

PUBLICATION

Taxpayers Given Another Chance to Tell IRS About Unreported Foreign Accounts and Assets

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U.S. citizens and resident aliens have another opportunity to disclose foreign holdings with less than normal penalties before August 31, 2011. Under U.S. tax laws, the worldwide income of any U.S. citizen or resident alien is subject to tax. In addition, taxpayers are required to file certain information returns related to financial accounts and assets held in a foreign country. Failure to report overseas income or failure to file foreign informational returns may result in severe civil or criminal penalties.

2009 Program

The Internal Revenue Service (IRS) has made a priority of combating international tax evasion and bringing funds held in undisclosed offshore accounts back into the U.S. tax system. With this goal in mind, in 2009 the IRS implemented the 2009 Offshore Voluntary Disclosure Program (the 2009 Program), which allowed eligible taxpayers to avoid substantial civil penalties and the threat of criminal prosecution by voluntarily disclosing their foreign accounts and assets. Under the 2009 Program, more than 15,000 taxpayers voluntarily disclosed foreign accounts and assets. For a summary of the 2009 Program and background on reporting requirements, [click here](#).

2011 Program

Because of the 2009 Program success and the continuing interest from approximately 3,000 additional taxpayers, the IRS recently announced a second voluntary disclosure program, the 2011 Offshore Voluntary Disclosure Initiative (the 2011 Program). The 2011 Program is a modified version of the 2009 Program, with a longer disclosure period and increased special penalty. On or before August 31, 2011, eligible taxpayers must voluntarily disclose foreign accounts and assets and pay (or make a good faith arrangement with the IRS to pay) all taxes, interest and penalties under the 2011 Program special penalty framework. These disclosures must cover undisclosed foreign accounts and assets for 2003 through 2010 (the 2011 Program Disclosure Period). In addition, eligible taxpayers must enter into a closing agreement with the IRS on or before August 31, 2011.

Penalty Framework

Under the 2011 Program's special penalty framework, eligible taxpayers must pay all tax and interest for the 2011 Program Disclosure Period, together with penalties as described below:

1. A 20 percent accuracy-related penalty on the underpayment of taxes during the 2011 Program Disclosure Period;
2. Any applicable failure to file and failure to pay penalties; and
3. In lieu of all other penalties that may apply, a penalty (the 2011 Program Penalty) equal to 25 percent of the amount held in the foreign account in the year with the highest aggregate account or asset value during the 2011 Program Disclosure Period.

Possible Penalty Reduction

2011 Program. The 2011 Program Penalty may be reduced to 12.5 percent if the taxpayer can establish facts that show the foreign account or asset value did not exceed \$75,000 in each year of the 2011 Program Disclosure Period. In addition, and very importantly, the 2011 Program Penalty may be reduced to 5 percent if the taxpayer establishes facts that show the following: (a) the taxpayer did not open the foreign account or cause the foreign account to be opened or formed; (b) the taxpayer has exercised minimal, infrequent contact with the foreign account; (c) the taxpayer has, except for a withdrawal closing the account and transferring the funds to a U.S. account, not withdrawn more than \$1,000 from the account in any year during the 2011 Program Disclosure Period; and (d) the taxpayer can establish all applicable U.S. taxes have been paid on the funds in the accounts/entities (where only the earnings have escaped U.S. taxes).

2009 Program. The 2011 Program also offers new opportunities to those taxpayers who disclosed under the 2009 Program. Under the 2011 Program, these taxpayers may recover amounts paid to the IRS if, had the 2011 Program rules applied, their penalty would have been reduced to either 12.5 percent or 5 percent.

Summary

The deadline to participate in the 2011 Program is August 31, 2011. Baker Donelson attorneys represented taxpayers who took part in the 2009 Program and also represented taxpayers who sought to reduce the applicable penalties.

If you are interested in taking part in the 2011 Program or otherwise wish to discuss the reporting and filing requirement related to unreported offshore accounts and income, please contact any attorney in the Firm's Tax Department.