the matter is forwarded to the IRS’s Philadelphia Offshore Identification Unit.

The Deadline:

The voluntary disclosure program will be in effect for six months, starting on March 23, 2009. So, taxpayers have until September 23, 2009 to commence the voluntary disclosure process. After this date, the IRS will re-evaluate its options. Commissioner Shulman made it clear in his comments that in cases where a taxpayer has unreported offshore income and does not come forward voluntarily, IRS agents will be instructed to fully develop the facts involved, pursue both civil and criminal avenues, and consider all available penalties including the maximum penalty for the willful failure to file, and the fraud penalty.

The Price:

The “penalty framework” applicable to the voluntary disclosure program is as follows:

- (1) The taxpayer must file or amend all tax returns within a look-back period (generally six years), including Form TD F 90-22.1, Report of Foreign Bank and Financial Accounts (aka an “FBAR”). [Note: Amended state tax returns may also be required.]
- (2) The taxpayer must pay all back-taxes and interest for the look-back period, including any accuracy or delinquency penalty (no reasonable cause exception may be applied) [Note: State back-taxes, interest, and penalties may also be imposed.]

- (3) The taxpayer must pay a penalty of 20% of the amount in the foreign bank account for the year within the look-back period with the highest aggregate account or asset value. This 20% penalty is in lieu of any other penalties that may apply, including FBAR penalties. In certain circumstances, this penalty may be reduced to 5% of the highest aggregate account or asset value.

The IRS is devoting increased resources to international tax issues. While those taxpayers who come in voluntarily will pay back taxes, interest and a significant penalty, they may avoid possible future criminal prosecution.

If you would like to learn more about the IRS's voluntary disclosure program, please call or e-mail Alan Griffith, Principal in Charge of the Stonefield Josephson Tax Group, at (310) 432-7407 or agriffith@sjaccounting.com, or any other Stonefield Josephson Principal.



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