

Offshore bank accounts and income not reported to the IRS

The U.S. government's recent pronouncements regarding offshore bank accounts have generated concern among many U.S. taxpayers who hold accounts overseas. The following is a list of frequently asked questions with answers intended to help such taxpayers determine the right path forward.

1. What is a voluntary disclosure to the IRS of unreported income and/or an undisclosed foreign bank account?

A "voluntary disclosure" is the process of voluntarily reporting previously undisclosed income (or false deductions) through an amended return or the filing of a delinquent return. A taxpayer's timely, voluntary disclosure of a significant unreported tax liability is an important factor the IRS considers when determining whether the taxpayer should be referred to the U.S. Department of Justice for possible criminal prosecution. Whether a taxpayer has made a voluntary disclosure is also a factor the Department of Justice considers when deciding whether to prosecute the taxpayer.

2. If I have income that I have not reported, or a foreign bank account I have not disclosed, why should I consider coming forward to talk to the IRS now?

The IRS is increasing its effort to identify taxpayers who may have concealed income and assets through the use of accounts located outside the U.S. A U.S. taxpayer (or any person required to file a U.S. income tax return) who comes forward, before being contacted by the IRS with regard to potential unreported income, is more likely to avoid an IRS examination of current and prior year tax returns. There are many reasons for disclosing previously unreported income, or the existence of a foreign bank account, now.

- The IRS is vigorously working to obtain information from foreign banks with respect to accounts owned by U.S. persons.
- The IRS has increased rewards paid to informants who provide the IRS with the identity of taxpayers that have not reported income.

- A taxpayer may want to resolve unreported income issues before the taxpayer's estate is passed to heirs.
- IRS Commissioner Shulman stated in a speech in December 2008: "Given the ease with which capital moves around the world, the IRS must and will remain vigilant to ensure that wealthy individuals don't use offshore accounts to avoid paying their U.S. taxes. But that's just the beginning."
- Obtaining peace of mind.

3. What must I be prepared to do if I want to make a voluntary disclosure?

A taxpayer who is considering making a voluntary disclosure should come forward before the IRS has begun a civil or criminal investigation of the taxpayer and before the IRS is in possession of information that will inevitably implicate the taxpayer. The most important factors in a voluntary disclosure are that it is a timely, honest and complete effort to return to full compliance with U.S. tax rules. A taxpayer must be prepared to:

- Provide all required substantiation to the IRS to support the additional items of income the taxpayer has reported.
- File amended returns for the previous three to six years, depending on the taxpayer's unique facts.
- Pay all tax and underpayment interest due. A penalty up to 20% on the additional tax due for one or more years is also possible. A penalty for failure to file certain disclosure forms regarding foreign holdings or entities may also be assessed, if applicable.
- File Form TD F 90-22.1 (Report of Foreign Bank and Financial Accounts) to report a financial interest in, or authority over, one or more financial accounts in foreign countries for each year covered by the voluntary disclosure, in which the aggregate value of the accounts exceeds \$10,000. Depending on the year of the violation, a penalty of \$25,000, or up to 50 percent of the account value, may be assessed.
- Cooperate fully with the IRS if the tax returns filed pursuant to the voluntary disclosure are selected for examination.

4. If I come forward, do I risk going to jail?

It is currently the practice of the IRS that a taxpayer's voluntary disclosure will be considered along with all other factors in the investigation in determining whether criminal prosecution of the taxpayer will be recommended to the Department of Justice. The IRS tries to work with taxpayers that come forward to correct a wrong before the error is discovered (or would have inevitably been discovered) by the IRS. If a taxpayer's facts suggest a potential criminal prosecution may be pursued by the government, the taxpayer should retain legal counsel immediately.

5. If I come forward, will my privacy be protected? Will the IRS give my name to the press?

A taxpayer's privacy is protected in a civil action by section 6103 of the Internal Revenue Code (26 U.S.C. section 6103). Tax returns and return information are protected from disclosure. The IRS is very strict in its observance of the rules regarding taxpayer confidentiality. Severe penalties, including loss of employment and criminal prosecution, are available to punish any IRS employee that makes an unlawful disclosure of taxpayer return information. PricewaterhouseCoopers LLP also enforces strict codes of conduct with all of its employees who work with confidential taxpayer return information.

6. How long does the process of a voluntary disclosure take before I know the IRS views me as in full compliance with U.S. tax rules?

The process of gathering information to prepare tax returns, preparing the returns, and negotiating the terms of a voluntary disclosure with the IRS can take several months or more. Each taxpayer's facts are different. The number of months required to complete a voluntary disclosure will almost always be less than the time the IRS would require if it opened its own examination of the taxpayer's tax returns filed for several years.

7. What is the cost of making a voluntary disclosure?

Each taxpayer's facts are different, but a typical voluntary disclosure includes the following costs:

- Payment of federal tax due plus underpayment interest
- Payment of State tax due plus underpayment interest
- Payment of penalties that are agreed to as part of IRS acceptance of the voluntary disclosure
- Preparation of tax returns and negotiation of terms for voluntary disclosure
- Possible attorney fees

For more information

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