

IRS Offers Amnesty To Offshore Account Non-filers

As we have been reporting, the IRS recently increased its focus on the reporting of foreign bank and financial accounts. In its view, there has been a significant lack of compliance surrounding offshore financial account reporting and the subsequent filing of related Foreign Bank Account Reports (FBAR).

Any U.S. person with a financial interest in, signature authority, or other authority over any foreign financial account with an aggregate value in excess of \$10,000 at any time during the calendar year must report to the Treasury. The information is reported by filing the Form TD F 90-22.1 by June 30 of the following year.

The IRS has a broad definition of both a "U.S. person" and a "financial account." For these purposes, a "U.S. person" includes U.S. citizens and residents, as well as those foreign individuals who are doing business in the U.S. This is applicable to individuals, corporations, partnerships, trusts, and estates, among others. A "financial account" includes any bank, securities, securities derivatives, or other financial instruments accounts, as well as any savings, demand, checking, deposit, or any other account maintained with a financial institution.

Noncompliance for minor violations can result in penalties up to \$10,000 per account. For willful failures, the civil penalties can be at least \$25,000 and can be increased to the greater of \$100,000 or 50% of the amount in the account.

Hedge Fund Significance

On June 12, 2009, the American Bar Association and American Institute of Certified Public Accountants presented a teleconference together with a panel of IRS personnel to clarify the FBAR effect on offshore hedge funds. The IRS representatives clarified that an offshore hedge fund is considered a "foreign financial account" and U.S. investors in such a fund must file a FBAR.

Accordingly, the FBAR filing requirements will likely apply to the following U.S. persons:

- Any direct investor in an offshore investment fund including tax-exempt investors such as foundations, IRAs, qualified plans, and universities
- Any investor that owns more than 50% of a U.S. or foreign entity which is

- such a direct investor in an offshore fund
- Any investor in a foreign corporation which may be considered a co-mingled fund
 - A “feeder fund” that invests in an offshore investment fund under a master-feeder structure
 - An investment manager with a financial interest in an offshore investment fund including a profits interest or “carried interest” in the fund, and potentially a
 - deferred compensation arrangement with the offshore fund
 - A managing member or general partner of an offshore fund that has authority over the offshore fund
 - Any individual (including officers of the offshore fund and officers of an investment advisor) who has signature or other authority over an offshore investment fund

In August the IRS issued Notice 2009-62, which states that persons who only have signature or other authority over a foreign financial account (no financial interest in) and offshore hedge funds have until June 30, 2010, to file 2008 and earlier reports without penalties.

Offshore Amnesty Program

Because there is confusion regarding these guidelines, the IRS introduced a new “Offshore Amnesty Program” to encourage proper reporting. Under the program, affected taxpayers are granted a six-month period (until September 23, 2009) to properly report and avoid potential criminal prosecution and hefty fines that could otherwise apply. The cost to accepted applicants will be the payment of the prior six years’ income taxes (including applicable penalties and interest), plus a one-time 20% penalty based on the year with the highest aggregate account balance.

Taxpayers who have properly reported income but have failed to properly file FBAR forms are not eligible for the Amnesty Program. Rather, they should file these forms by September 23, 2009, and attach a statement explaining why the reports are late.

For specific information regarding your circumstances, please contact Russell Goldberg at 407-869-8900 or rgoldberg@kglc.com.

Please note that any and all terms of the amnesty program are applicable only to taxpayers that make voluntary disclosure requests and who fully cooperate with IRS requirements.

IRS Circular 230 Disclosure

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