

Taxpayers with Offshore Assets Get Second Chance

U.S. taxpayers have been given another opportunity to disclose hidden offshore bank accounts to the IRS. Fifteen months after the expiration of the previous voluntary disclosure effort, the IRS unveiled on February 8 a new Offshore Voluntary Disclosure Initiative (“OVDI”) to encourage taxpayers with undisclosed foreign accounts and assets to come forward and comply with U.S. tax law. Taxpayers who come forward by August 31, 2011, will receive some assurance that they will not be criminally prosecuted in exchange for the payment of back taxes, interest and reduced penalties.

In light of recent Justice Department investigations into small Swiss cantonal banks and IRS efforts in several jurisdictions around the world outside of Switzerland, it is clear that the IRS was not satisfied with the concessions made by UBS to turn over its U.S. customers. As these investigations continue, information also streams in from whistleblowers, the most recent example of which was the receipt of Swiss bank data by WikiLeaks on January 17. With this pressure mounting, taxpayers with hidden offshore accounts are again being encouraged to come forward voluntarily or risk facing criminal prosecution and the complete confiscation of their offshore accounts. “Tax secrecy continues to erode,” IRS Commissioner Doug Shulman said. “We are not letting up on international tax issues, and more is in the works. For those hiding cash or assets offshore, the time to come in is now. The risk of being caught will only increase.”

The IRS reported that the 2009 voluntary disclosure effort netted almost 15,000 taxpayers with accounts in 60 countries and another 3,000 coming forward after the program had closed. The IRS expects that there are thousands more taxpayers who continue to hide their assets abroad. In the words of Commissioner Shulman, this new OVDI allows these taxpayers “a last, best chance to get back into the U.S. tax system” and addresses several concerns that were brought to light during the previous effort. The principal penalty feature of the new OVDI is a miscellaneous penalty equal to 25 percent of the highest aggregate amount of a participant’s foreign bank account between 2003 and 2010. This penalty represents a 5 percent increase over that offered in the 2009 program. Additionally, participants will have to pay up to eight years of taxes owed plus interest, rather than the previous, six year, term. Although the penalty provisions of the new OVDI are generally harsher, the miscellaneous penalty may be reduced to 12.5 percent or 5 percent where the participant’s offshore account balance is less than \$75,000 or where the participant had minimal involvement with the account activity, respectively.

Taxpayers who want the benefits of the OVDI must submit their tax returns, paperwork, and a payment to the U.S. Treasury by the August 31, 2011 deadline, and are thus encouraged to begin preparations as soon as possible. If you have any questions please do not hesitate to contact us.

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