



## IRS Voluntary Disclosure Terms for Taxpayers with Offshore Accounts

On March 26, 2009, the IRS provided guidance to its field agents on how to deal with U.S. taxpayers who own interests in foreign (offshore) financial accounts and have previously not disclosed these accounts. IRS Commissioner Douglas Shulman announced if these taxpayers come forward and divulge all of their offshore accounts they can expect penalty relief. The penalty relief portion of the voluntary disclosure program will only be available to taxpayers who come forward within the next six months.

Currently, if during a course of an audit, IRS agents discover a taxpayer has not reported an interest in an offshore accounts or income accruing on such accounts, penalties of up to 50% of the balance of each offshore account may be imposed for each year an account remains undisclosed. Additionally, interest will also be due on any unpaid tax.

### Under the voluntary disclosure program the IRS commissioner announced:

- ▶ Taxes on the income attributable to the previously undisclosed accounts would be due for the last six years, or the length of time the account was in existence, if less.
- ▶ Interest on the tax imposed on the income attributable to the previously undisclosed accounts would be due for the last six years, or the length of time the account was in existence, if less.
- ▶ The imposition of a 20% accuracy-related penalty under Internal Revenue Code (IRC) §6662 or a 25% delinquency penalty under IRC §6651, with no reasonable cause exception, for each tax year at issue.
- ▶ In lieu of all Foreign Bank and Financial Account (FBAR) information return penalties, a penalty equal to 20% of the amount in the offshore account for the year in which the account had the highest aggregate value. This penalty may be reduced to 5% under special circumstances if a) the taxpayer did not open or cause to be open the account; 2) there has been no activity in the account (e.g.: deposits or withdrawal) during the period in which the taxpayer controlled the account; and c) all applicable U.S. taxes (e.g.: estate) have been paid on the account such that only earnings have escaped U.S. taxation.
- ▶ This program is only applicable to taxpayers who make a voluntary disclosure request and who cooperate with the IRS in making a complete disclosure of the facts and arrangements to pay the liabilities due.
- ▶ The benefits under the voluntary disclosure program are not available once the IRS or Department of Justice initiates a civil examination or criminal investigation.

### The advantages to participating in the program are:

- ▶ The IRS will not pursue criminal tax evasion charges against taxpayers who, under this program, voluntarily disclose offshore accounts which they own.
- ▶ The IRS will not pursue other penalties such as IRC §6663 fraud penalties (75% of unpaid tax), or the penalty for willful failure to file Form TD F 90-22.1, Report of Foreign Bank and Financial Accounts (the greater of \$100,000 or 50% of the offshore account balance). These penalties annually apply to undisclosed accounts and assets during the relevant tax years.

Form TD F 90-22.1 is due each year on June 30 and an extension of time to file is not available. Even though the filing of this form is administered by the IRS under Title 26 of the U.S. Code (the Internal Revenue Code) the definitions and rules for filing this form are contained in the Bank Secrecy Act provisions in Title 31 of the U.S. Code (Money and Finance).

Care must be taken in determining who must file this form, the types of account which must be reported, and who owns or has signatory authority over an offshore account. Please contact your Keiter Stephens representative with your specific questions.