

Non-Disclosed Overseas Bank Accounts, Assets and Income are Being Targeted in New IRS Operation

Singapore, Hong Kong, small Caribbean islands and other tax-friendly jurisdictions are clearly on the radar of the U.S. enforcement agencies.



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THE U.S. INTERNAL REVENUE Service (IRS) has stepped up its efforts to identify and prosecute U.S. taxpayers who have non-disclosed overseas bank accounts, assets and income, and their non-U.S. facilitators, including banks, lawyers, accountants, financial advisors and consultants. Relying on tax treaties, tax information exchange agreements, whistleblowers and other taxpayers, the IRS and U.S. Department of Justice are expanding their scope beyond Switzerland and Liechtenstein and are now in a full global mode.

Singapore, Hong Kong, small Caribbean islands and other tax-friendly jurisdictions are clearly on the radar of the U.S. enforcement agencies. Further, national banks and other small banks without a U.S. presence are now the targets of the U.S. government. Recently, there have been significant developments that U.S. taxpayers and their international advisors need to be concerned with.

The IRS Launches a Second Voluntary Disclosure Program

On Feb. 8, 2011, the IRS announced a second voluntary disclosure program. The "2011 Offshore Voluntary Disclosure Initiative" is the successor to the program that ended on Oct. 15, 2009. The 2011 program is avail-

able to persons who filed after Oct. 15, 2009. After the 2009 program ended, taxpayers who came forward could make voluntary disclosures and avoid criminal prosecution. However, the tax and penalty structure of those filing after Oct. 15, 2009, was uncertain. There are several important changes in the 2011 program.

(1) The period for voluntary disclosure is 2003 through 2010. This is an eight-year period. Under the 2009 program, the period was six years, 2003-2008.

(2) The penalty on the highest balance during the eight-year period is 25 percent. Under the 2009 program, the penalty for the six year period was 20 percent. Additionally, the 25 percent penalty is reduced to 12.5 percent if the highest balance for the eight-year period is less than \$75,000 for all years.

(3) A 5 percent penalty, instead of a 25 percent (or 12.5 percent) penalty is available for certain taxpayers.

Eligibility for a 5 Percent Penalty

U.S. taxpayers that are eligible for a 5 percent penalty include:

- U.S. taxpayers who did not open or cause the account to be opened (unless the bank required that a new account be opened, rather than allowing a change in ownership of an existing account, upon the death of the owner of the account);

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- U.S. taxpayers who have exercised minimal, infrequent contact with the account, for example, to request the account balance, or update account-holder information such as a change in address, contact person, or email address;

- U.S. taxpayers who have, except for a withdrawal closing the account and transferring the funds to an account in the United States, not withdrawn more than \$1,000 from the account in any year covered by the voluntary disclosure; and can establish that all applicable U.S. taxes have been paid on funds deposited to the account (and only account earnings have escaped U.S. taxation).

For funds deposited before Jan. 1, 1991, if no information is available to establish whether such funds were appropriately taxed, it will be presumed that they were. The "new" 5 percent penalty requirements under the 2011 program are more taxpayer favorable and more specific than the 5 percent penalty under the 2009 program, for which almost no one qualified.

This fact was not lost on the IRS, which is permitting taxpayers under the 2009 program—including taxpayers who have closed cases—to apply for the 5 percent penalty if they qualify. This could mean a substantial refund for taxpayers who didn't think that they qualified for the 5 percent program under the 2009 Voluntary Disclosure window.

Under the 2011 program, all information must be submitted on or before Aug. 31, 2011. Any U.S. taxpayer



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who has overseas accounts and/or assets and who is not tax compliant is well-advised to make a voluntary disclosure before it is too late. A taxpayer who is identified by the IRS before the taxpayer makes a voluntary disclosure will most likely be criminally prosecuted, with jail time a significant possibility regardless of age, and the taxpayer will lose most if not all of the overseas account.

The promise of a substantial monetary award for whistleblowers makes continuing non-disclosure by taxpayers a risky business. It is naive to believe that non-disclosed accounts or assets can remain unknown.

Smaller Banks and Advisors Targeted

The United States, through the IRS and the U.S. Department of Justice, has sought to identify non-U.S. financial institutions that do not have a U.S. presence and non-U.S. advisors (lawyers, accountants, financial advisors, bankers, etc.) who have knowingly assisted U.S. taxpayers in tax evasion under U.S. law. The U.S. has previously indicted Swiss and Liechtenstein financial advisors, Swiss lawyers and U.S. green card holders even though such persons could not be arrested and would remain fugitives.

Further, it is acknowledged that the United States has "sealed" indictments against other non-U.S. persons. Thus, these persons may not even know that they have been indicted. The Department of Justice recently announced that it had sent a task force to Asia to discuss and investigate non-compliant U.S. taxpayers in Singapore and Hong Kong.

These developments have made it abundantly clear that anyone involved in U.S. tax non-compliance is taking a serious risk of incarceration and monetary penalties. The IRS is looking for people in this situation, so don't be one of them. ■

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