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Second IRS Amnesty Offer A Wake Up Call

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Wealth managers should pay close attention to and spread the word about the Internal Revenue Service's latest amnesty offer for Americans with undeclared income from offshore accounts. Not only is the voluntary disclosure program a good deal and an opportunity to avoid much stiffer penalties or prison in the future, but it is also a reminder that some of their clients may owe money to the IRS and not realize it, say five attorneys who specialize in the field.

Taxpayers who do come forward under the IRS's Offshore Voluntary Disclosure Initiative, announced on Feb. 8, will be required to pay up to 25 percent of the highest annual amount in their foreign account from 2003 to 2010, plus back taxes, interest and other tax penalties for those years. The program, the second of two voluntary disclosure programs, ends August 31. The previous amnesty program ran from March 2009 through October of that year.

"I think there a lot of people out there who still don't realize they have to report their income [outside the U.S.]," said Carl Linder, president of Miami-based The Linder Law Group. "Some are dual citizens and some are green card holders, but there is definitely a large group that doesn't know they have to report."

Many people in this group who are required to file U.S. tax returns and disclose foreign accounts are what attorneys call "accidental citizens," because they have not lived in the U.S. for years or have never lived in the U.S.

For example, someone who was born, raised and is living in Bermuda and never earned income in or from the U.S. may nonetheless be required to file U.S. tax returns as a dual citizen because his or her mother was born in the U.S., pointed out attorney Caroline Ciruolo, partner for Rosenberg Martin Greenberg, a Baltimore law firm.

In addition, businesspeople and wealthy individuals used to living and working in different parts of the world may not realize the implications of failing to report all their accounts, said Maarten van Hengel, a founding partner of the New York and Boston-based wealth management firm Highmount Capital.

"It's not unusual for people to work in one country and live in another," said van Hengel, whose firm has offices in Amsterdam and Switzerland. "The world is getting smaller and much more complicated and it can be very complicated to keep up with changing laws."

"A lot of people don't pay attention," said Charles "Skip" Fox, a partner at McGuire Woods in Charlottesville, Va. "And a lot of their advisors may not be paying attention, but they should."

Taxpayers Urged To Take Advantage Of IRS Offer

But anyone who has an overseas account should take advantage of the 2011 Offshore Voluntary Disclosure Initiative, Fox and other attorneys warn. "My guess is that the IRS has gathered significant information from their first amnesty program [in 2009] and have more leads than they can follow," said Duncan Osborn, senior partner for Osborn, Helman, Knebel & Deleery in Austin, Tx. "It will lead them to turn up additional U.S. taxpayers with foreign accounts who didn't pay and throw the book at them."

"The risk of being found out in an era of heightened transparency," Osborn continued, "is quite high."

That point was underscored by IRS Commissioner Doug Shulman. "Tax secrecy continues to erode," Shulman said in a release announcing the program. "We are not letting up on international tax issues and more is in the works. For those hiding cash or assets offshore, the time to come in is now. The risk of being caught will only increase."

But taxpayers who participate in the new initiative may only have to pay a penalty of five percent if they can demonstrate they weren't aware of foreign reporting requirements or have inherited accounts that were not actively managed.

Taxpayers who never had more than \$75,000 in offshore accounts will be eligible for a penalty of 12.5 percent.

According to the IRS, approximately 15,000 U.S. citizens participated in its 2009 amnesty program. They paid a 20 percent penalty on their previous six years of undeclared income. About 2,000 cases from 2009 have closed, the agency said, generating almost \$400 million in revenue.

The IRS also reached [an historic agreement with UBS](#) that year to turn over names of the Swiss banks' U.S. clients who had not reported their foreign accounts and earnings. And this week the Swiss Finance Ministry said that Switzerland will make it easier for foreign

governments to locate citizens who have Swiss bank accounts. Switzerland will now provide information on holders of the accounts if foreign governments provide the bank-account number or other information such as a Social Security number or credit card details.

U.S. citizens who fail to disclose offshore accounts and file false tax returns are subject to criminal prosecution and face prison terms and fines of up to \$500,000, according to the IRS.

While attorneys praised the new initiative, some felt the August 31 deadline is too short.

There is a good chance that a number of taxpayers interested in the program will be unable to meet the deadline, said Ciruolo. She noted that it may take months to obtain the necessary account information from foreign financial institutions, as well as a significant amount of time to prepare the amended returns.

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