

Individual and Business Offshore Accounts

IRS Announces Second Offshore Voluntary Disclosure Initiative

Offshore Accounts

The IRS is aware Americans have undisclosed assets in foreign financial institutions. In some cases, taxpayers may not be aware that federal law requires disclosure of offshore accounts above a certain monetary threshold. In other cases, taxpayers choose not to disclose them in an attempt to avoid paying taxes.

The U.S. and the IRS are working together to discover unreported offshore assets to recoup tax revenue that has been hidden in offshore accounts. The U.S. continues to negotiate with so-called tax haven jurisdictions for more transparency in their banking and tax laws. These are countries that have had traditionally tough bank secrecy laws. The U.S. has had some success in its negotiations, most notably in getting one of Switzerland's largest banks to agree to share account information with the IRS, and many experts predict that the U.S. will persuade banks in other countries to share account information.

The 2009 Offshore Voluntary Disclosure Program (OVDP), established in the Hiring Incentives to Restore Employment (HIRE) Act of 2010, required taxpayers with foreign accounts and assets worth \$50,000 or more to disclose those investments and accounts in an attachment to the individual's Form 1040. The 2009 OVDP defined assets broadly to include cash accounts, investments in foreign entities such as hedge funds, private equity funds and real estate holdings, and ownership in passive foreign investment companies. According to the IRS more than 15,000 taxpayers participated in the 2009 program which uncovered undisclosed accounts in more than 60 countries. Since that time, more than 3,000 taxpayers have come forward to the IRS with bank accounts from around the world. Due to increased interest from taxpayers with foreign accounts, the IRS has announced a second special disclosure initiative.

2011 Offshore Voluntary Disclosure Initiative

The 2011 Offshore Voluntary Disclosure Initiative (OVDI) is designed to allow taxpayers with undisclosed income from hidden offshore accounts to participate in another voluntary disclosure initiative to reduce penalties and possibly avoid criminal prosecution as well as to get current with their taxes.

There is a new penalty framework for the 2011 program. Individuals will be required to pay a penalty of 25 percent of the amount in the foreign bank accounts in the year with the highest aggregate account balance covering the 2003 to 2010 time period. Participants also must pay back-taxes and interest for up to eight years, as well as pay accuracy-related and/or delinquency penalties. Taxpayers participating in the initiative must file all the necessary paperwork and make all required payments with the IRS before August 31, 2011.

Reduced Penalties

Some taxpayers may be eligible for a 12.5 or 5 percent penalty. The 12.5 percent penalty applies to taxpayers whose offshore accounts or assets did not surpass \$75,000 in any calendar year from 2003 to 2010. The 5 percent penalty generally applies to taxpayers who did not open the foreign account and who met other very specific criteria covered by the 2011



initiative. Individuals who are foreign residents and who were unaware they were U.S. citizens may also qualify for the 5 percent penalty.

How to Participate

The first step is to talk to a tax professional. The program is not just for individuals. Entities such as partnerships and trusts can also request to participate in the program.

The IRS encourages taxpayers to file a pre-clearance request. The IRS will then notify the taxpayer if the taxpayer has been cleared to make a voluntary disclosure. The IRS cautions that pre-clearance approval does not guarantee acceptance into the program. After pre-clearance, taxpayers submit a voluntary disclosure letter. The IRS will review the letter and notify the taxpayer if they have been accepted into the initiative. If accepted, the IRS requires the taxpayer to submit an extensive voluntary disclosure package.

If you would like to participate in the voluntary offshore disclosure program, please contact our office.

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