

**IRS ANNOUNCES NEW VOLUNTARY DISCLOSURE DEAL FOR  
OFFSHORE ACCOUNT HOLDERS – SEPTEMBER 23, 2009**

**DEADLINE**

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On March 23, 2009 the Internal Revenue Service announced a new offer to taxpayers holding offshore accounts.

In an effort to bring those taxpayers maintaining assets offshore back into the tax system, the IRS will now guarantee taxpayers who come forward voluntarily that the IRS will neither bring criminal charges nor seek the 75% fraud penalty.

The program is currently set to expire in six months, or on September 23, 2009, at which time the IRS will reevaluate its effectiveness.

***The Deal***

In order to take advantage of the IRS offer, taxpayers will need to do all of the following:

- Pay 6 years of back taxes on the newly disclosed assets;
- Pay the interest due on the back taxes;
- Pay either a 20% accuracy related penalty or a 25% delinquency penalty for each tax year at issue;
- Pay a 20% penalty on the total balance in the taxpayer's foreign bank accounts for the year the accounts held their highest aggregate value.

Though the taxpayers who come forward will pay taxes, interest, and substantial penalties, they will not face either criminal prosecution or the 75% fraud penalty. In addition, they will not be subjected to the civil penalty for failing to file Form TD F 90-22.1 to report their interest in a foreign bank account. The voluntary disclosure allows taxpayers to put the issue behind them and give them certainty as to their tax liability.

### ***Voluntary Disclosure***

This offer is only available to taxpayers who make a voluntary, timely disclosure. Under the Internal Revenue Manual (“IRM”) § 9.5.11.9.3, a voluntary disclosure occurs when the taxpayer’s communication to the IRS is “truthful, timely, complete, and when:

- A taxpayer shows a willingness to cooperate (and does in fact cooperate) with the IRS in determining his/her correct tax liability.
- The taxpayer makes good faith arrangements with the IRS to pay in full, the tax, interest, and any penalties determined by the IRS to be applicable.”

In addition, IRM § 9.5.11.9.4 states that a voluntary disclosure is timely if it is received before:

- The IRS has initiated a civil examination or criminal investigation of the taxpayer, or has notified the taxpayer that it intends to commence such an examination or investigation.
- The IRS has received information from a third party (e.g., informant, other governmental agency, or the media) alerting the IRS to the specific taxpayer’s noncompliance.

- The IRS has initiated a civil examination or criminal investigation which is directly related to the specific liability of the taxpayer.
- The IRS has acquired information directly related to the specific liability of the taxpayer from a criminal enforcement action (e.g., search warrant, grand jury subpoena).

The taxpayer's request will initially be examined by Criminal Investigation ("CI") to determine if the taxpayer is eligible to participate in the program. If CI determines that the taxpayer has made a timely disclosure under IRM § 9.5.11.9.4 above, the request will be sent to the Philadelphia Offshore Identification Unit for processing.

### ***Priority Case Development***

The new voluntary compliance initiative comes when the IRS is pushing its personnel to make finding unreported income, including hidden offshore accounts, a priority. As discussed in an accompanying IRS Memorandum, investigating "abusive offshore transactions designed to defeat our tax system" is the highest priority, and IRS examiners are instructed to use all the IRS tools available, including third party contacts, administrative summonses, and in person interviews of taxpayers to develop cases and, where applicable, make determinations regarding potential penalties.

This initiative is similar to the one implemented by the IRS in 2003 where the Service gained information about thousands of taxpayers using foreign credit cards to shelter assets offshore and, recognizing the daunting task of allocating sufficient

resources to audit this mother lode of potential unpaid taxes, offered taxpayers an opportunity to file delinquent or amended returns to report their correct liability.

### ***Conclusion***

Taxpayers who have unreported offshore accounts should avail themselves of this new IRS voluntary disclosure program, particularly in light of the IRS's priority initiative to locate and pursue unreported income. Failure to take advantage of this program will leave such taxpayers open to both the 75% fraud penalty and criminal prosecution. *Remember, September 23, 2009 is the deadline!*

### **About the Authors**

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