



Foreign Accounts - Extended Relief

September 2009

To our clients:

This week the IRS extended the time that taxpayers can file for relief under the foreign account voluntary compliance program from September 23, 2009 until October 15, 2009. In the notice, the IRS indicated that there would be no more extensions. As most of you are aware, the voluntary compliance program is being used to strongly encourage taxpayers who have undisclosed assets in foreign bank accounts to report and pay tax on the assets in those accounts.

The issues that you (the taxpayer) must consider are the following:

1) If you have an ownership interest in any foreign bank account, securities account or foreign mutual fund or if you have signature authority over the account (meaning you can control the movement of funds) and if the aggregate value of the account(s) is over \$10,000 you have an annual reporting obligation. You must file what is known as an FBAR (TD F 90-22.1) by June 30th of each year. There is no extension of time to file the FBAR (normally) The filing is not made with the IRS, it is made to the Department of the Treasury. This is an annual obligation. This requirement is for any foreign account (not just those located in Switzerland or the Caymans etc.) This filing requirement is not just for individual accounts. If you have signature authority over a corporate account the rules apply.

"Foreign" accounts include all accounts (bank, security, mutual fund) that are held in any foreign (non - U.S.) country. It is the location of the account and not the nationality of the institution that is determinative.

Caution: While most people are aware of foreign accounts that they own, they may forget about accounts over which they have signature authority. For example, if you have an active Power of Attorney for a parent or grandparent (meaning that you could act today and not only in the event of a disability) and the relevant foreign account(s) are over \$10,000 you need to file an FBAR. This is true even if your parent/grandparent has already filed one. Also for parents that have had a student overseas - if there was a bank account set up for the student and if at some point during the year the balance in the account was over \$10,000, then the FBAR is due.

This year so long as you are not under IRS audit or other governmental investigation, you can clean up your FBAR filings by the new extended date of October 15, 2009 and you will not be penalized. The penalties for failing to file an FBAR can be severe particularly if the government determines that you intentionally disregarded your filing

obligation. This could result in a criminal penalty that in the most aggressive cases could mean jail time.

2) Separate and apart from the FBAR filing is the requirement that if you are a U.S. taxpayer (U.S. citizen or resident alien) you must report all worldwide income on your tax returns. This includes money in a foreign bank account even if it is non-U.S. source income. You have all been reading about the Swiss accounts and those individuals who intentionally opened accounts to hide money offshore, but the rules apply to accounts that might have been created by inheritance or gift or on the sale of a non. U.S. business as well. The IRS has a voluntary disclosure program (VDP) that allows taxpayers to come forward and disclose previously unreported income. This program has been in existence for a long time. However, this year the IRS has devised a special program for foreign account filers. If you have a foreign account and you have not paid the appropriate tax on the account's creation or on the income in the account, you can take advantage of the program. The only exception is if you are currently under audit or investigation. Because of the significant number of people interested in the program, the IRS has extended the date that you can file to be accepted in the program to October 15, 2009.

Taking advantage of the VDP means that you need to disclose the accounts and income; file amended tax returns; pay the tax, interest and penalties due on those returns and then pay a one-time penalty of 20% (5% in very special and limited circumstances) of the highest amount in the accounts from the period 2003-2008. You also will have to be current for 2009. Payments are due once you enter into a closing agreement with the IRS. The IRS has indicated that it will take into account ability to pay in structuring installment payments etc. While the 20% penalty may seem steep, it is in lieu of any other additional penalties the IRS could impose, the FBAR penalties and criminal prosecution.

When the disclosure is made to the IRS, the taxpayer needs to be very forthcoming about the circumstances involved with the creation of the account, what advice was given/taken, who you spoke with etc. In other words, you are required to "name names" since the government will use this information to pursue other unreported income/delinquent taxpayers.

More

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