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# IRS Updates Voluntary Disclosure Amnesty: What You Should Know

The IRS has outdone itself with a helpful and liberal document that's good news for many taxpayers currently wringing their hands over the looming August 31, 2011 deadline. See 2011 Offshore Voluntary Disclosure Initiative Frequently Asked Questions and Answers. That's the deadline to comply with offshore account disclosures. See Tax Amnesty: IRS Voluntary Disclosure Part Deux.

The IRS has even gone so far as to say you can have up to an extra 90 days—up until November 30, 2011 to get all your amended tax returns, FBAR forms (Treasury Form TD F 90-22.1), and account information to the Austin Campus—yes, IRS Service Centers are "Campuses" now—which sounds quite collegiate. But don't just put off dealing with these issues—that's not how the extension works.

**90-day Reprieve.** Taxpayers may ***request*** an extension to complete their submission if they can demonstrate a good faith attempt to fully comply, on or before August 31, 2011, with the information disclosure required under the 2011 OVDI. The good faith attempt to fully comply must include properly completed and signed agreements to extend the period of time to assess tax (including tax penalties) and to assess FBAR penalties.

Written requests for up to a 90-day extension must include a statement of those disclosure items that are missing, why they are not included, and the steps taken to secure them. FAQ 25.1.

**<u>Opt Out</u>.** Even more important is the concept of electing out of the IRS program. That sounds counterintuitive. First everyone tells you to step forward into the sunlight of IRS amnesty. See Becoming Tax Mr. Clean.

In fact, they say it's your last chance. See IRS Offshore Amnesty: Second (Last) Chance. Then they tell you to opt out of the amnesty? Why apply to be considered part of a special IRS program only to opt out?

Yet opting out of the program can clearly make sense for some people. Up until now there's been much nervous talk about the wisdom of electing out of the voluntary disclosure program. For example, suppose that you're unsuccessful in trying to persuade the IRS that you should qualify for the reduced 5% penalty not the 25% penalty. You can always opt out of the program and take your chances with an examination.

Until now that seemed pretty frightening. The IRS now makes clear, though, that it's OK to do this. In fact, the IRS has also published a separate guide titled Opt Out and Removal Guide for the 2009 OVDP and 2011 OVDI where the procedures for opting out are set forth.

For clients and their advisers, the revised FAQs offer helpful guidance on the opt-out option. The newly revised FAQs illustrate the pros and cons of opting out with six examples. See FAQ 51. The first three examples describe situations in which it may be smart to opt out.

The first taxpayer mistakenly failed to report foreign income on his tax return but, because of foreign tax credits, had no tax deficiency relating to that income. Even if he'd properly reported it all, his tax credits would have wiped it out. No harm, no foul.

Here, electing to opt out may subject him to a much smaller FBAR penalty than the program's 25% penalty. In fact, if the taxpayer shows the violation was due to reasonable cause, there might be no penalty at all! That might sound like opting out is a smart move for all.

Nope, clearly it isn't. Opting out can backfire, too. New FAQ 51.2 carries two examples showing disadvantages of opting out. Most frightening is New FAQ 51.3, saying that a case can still be referred to ***IRS's Criminal Investigation Division***. If you opt out of the 2011 OVDI, are audited, and found to have under-reported income and made false statements, you're in deep trouble.

**Bottom Line?** Over the coming weeks many taxpayers and advisers will be studying the IRS's latest missives and applying them to their facts. Stay tuned.

For more, see:

IRS Voluntary Disclosure A Mistake For Some

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IRS Foreign Account Disclosure: What About The States?

IRS Will Find Your Offshore Account

Beware Bank Interest Reporting Even For Nonresidents

Are You Getting Enough FBAR?

"Quiet" Foreign Account Disclosure Not Enough

Avoid IRS Hit List Of Tax Scams

IRS Issues New Guidelines For Overseas Accounts

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