

Foreign Bank Account Reporting (FBAR) and the IRS Voluntary Compliance Initiative of 2009.

On March 23, the IRS announced its voluntary compliance initiative to encourage disclosure of foreign bank account details, such as previously undisclosed foreign financial accounts and entities. The policy will remain in place until Sept. 23, 2009. Taxpayers having a financial interest or signature authority over one or more foreign bank accounts worth \$10,000 or more should be aware that IRS is targeting these accounts, and this initiative should be carefully evaluated. The IRS has already announced it is hiring more agents and has launched projects involving LGT bank in Liechtenstein, as well as UBS in Switzerland.

Taxpayers holding an interest in or signature authority over a foreign account have mandatory filing requirements. The two most common are (1) indicating the existence of all foreign account(s) and include any income earned on their annual income tax returns, and (2) separately filing by June 30 of each year Form TD 90-22.1, Report of Foreign Bank and Financial Accounts (FBAR). Other filing requirements may also apply, particularly if a corporation or trust is involved.

Taxpayers who fail to properly report their foreign accounts and pay taxes on foreign income could face penalties far exceeding the amounts maintained in their accounts. In the case of a willful violation, the penalty may be the greater of \$100,000 or 50% of the unreported balance *for each year* an account is unreported. To compound matters, the IRS would likely pursue any taxes owed and assert any applicable penalties under the Internal Revenue Code, which could potentially entail the 75% penalty for fraud.

The IRS voluntary disclosure initiative provides a window of opportunity for U.S. Taxpayers who have not complied with foreign bank account reporting requirements and who have not paid taxes on their foreign income. The program does not guarantee that criminal charges will not be brought, but a properly made voluntary disclosure greatly reduces the likelihood of criminal liability. The program further offers Taxpayers an opportunity to significantly reduce civil liabilities by avoiding or reducing the foreign bank and financial account balance nondisclosure penalty provisions and other provisions pertaining to various information returns.

As Government spending reaches record highs, it undoubtedly sees foreign bank accounts as a fertile source of increased tax revenues. In mid-2008, IRS was provided account information on several thousand Liechtenstein LGT depositors by a bank employee seeking IRS whistleblower money for the stolen information. In February 2009, the Government filed suit against Swiss banking giant UBS, to compel disclosure of the names of as many as 52,000 U.S. citizens holding overseas accounts. These secret accounts are alleged by the government to hold some \$14.8 billion in assets—all of which may be subject to significant reporting and income tax penalties.

IRS has announced it is increasing its international tax enforcement efforts. IRS Commissioner Shulman has described the voluntary compliance initiative as “a last chance for people to come clean on their own” and “those who truly come in voluntarily will pay back taxes, interest and a significant penalty, *but can avoid criminal prosecution.*” The voluntary disclosure period is open for six months; thus participants must file by September 23, 2008.

Affected taxpayers should discuss their options with legal and accounting professionals, as the guidance does not confer upon taxpayers any substantive rights and there is no guarantee that taxpayers will not be referred for criminal prosecution. Under the initiative, taxpayers who failed to file Foreign Bank Account Reports (FBAR), Form TD 90-22.1, receive a reduced penalty of 20 percent; and in certain limited circumstances as low as 5 percent. Back taxes and interest are computed going back 6 years—2003 through 2008. Participants must also pay an accuracy penalty or a delinquency penalty for those years and forgo any “reasonable cause” penalty exceptions.

Taxpayers wishing to participate in this initiative are advised by the American Institute of Certified Public Accounts (AICPA) to contact a tax professional, both a CPA and an attorney, immediately in order to determine whether disclosure is necessary, ensure that they meet the September 23 voluntary disclosure deadline, and to protect the taxpayer’s rights.

[Andreozzi Fickess LLP](#) can provide your legal counsel needs regarding these foreign accounts and the compliance initiative. Our firm also maintains strategic relationships with CPAs [Freed Maxick & Battaglia CPAs, PC](#), in Buffalo, NY. These firms can provide timely and accurate service regarding all aspects of these foreign account issues.

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