Forbes

Robert W. Wood
THE TAX LAWYER

Apr. 13 2011 — 9:04 am

"Quiet" Foreign Account Disclosure Not Enough

The IRS has made it clear that foreign account compliance is one of its major initiatives. Its current foray into foreign bank account disclosure was announced February 8, 2011. The 2011 Offshore Voluntary Disclosure Initiative offers what IRS Commissioner Shulman called the "last, best chance" to come clean.

In the past, many U.S. taxpayers familiar with Form 1040 didn't focus on this issue. They, and in many cases even their professional tax advisers, may have entirely neglected to answer the question on Schedule B. It asks–yes or no–whether they had any foreign bank accounts. Alternatively, they may have inaccurately answered "no."

Even if they ignored or fudged on that question, many did not file an FBAR (Treasury Form TD F 90-22.1, Report of Foreign Bank and Financial Accounts) annually. Provided you have more than $10,000 in a foreign account, the FBAR is a separate detailed disclosure that must be completed detailing where and how much you have in foreign banks. Foreign accounts are aggregated so if you have more than the $10,000 threshold offshore, you must file the FBAR. FBARs are due each June 30 for the preceding year. Many angry U.S. citizens and permanent residents (holding green cards) didn't even know about the FBAR form until recently. See IRS On What Is A Foreign Account.

But it's getting harder today–maybe even impossible–to remain ignorant of these rules. In fact, today the government is doing a very good job

But it's getting harder today–maybe even impossible–to remain ignorant of these rules. In fact, today the government is doing a very good job publicizing all the multiple ways you need to report and account for your foreign accounts and assets. See IRS Says What To Do About Foreign Accounts On 2010 Returns.

Many people who didn't comply in the past–regardless of whether or not they knew about the rules–are applying for a kind of limited tax-amnesty. See Tax Amnesty: IRS Voluntary Disclosure Part Deux. From now until August 31, 2011, taxpayers can apply for a form of relief. Yet with taxes, penalties and interest–and an FBAR penalty that is now 25% of the highest aggregate account balance over the last eight years–some say the penalties are too stiff.

These penalties may seem high until you consider the alternative. In fact, the penalties for coming forward under the current prepackaged IRS program pale in comparison to what the IRS ***could*** rain down on taxpayers caught violating the rules. Between income tax, interest, civil and criminal penalties for the tax and FBAR violations, jail time can be as high as ten years and fines can be multiples of the foreign accounts. See IRS Offshore Amnesty: Second (Last) Chance.

For all these reasons, most people want to come forward under the new IRS program, no matter how painful it may be. If the alternative is a full voluntary disclosure under the IRS program or a more limited (and one might hope less expensive) quiet disclosure, the choice may be easy. A quiet disclosure is usually described as filing amended tax returns and past due FBARs without coming forward to the IRS or truly "fessing up."

The IRS has made its position on this point very clear. To the IRS, a quiet disclosure is no disclosure at all. See IRS Offers Amnesty For Offshore Tax Cheats. Nevertheless, some taxpayers may follow this path. There are no statistics on which to base a judgment whether it might work. The risk seems high.

For more, see:

IRS Foreign Account Disclosure: What About The States?

Beware Foreign Trust Reporting to IRS

Don’t underestimate IRS’s new foreign tax rules

Robert W. Wood practices law with Wood & Porter, in San Francisco. The author of more than 30 books, including Taxation of Damage Awards & Settlement Payments (4th Ed. 2009, Tax Institute), he can be reached at wood@woodporter.com. *This discussion is not intended as legal advice, and cannot be relied upon for any purpose without the services of a qualified professional.*