

THE IRS ISSUES OPTIONAL FORM FOR TAXPAYERS TO APPLY FOR VOLUNTARY DISCLOSURE OF FOREIGN BANK ACCOUNT

In response to the large volume of requests that it received, on July 29, 2009, the IRS issued an optional form (<http://www.irs.gov/compliance/enforcement/article/0,,id=205909,00.html>) for taxpayers who want to make a voluntary disclosure of foreign bank accounts or assets. A taxpayer may complete the form and send it to the IRS at the appropriate address listed on the website above. The form must be sent (and should be received by the IRS) before September 23, 2009 in order to be eligible for the amnesty program that the IRS announced on March 26, 2009. The amnesty program provides a favorable penalty framework for failure to file Form TD F 90-22.1 ("FBAR").

The favorable 20% penalty under the amnesty program is available only if the IRS accepts a taxpayer's voluntary disclosure. Generally, a voluntary disclosure will not be accepted by the IRS unless the disclosure is received by the IRS before it has initiated an examination or investigation of the taxpayer or received information alerting it of the taxpayer's noncompliance. Therefore, a taxpayer interested in the amnesty program should make a voluntary disclosure as early as possible.

The questions on the form include personal identifying information, the source of funds for the offshore accounts or assets, an estimate of the annual range of the highest aggregate value of the accounts or assets, an estimate of the potential unreported income from the accounts, a list of the financial institutions and the countries in which the institutions are located, a list of the persons affiliated with the accounts, the purpose for establishing the accounts or assets, the dates the accounts were opened/closed, points of contact at the financial institutions, and an explanation of all face-to-face meetings and other communications with the institutions, independent advisors or investment managers regarding the accounts or assets.

The taxpayer must sign the form under "penalties of perjury" and certify that the taxpayer is willing to cooperate with the IRS, including in assessing income tax liabilities and making good faith arrangements to pay all taxes, interest and penalties associated with the disclosure. Sending the form only initiates the process and does not mean that the IRS will accept the voluntary disclosure. The IRS has stated that, if the form is fully completed, it generally will have "the information we need to indicate to the individual whether they're eligible to make a voluntary disclosure."

To ensure compliance with requirements imposed by the IRS, we inform you that, unless explicitly provided otherwise, any U.S. federal tax advice contained in this communication (including any attachments) is not intended or written to be used, and cannot be used, for the purpose of (i) avoiding penalties under the Internal Revenue Code or (ii) promoting, marketing or recommending to another party any transaction or matter addressed herein.

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