



Consider IRS Relief Deals Carefully

Friday, November 16, 2012

from BNA Tax and Accounting Center

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If you still have undisclosed foreign bank accounts you should feel uneasy. It's clear that more data is coming from IRS whistleblowers. Plus, the IRS has mined banking details from thousands of U.S. taxpayers under the IRS voluntary disclosure programs in 2009, 2011 and 2012. And FATCA compliance rules are requiring even more disclosures. Recently, former UBS banker Bradley Birkenfeld was awarded \$104 million for helping to change the landscape of offshore banking forever. The IRS award is the biggest and only sizable award in the much discussed program. It's making many whistleblowers more alert and more claims are on the way.

It's not enough to simply close your offshore accounts even if you give the money away. But some choices can seem painful. The Offshore Voluntary Disclosure Program (OVDP) involves eight amended tax returns, eight FBARs and a 27.5% penalty. The latter can be a bitter pill so you may have been waiting anxiously for a new and easier IRS program as an alternative.

When the IRS announced details of its streamlined program on August 31, 2012, there was some disappointment at its narrow scope. The newest program is a simplified alternative for certain U.S. citizens living abroad who did not file tax returns and who owe minimal U.S. taxes, typically because of paying taxes where they reside. Although not restricted to dual U.S.-Canadian citizens, it seems primarily targeted at them.

For those who qualify, it requires only three years of tax returns and six FBARs, with the promise of no penalties. Although this streamlined program sounds very attractive, it is only for U.S. citizens (including dual citizens) who have resided outside the U.S. since January 1, 2009. They must not have filed a U.S. tax return during that period and they must be low risk. See [Instructions for New Streamlined Filing Compliance Procedures for Non-Resident, Non-Filer U.S. Taxpayers](#) . To determine if you are low risk, see [this IRS questionnaire](#).

A taxpayer meeting these criteria and owing less than \$1,500 in tax for each of the three tax years should qualify-unless there are high risk factors, such as if the taxpayer:

- Claims a refund;
- Has "material economic activity" in the United States;
- Has not declared all income in his country of residence;
- Is under audit or investigation by the IRS;
- Has had prior FBAR penalties or an FBAR warning letter;
- Has an interest or authority over an account outside the taxpayer's country of residence;
- Has a financial interest in an entity outside the taxpayer's country of residence;
- Has U.S. source income; or
- Shows indications of sophisticated tax planning or avoidance;

Thus, even this streamlined IRS program has risks and numerous rules. The IRS states that it does not guarantee immunity from prosecution. Moreover, a taxpayer who applies for this streamlined program becomes ineligible for the OVDP.

For these and other reasons, some advisers suggest that this streamlined program should be approached with caution. For some, the OVDP is the only safe choice. But whatever you do, get some advice and proceed carefully.

For more information, in the Tax Management Portfolios, see Toscher, Perez, Rettig and Robbins, 636 T.M., Tax Crimes, and Blum, Canale, Hester, and O'Connor, 947 T.M., Reporting Requirements Under the Code for International Transactions and in Tax Practice Series, see ¶3830, Penalties and ¶7170, U.S. International Withholding and Reporting Requirements and FACTA.