

by Brian Mahany

That didn't take long. Like Star Wars and Rocky, the IRS' offshore tax amnesty program is coming out with its fourth release. The newest edition, called the Offshore Voluntary Disclosure Program or OVDP takes the same name as the 2009 program and comes just a few months after the 2011 OVDI program ended.

Sound confusing? It really isn't.

As we have been saying for months, taxpayers continue to come forward in record numbers as they learn of the government's foreign bank account reporting requirements. Almost all the taxpayers we hear from simply did not know they had to report offshore bank or financial accounts. Many of these people are foreign born Americans, dual nationals or Americans living overseas.

IRS Commissioner Doug Shulman announced earlier today the new program. Unlike prior amnesty programs, this one has no end date, few rules and can be discontinued at any time. Over the next few months we will see how the IRS treats people who come forward voluntarily. Prior to today's announcement of the new program, the IRS has been accepting voluntary disclosures and in some instances, significantly waiving penalties.

The IRS found itself in a pretty difficult position before today's announcement. Hundreds of thousands of people have yet to come forward and file Reports of Foreign Bank and Financial Accounts. ("FBAR's" are the annual form that taxpayers with overseas financial holdings must use to disclose their accounts.) The governments of Canada and India have been pressuring the White House to offer some type of relief to their citizens or residents, many of which simply didn't know of the IRS filing requirements. And this month an already complicated regulatory scheme got more complicated with the new Foreign Asset Tax Compliance Act (FATCA) coming online just in time for the tax return filing season.

What does this mean for taxpayers with unreported accounts? It means there is still time to get into compliance and avoid criminal prosecution for unreported accounts. For taxpayers who truly didn't know of the offshore reporting requirements or otherwise did not act "willfully" (in the words of the IRS), there is also the ability to avoid or reduce civil penalties.

The IRS has to tread carefully with the new program. In each past amnesty, taxpayers who came forward received increasing penalties. That

makes sense; the government wants to “reward” those who came forward first. But so few people have come forward, the government needed to do something to persuade them to come into compliance.

For now, the IRS says that people who take advantage of the program can receive a reduced penalty of 27.5% of the highest balance in the unreported accounts over the last 8 years (up from 25% in the 2011 offshore voluntary disclosure initiative “OVDI”). Reduced penalties of 5 and 12.5 % are still available as well.

The full penalty for taxpayers who are caught or refuse to participate is 50% per year of the highest balance!

Of course, taxpayers who received no income from their foreign accounts or who reported their offshore accounts but failed to file an FBAR may do better to opt out of the program and file a traditional voluntary disclosure. For now, the IRS is only saying that it will provide more guidance shortly.

If you have an unreported foreign financial account or financial assets, contact a tax attorney with offshore reporting experience immediately. With new amnesty options, FBAR requirements and a brand new FATCA law now in effect, don’t try to figure out the rules yourself or rely on a preparer without offshore experience.

The tax lawyers at Mahany & Ertl can assist you with a wide range of foreign financial reporting issues. We advise individuals, businesses and accountants.

Whatever you do, don’t delay. There are no deals if the IRS finds you first and they certainly are looking in 2012.

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