

Rosen Seymour Shapss Martin & Company LLP

Certified Public Accountants & Profitability Consultants

Tax Alert

Foreign Bank and Financial Account Report (FBAR): Voluntary Disclosure - Third Time's a Charm

Dear Clients and Friends of the Firm:

For a third time in the past three years, the IRS has announced an amnesty, of sorts, to encourage taxpayers to report their ownership and signature rights over foreign financial accounts. The first voluntary disclosure program was in 2009, and the IRS considered it a success. However, their statistical analysis showed there were many more unreported foreign financial accounts, so the IRS announced a second program in 2011 (with increased penalties). Once again, the IRS noted success tempered by statistics showing continued non-compliance. To date, the IRS has collected more than \$4.4 billion from the 2009 and 2011 programs, based upon 33,000 voluntary disclosures.

The new program, announced on January 9, 2012, tracks the 2011 program except that the top penalty increases from 25% to 27.5%. Additionally, there is no deadline under the new program-but the IRS ominously says that the "terms of the program could change at any time going forward."

Generally, all U.S. persons are required to report their foreign financial accounts that have a value of \$10,000 or more any time during the year (ownership, joint ownership, signature rights even without ownership, etc.) by June 30th of the following year. The form is TD F90-22.1, called the FBAR form.

How to participate

Taxpayer must file all FBAR returns from 2003 to the present, together with amended income tax returns (if taxpayer did not report income from any foreign financial account). Taxpayer must include the following payments:

- Income taxes
- 20% of the underpayment of income tax (the accuracy-related penalty)
- 5% per month, up to 25% maximum, for late filing (if returns were delinquent)
- 0.5% per month, up to 25% maximum, for late payment

- Interest
- FBAR penalty, which is 27.5% multiplied by the highest aggregate balance in foreign bank accounts/entities or value of foreign assets during the period 2003 through the present

FATCA-the complement to FBAR

Despite the broad reach of FBAR, the information disclosed in an FBAR form is not readily available to an IRS examiner. FBAR originated in the Bank Secrecy Act of 1970, not in the Internal Revenue Code. FBAR information does not automatically appear in the database used by IRS examiners, and to date, an examiner has to request that taxpayer supply a copy of the form. In 2010, Congress enacted the Foreign Account Tax Compliance Act (FATCA), which requires foreign financial institutions (FFIs) to report income earned by U.S. taxpayers. This is analogous to the Forms 1099-INT or 1099-DIV issued by U.S. financial institutions. Please see our Tax Alert dated January 19, 2012 for more information about FATCA.

Should you require any additional information on this matter, please feel free to contact Mark Peltz at 212-303-9003 or via e-mail at mpeltz@rssmcpa.com. For more information on RSSM, please visit our website at www.rssmcpa.com.

Sincerely,

Rosen Seymour Shapss Martin & Company LLP

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