

May 2009

TAX ALERT

IRS INSTITUTES VOLUNTARY DISCLOSURE PROGRAM FOR PEOPLE WITH OFFSHORE ACCOUNTS

Program in effect until September 23, 2009

The Internal Revenue Service ("IRS") recently announced a voluntary disclosure program for people with interests in offshore accounts.

Foreign Bank Account Reporting and Tax Obligations

While it is perfectly legal for citizens of the United States, legal permanent residents (i.e., Green Card holders) and other persons who are U.S. "tax" residents to own offshore bank and brokerage accounts, U.S. income tax is due on the income earned and capital gains recognized in such accounts and there are various reporting requirements that should be complied with respect to these accounts. It is fairly common knowledge that failure to report income earned in an offshore account may be considered tax evasion, which can result in significant penalties and criminal liability. However, many people do not know that failure to annually report to the IRS certain information regarding offshore accounts worth in the aggregate more than \$10,000 on U.S. Treasury Form TD F 90-22.1 (Report of Foreign Bank and Financial Accounts) (also known as the "FBAR") can also result in significant civil and even criminal penalties.

IRS Crackdown on Unreported Foreign Bank and Brokerage Accounts

The U.S. government believes that individuals have used offshore accounts to hide income to evade U.S. income taxes. The IRS, as you may know, has recently been aggressively pursuing individuals with interests in offshore accounts. This has resulted in the disclosure by UBS, which formerly had a reputation for absolute secrecy, and possibly other institutions, of many names of U.S. persons holding Swiss or other offshore accounts to the U.S. government. In addition, on July 8, 2008, the IRS issued and served a summons on UBS demanding that UBS produce account records relating to accounts held by UBS for U.S. taxpayers. The IRS has begun investigating individuals with interests in offshore accounts and has commenced criminal prosecutions in some of these matters.

Relevant Tax and Reporting Rules

In general, there is no statute of limitations for the assessment of taxes with regard to income that was deliberately not reported to the U.S. government. In other words, the IRS can investigate and impose taxes on any year and all years in which unreported income was earned, even if that income was earned 10, 20, or more years ago. Interest is imposed on unpaid income taxes from the date the tax liability was due and various penalties, some of which may be significant, can apply. For example, the penalty for a significant underpayment of income tax can be 20% of the unpaid tax and the penalty for an underpayment of tax due to fraud is 75% of the unpaid tax.

In addition to the interest and penalties on unreported income, failure to file the FBAR with respect to foreign accounts worth in the aggregate more than \$10,000 can result in additional civil and criminal penalties. The civil penalties for failure to file the FBAR can be as high as 50% of the balance of the account in any given year. Criminal penalties for violating the FBAR requirements can range from a \$250,000 fine to 5 years in prison or both. In addition, if the FBAR

(Please see next page for more information.)

666 Fifth Avenue, 28th Floor • New York • NY 10103-0084
600 Old Country Road • Citibank Building • Garden City • NY 11530-2011
Court Plaza North • 25 Main Street, 6th Floor • Hackensack • NJ 07601-7015

212.977.9700 Tel • 212.262.5152 Fax
516.229.9400 Tel • 516.228.9612 Fax
201.487.3700 Tel • 201.646.1764 Fax

violation is committed while violating another law or as part of a pattern of illegal activity, criminal penalties can be as high as a \$500,000 fine or 10 years in prison or both.

New Voluntary Disclosure Program

On March 26, 2009, the IRS announced a new program that is designed to encourage taxpayers with offshore assets to voluntarily disclose this information. While participation in this program will require a taxpayer to pay certain back taxes, interest and penalties, the taxpayer's potential liability for tax, interest and penalties can be significantly reduced. Perhaps more significantly, voluntary disclosure through this program may allow eligible individuals to avoid criminal prosecution.

Participation in the new voluntary disclosure program is only available to taxpayers who have initiated disclosure on or before September 23, 2009.

This new voluntary disclosure program may provide an opportunity for individuals who have not reported certain income or interests in offshore accounts or completed all relevant U.S. government filings regarding such accounts to significantly reduce potential exposure for interest and penalties on unreported or undisclosed foreign accounts and to avoid criminal liability. The U.S. government may take a much stronger position with regard to taxpayers who have not been paying taxes or filing the required documents and who fail to take advantage of this program. Please contact your attorney at Phillips Nizer LLP or one of the attorneys below for further guidance.

We are available to provide counsel and guidance concerning this issue, as well as other tax concerns not discussed in this Alert. For additional information on the issues herein and other issues arising under federal law, please contact us.

Contact:	Michael W. Galligan	212.841.0572	mgalligan@phillipsnizer.com
	Jeffrey B. Kolodny	212.841.0582	jkolodny@phillipsnizer.com
	Tiberio Schwartz	212.841.0568	tschwartz@phillipsnizer.com

Circular 230 Disclosure: Pursuant to U.S. Treasury Department Regulations, we are required to advise you that, unless otherwise expressly indicated, any federal tax advice contained in this communication, including attachments and enclosures, is not intended or written to be used, and may not be used, for the purpose of (i) avoiding tax-related penalties under the Internal Revenue Code or (ii) promoting, marketing or recommending to another party any tax-related matters addressed herein.

This information is provided as a public service to highlight matters of current interest and does not imply an attorney-client relationship. It is not intended to constitute a full review of any subject matter, nor is it a substitute for obtaining specific legal advice from competent, independent counsel.