

Daily Journal

Tax Amnesty Deadline Extended

Tax amnesty may sound like an oxymoron, but it's deadly serious. Like a slow boil, the IRS amnesty program on offshore income and bank accounts has been percolating since March. Yet it was only in recent weeks that the IRS program hit its stride, generating hype from taxpayers all over the country, and equal interest from thousands of U.S. citizens and residents currently living abroad.

People are still literally coming out of the woodwork to wriggle under the IRS amnesty door before it closes. And suddenly, before the long-announced (and supposedly ironclad) Sept. 23, 2009 deadline, the IRS relented. Announcing an extension until Oct. 15, 2009, the IRS responded to tax adviser pleas and threw open its doors, allowing taxpayers a little more time to, in the words of Commissioner Doug Shulman, "get right with the government." But this extension is a one-time deal.

Should taxpayers volunteer, and if so, why? What can they expect if they do or don't? And why did the IRS grant more time?

U.S. citizens and permanent residents must pay U.S. tax on their worldwide income, which has always been the case. Yet the international banking industry has made no secret of the fact that they have ways to help hide your money from the taxman, your ex-spouse, etc.



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However, until UBS tripped up by sending bankers onto U.S. soil to solicit secret deposits, no one knew how widespread a problem this had become. It has also long been true that any U.S. holder of a foreign bank account must file an annual Foreign Bank Account Report with the IRS. Turns out most people had never heard of a Foreign Bank Account Report until this year.

Now we know there are huge volumes of undisclosed foreign accounts with many tax dollars at stake. The IRS has tried to secure compliance by carrot, stick, or a little of both. The amnesty moniker, however, may not fit too well. Indeed, the IRS program offers no true guarantee against prosecution, other than the mildly disturbing assurance that you *probably* will not face criminal charges.

Even so, most taxpayers still want to comply, and they should. It is widely assumed that the IRS will not prosecute participants, and that if it does, it will pick only the most egregious (and egregiously big) cases. That means most people with unreported income from a foreign account should comply.

To participate, you must tell the IRS (by making contact with the nearest IRS Criminal Investigation Office) before Oct. 15th, and submit a variety of data about your foreign account(s). You must amend the last six years of tax returns, reporting (and paying tax) on all the income for those six years you failed to report. You will be responsible for the tax previously omitted, the interest (at an IRS rate), and a delinquency penalty of 20 percent.

Last, the IRS will impose a special 20 percent penalty based on the highest aggregate account value of your secret accounts over the last six years. Rough justice perhaps, but that's the deal.

Once you enter the IRS program, it is not clear how long the process will take or how much interaction with Uncle Sam you will face. Some of this will depend on how quickly you submit all your documents, how convoluted your story, and perhaps even luck. Convoluted or not, this is no time to sugarcoat the truth. Besides, the IRS voluntary disclosure program is a far better deal than it could have been.

It is also far better than the alternative. Indeed, if you sit quietly and do nothing, or if you try to more stealthily start complying with tax return and Foreign Bank Account Report filing requirements (only prospectively, for example), you may end up worse off. In fact, about the only thing the IRS has been clear on is that if you fail to take this amnesty avatar and are later discovered, all bets are off.

And this is not merely about how well *you* keep secrets, because there has been a sea change in international banking. UBS and many other foreign banks are now in the uncomfortable position of doing deals with the IRS and trying to make peace over these issues. In the past, you may have had a guarantee that a foreign banker would never rat you out. That is less true in today's era of global transparency.

No one likes to discuss the possibility of criminal prosecution, but it is a necessary worry. As Wesley Snipes is well aware, the government takes these things seriously, and filing false tax returns is not to be taken lightly. Indeed, filing a false tax return can carry fines and up to three years in prison. Tax evasion merits higher fines and up to five years incarceration. Surprisingly, failure to file Foreign Bank Account Reports can earn you up to 10 years!

For most people, these unmentionables will never come true, but the best way to ensure they do not is to get with the program and comply. Like it or not, the IRS voluntary disclosure program is worth doing, and is vastly less expensive than the alternative. You can thank the IRS for extending the deadline just a bit, due in part to the throngs of tax lawyers who have been begging for more time.

So as the adage goes, don't look a gift horse in the mouth. If you do, the IRS is likely to tax it.

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