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America's Tax Lawyers

Nothing like a good horror story on Halloween night. Most people with unfiled FBARs and unreported foreign accounts do nothing even after learning of their obligations and the penalties for noncompliance.

Once upon a time the chances of getting caught were quite low. Those days are gone for good.

The willful failure to file an FBAR is a felony punishable by 5 years in prison. Although most taxpayers are not criminally prosecuted, the IRS can and usually does impose huge civil penalties - up to the greater of \$100,000 per unreported account or 50% of that account's maximum historical balance. Unfortunately, many people don't believe that which is a great segue to this article.

It shouldn't be the job of accountants and lawyers to find and educate people with unreported foreign accounts. That is the IRS' responsibility. Unfortunately their efforts have fallen short of the mark.

Don't believe that? Ask the government's own audit and evaluation agency, the Government Accountability Office. Both the GAO and the IRS' own Office of the Taxpayer Advocate say the agency has done a poor job of educating taxpayers about foreign reporting responsibilities.

Consider this; the IRS claims only a small percentage of people with offshore accounts have filed FBARs. This includes dual nationals, foreign-born Americans, green card holders and Americans with offshore business interests and expats living overseas.

The reality is that the government will probably find your clients if they have an unreported foreign bank account, hedge fund, brokerage account, annuity or insurance policy with cash value.

Since 2008 the IRS has become very adept at finding offshore accounts. Foreign governments are increasingly cooperating in the IRS' efforts as well.

Beginning next year, the Foreign Account Tax Compliance Act (FATCA) requires foreign financial institutions to sort through their account base and disclose accounts with ties to the United States.

So with the time running out and the chance of getting caught increasing, why are folks sitting on the fence? Enter the "Myths."

Myth #1. "I won't get caught." Not everyone will get caught but the odds aren't in their favor. Taxpayers who do get caught, however, face draconian penalties. The risk simply is **not** worth it.

Myth #2. "If I come forward I will have to pay a 50% penalty." It's better to turn that statement around. If they don't come forward their chance of a 50% or more penalty is much greater.

The IRS is running an amnesty plan for taxpayers with unreported foreign accounts. The program, called the Offshore Voluntary Disclosure Program or OVDP for short, provides a get out-of-jail card, a promise of no audit and a reduced 27.5% penalty.

There are even better programs for taxpayers with smaller accounts and expats living in a foreign country.

If clients can prove their actions were merely negligent, they might avoid all penalties. That is called a voluntary disclosure. Because the risks are so great with any unreported offshore account, we recommend enlisting an experienced FATCA attorney to help with voluntary disclosures and amnesty applications.

Myth #3. "Lawyers and CPAs are making this up to scare people." Simply untrue. Dozens of Americans are under indictment or headed to prison over an unreported account.

Myth #4. "I will just close the account and repatriate the money before I get caught." Great idea but it won't work. Whether or not the account is now closed doesn't stop the IRS from seeking penalties. In fact, the IRS views sudden account closures or transfers of offshore accounts in anticipation of an audit to be an affirmative act of tax evasion.

Myth #5. "I will simply file the missing FBAR forms and amend my old returns - the IRS will never notice." That is called a quiet disclosure and the IRS says doing that won't work. The Service wants people with unreported accounts to come through the "front door" and deal with the IRS.

Myth #6. "I closed the account and spent the money already, how can I

possibly pay the penalties?" Fortunately the IRS offers payment plans.

Myth #7. "The entire tax system and especially the FBAR penalties are simply unfair." That may or may not be a myth but the penalties aren't likely to decrease anytime soon.

The time is now to comply. Once FATCA is implemented and accounts are disclosed to the IRS, most taxpayers will lose their ability to enjoy any of the amnesty programs.

What are the next steps?

Getting clients off the fence is the most important first step. Once folks decide to come into compliance, make sure they (or you) team up with a good IRS attorney.

Don't let the myths keep clients from taking charge of the situation while there is still time.

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