

New Offshore Voluntary Disclosure Initiative Announced

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U.S. taxpayers with offshore accounts should take note of the new voluntary disclosure program announced by the Internal Revenue Service. The 2011 Offshore Voluntary Disclosure Initiative (“2011 Initiative”) was announced February 8, 2011, and offers taxpayers who did not participate in the IRS’ prior offshore voluntary disclosure offering in 2009 (“2009 Program”) a second chance to come clean in exchange for reduced penalties. For those taxpayers who have already come forward, new reduced penalty structures in the 2011 Initiative are available to qualifying taxpayers who participated in the 2009 Program.

The 2011 Initiative is similar to the 2009 Program, but the IRS has made some significant changes, including: (1) extending the period covered by the voluntary disclosure to eight years, *i.e.*, tax years 2003 – 2010; (2) increasing the flat-rate penalty assessed on the highest aggregate balance of offshore accounts (the “Offshore Penalty”) to 25 percent from 20 percent; (3) introducing two new reduced penalty structures which may lower the Offshore Penalty to five percent or 12.5 percent for certain taxpayers; and (4) implementing a strict deadline requiring interested taxpayers to submit all filings, as well as payment for all taxes, interest and penalties to the IRS on or before August 31, 2011.

I. How to Make a Voluntary Disclosure Under the 2011 Initiative

Who is Eligible

Taxpayers with unreported income from offshore accounts and/or entities that have not previously come forward to the IRS are eligible. This includes interim filers, those taxpayers that made a voluntary disclosure after the deadline for the 2009 Program. Taxpayers who have made a “quiet disclosure” by filing amended tax returns and paying related tax and interest for previously unreported offshore income without otherwise notifying the IRS are also eligible. Quiet disclosures do not satisfy the IRS’ requirements for a voluntary disclosure, and therefore will not protect taxpayers from the imposition of additional penalties or potential criminal prosecution.

Participants in the 2009 Program are generally not eligible to participate under the 2011 Initiative (except that they may be eligible for the new reduced penalty as discussed below). As with the prior voluntary disclosure program, taxpayers under civil examination by the IRS are not eligible to participate.

Requesting Acceptance Into the 2011 Initiative

Taxpayers must request acceptance into the 2011 Initiative by submitting a completed Offshore Voluntary Disclosure Letter to the IRS by August 31, 2011.

II. Submission Requirements

As noted above, the period covered by the 2011 Initiative include tax years 2003 – 2010. As with the 2009 Program, taxpayers must submit all of the following for each year covered by the voluntary disclosure:

1. Copies of previously filed original (and, if applicable, previously filed amended) federal income tax returns;
2. Complete and accurate amended federal income tax returns;
3. Complete and accurate Form TD F 90.22-1, Report of Foreign Bank and Financial Accounts (“FBAR”), including copies of any FBARs previously filed; and
4. For taxpayers disclosing offshore entities, complete and accurate amended information returns with respect to such entities, along with copies of any informational returns previously filed.

The 2011 Initiative also requires the following:

1. A Foreign Account or Asset Statement;
2. A Foreign Financial Institution Statement (if the aggregate highest account balance in any year is \$1 million or more);
3. A Taxpayer Account Summary With Penalty Calculation; and
4. A signed agreement to extend the period of time to assess tax (including tax penalties) and to assess FBAR penalties.

Taxpayers disclosing offshore financial accounts with an aggregate highest account balance in any year of \$500,000 or more must also provide copies of offshore financial account statements to the IRS.

The 2011 Initiative also requires payment of all tax, interest and penalties due under the voluntary disclosure by August 31, 2011. If the full amount of tax, interest and penalties, as described above, cannot be made with the submission, taxpayers must submit a proposed payment arrangement and a completed Collection Information Statement.

III. New Penalty Framework

Penalties

Taxpayers accepted into the voluntary disclosure program will be required to pay an Offshore Penalty equal to 25 percent of the highest aggregate account balance during the voluntary disclosure period, unless they qualify for either the five percent or 12.5 percent Offshore Penalty under the new reduced penalty frameworks.

The 12.5 percent Offshore Penalty is available to any taxpayer whose highest aggregate account balance in each of the years covered by the 2011 Initiative was less than \$75,000. The more limited five percent Offshore Penalty is available under two circumstances: (1) the taxpayer exercised only minimal or infrequent contact with the account, as defined by the 2011 Initiative; or (2) the taxpayer is a foreign resident who did not know that they are a U.S. citizen.

Availability of Reduced Penalty Framework for 2009 Program Participants

The reduced penalty structures are available to taxpayers who participated in the 2009 Program. However, only participants whose cases have been resolved and closed under a closing agreement are currently eligible to request a review by the IRS. Thus, taxpayers accepted into the 2009 Program who have not yet closed their case and believe that they are eligible for the reduced penalties should make every effort to close their case.

IV. Closing Comments

Combating international tax evasion continues to be a top priority of the IRS. The IRS and the U.S. government are continuing efforts to obtain quality information regarding U.S. taxpayers with foreign accounts. It is expected that access to such information will only increase once the Foreign Account Tax Compliance Act and Foreign Financial Asset Reporting rules become effective in 2012.

In addition, the IRS has stated it will continue to review amended tax returns for quiet disclosures, or those reporting increases in income for previously undisclosed offshore accounts or entities. If a return is selected for examination, the 25 percent Offshore Penalty will not be available. Additionally, such quiet disclosures do not protect against additional civil penalties or criminal prosecution.

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