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Compliance With Offshore Tax Program Is Painful, But Better Than the Penalty

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The IRS recently gave taxpayers a final chance to disclose unreported foreign accounts and income and know what the civil penalties will be. All information must be submitted by Aug. 31. Time is short and the consequences of nondisclosure are severe.

The roots of the move go back three years ago, when allegations emerged in Liechtenstein that the prince's trust company, LGT, had been compromised.

Heinrich Kieber had been hired by LGT to scan documents into its computer system. Kieber allegedly made copies for himself and then sold them for 4 million Euros to the German government, which was eager to learn the names of residents who invested in the tax haven.

The German government then went after, and received, 100 times that investment from tax-evading residents whose names were disclosed.

Subsequently, German authorities forwarded to the U.S. government the names of about 100 U.S. taxpayers among the group with unreported overseas accounts and assets.

In an unrelated development about two months later, allegations circulated about advice given by Swiss bank UBS to U.S. taxpayers on how to evade offshore taxes.

Senate hearings followed in July 2008, and the chink in the armor of offshore-bank secrecy had been found. UBS was indicted and, in a settlement, agreed to disclose to the Internal Revenue Service the names Americans with Swiss accounts.

Thousands of noncompliant taxpayers sought to come clean rather than face confiscation of most of their overseas assets, or worse, incarceration. In March 2009, the IRS announced the Offshore Voluntary Disclosure Program for those wishing to amend past transgressions.

By the time that program ended on Oct. 15, 2009, 15,000 taxpayers had come forward. Since then, 3,000 taxpayers have followed.

On Feb. 8 of this year, the IRS announced a second voluntary disclosure program. It contains increased penalties and a longer look-back period than the 2009 program but also carries the promise that if the IRS didn't already know who the noncompliant taxpayer was, criminal prosecution would be avoided and lesser fines would be imposed.

This program ends on Aug. 31, and all documentation must be filed by that date for taxpayers seeking relief. Much has been written about the efficacy of the 2011 initiative, particularly whether the higher penalty structure would induce noncompliant taxpayers to continue to

come forward or continue to hide in the shadows.

Our recent experience indicates that the possibility of criminal action is great enough that most prospective clients are accepting the new terms and making application.

Since the LGT and UBS disclosures, other foreign banks and foreign financial advisers have been under scrutiny.

Foreign financial advisers have been reluctant to leave the safety of their home country as several have been arrested on landing in the United States, often not knowing they are on the Justice Department's watch list. Sealed indictments have become commonplace and foreign lawyers have been indicted. It will be a long time before foreign financial advisers visit the Statute of Liberty.

In February, the IRS and Justice Department increased their efforts to obtain knowledge about and possibly prosecute U.S. tax evaders and their advisers who have accounts in Singapore and Hong Kong. The small islands of the Caribbean are also on their radar screen. With all this activity, one can only ask those who have not yet come forward and disclosed, "What are you waiting for?"

Recently, Rick Raven, the Internal Revenue Service deputy chief of criminal investigations, warned taxpayers that they should come forward immediately and not wait until it is too late.

For those taxpayers naive enough to think they will not be found, Raven says, "You cannot discount the amount of information we get from the IRS whistleblowers' office, as well as through cooperation with foreign governments and the wealth of information IRS is receiving from the 18,000 taxpayers who have come into the voluntary disclosure program since 2009."

He adds, "This isn't just a Swiss problem. In my years with CI [criminal investigations], we've never had as many banks under investigation as we do right now."

In spite of these dire warnings, taxpayers still ask us to find creative ways to not disclose. Perhaps it is greed. Perhaps it is naivety. Perhaps it is the unknown. We tell them, "there is only one way out, voluntary disclosure." Bringing your assets back to the United States, contributing them to a charity or just filing amended returns does not wipe out the problem. Time is growing short. Don't wait.

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