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The IRS Tax Amnesty Programs – Fact Or Fiction

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Department of the Treasury
Internal Revenue Service

Joshua Ashman, CPA is a US trained and licensed tax accountant. Joshua specializes in the areas of international taxation and expat taxation. Joshua has extensive experience with international compliance and expat tax returns and the issues that typically arise, such as reporting related to foreign pension schemes, Passive Foreign Investment Companies (PFICs), FATCA and Form 8938, FBAR reporting, foreign trust reporting on Form 3520, and reporting related to ownership of foreign corporations (Form 5471). Prior to co-founding Expat Tax Professionals LLC, Joshua held a senior managerial position in the tax compliance practice of PwC.

Ephraim Moss, Esq. is a US attorney specializing in international tax matters. Ephraim has extensive experience in counseling clients on matters such as cross-border tax structures, tax return treaty positions, expatriation matters, and disclosure of foreign financial accounts. In recent years, Ephraim has focused his practice on assisting delinquent taxpayers with utilizing the various IRS disclosure programs and has regularly represented clients before the IRS. Prior to co-founding Expat Tax Professionals LLC, Ephraim held a managerial position in the international tax practice of Ernst & Young.

Introduction

Despite the overall success¹ of the IRS tax amnesty programs² in recent years, many expats remain hesitant to enter the programs due to a number of misunderstandings surrounding their requirements and their outcomes. In this article, we separate fact from fiction so that you can decide intelligently whether tax amnesty is right for you.

Fact Or Fiction – Tax Amnesty Is Rarely Granted

Answer: Fiction

In recent years, the IRS has made it clear to taxpayers that it is more interested in disclosure than in punishing late filers or non-filers. In 2014, the IRS expanded its more lenient program, the Streamlined Procedures,³ allowing taxpayers to participate if they can explain in a written statement⁴ how their delinquency was not intentional.

This lenient approach has allowed many delinquent taxpayers to successfully enter its amnesty programs. The latest IRS statistics show that the IRS tax amnesty programs continue to be a popular and effective method for delinquent taxpayers to catch up with the IRS. According to the IRS, 55,800 taxpayers have used the Offshore Voluntary Disclosure Program (OVDP) to resolve their tax obligations, while an additional 48,000 taxpayers have used the Streamlined Procedures.

Fact Or Fiction – I Need To Disclose My Entire Tax History

Answer: Fiction

One of the strongest benefits of entering an IRS tax amnesty program is the ability to become completely compliant with your expat taxes without having to disclose your entire past. The IRS recognized that gathering financial information about the distant past can be cumbersome, if not impossible, so in order to encourage disclosure, it limited the tax years that require filing.

The two main amnesty programs currently offered by the IRS are the OVDP and the Streamlined Procedures. Under the OVDP, US expats are required to file tax returns and FBARs⁵ for the prior eight years. Under the Streamlined Procedures, taxpayers are required to file only the prior three years of tax returns, including required information returns, and six years of FBARs.

Fact Or Fiction – I May Not Pay Any Penalties

Answer: Fact

A taxpayer who qualifies for the foreign offshore Streamlined Procedures⁶ can come clean with the IRS and suffer *no penalties*. In order to qualify, a taxpayer must fulfill a non-residency requirement and certify that the failure to report all income, pay all tax, and submit all required information returns, including FBARs, resulted from non-willful conduct. Unpaid taxes and interest must be paid, if due, but in many cases, taxpayers can utilize the Foreign Earned Income Exclusion and/or foreign tax credits to reduce or eliminate taxes due.

While the OVDP is not penalty-free, it does limit the penalties that would otherwise be imposed. Under the OVDP, in lieu of all other penalties that may apply to the undisclosed foreign assets and entities, including the FBAR penalty, a reduced penalty of 27.5 percent (which can be increased up to 50 percent in certain cases) will be calculated based on the highest aggregate balance in foreign bank accounts/entities or value of foreign assets during the period covered by the voluntary disclosure.

Fact Or Fiction – The Streamlined Procedures And OVDP Are My Only Two Options

Answer: Fiction

While the Streamlined Procedures and OVDP are the two most popular tax amnesty programs, there are a number of additional options available to delinquent taxpayers.

For example, there are special programs and procedures for taxpayers who have only failed to file FBARs or have failed to include an informational form ⁷ with their tax return, such as the form for ownership of a foreign corporation.

Fact Or Fiction – The IRS Tax Amnesty Programs May Not Last Forever

Answer: Fact

Contrary to popular belief, the IRS has given no certainty that it will maintain its tax amnesty programs on a permanent basis. In a recent interview,⁸ IRS Commissioner John Koskinen did express that the IRS is a long way from moving away from the voluntary disclosure programs, but at some point, once ignorance is no longer a valid excuse, the programs will come to an end or become significantly modified.

For this reason, if you are an expat who is late on filing your US tax returns or FBARs, you should consider coming clean sooner rather than later. A number of options are currently available to you, including and in addition to the IRS tax amnesty programs. Each option has its advantages and disadvantages, and choosing the best way forward requires a careful analysis of your particular facts and circumstances.

For a full picture of the IRS tax amnesty programs and for practical tips for late filers, you are welcome to download and read our *Expatriate Tax Handbook – Solutions for Delinquent Taxpayers*.⁹

ENDNOTES

- 1 See <http://www.expattaxprofessionals.com/Success-IRS-Amnesty-Programs>
- 2 See <http://www.expattaxprofessionals.com/tax-amnesty-for-late-filers/>
- 3 See <http://www.expattaxprofessionals.com/role-residency-streamlined-procedures/>
- 4 See <http://www.expattaxprofessionals.com/irs-further-tweaks-form-14653-for-the-streamlined-amnesty-program/>
- 5 See <http://www.expattaxprofessionals.com/expat-tax-information-fbar/>
- 6 See <http://www.expattaxprofessionals.com/the-expat-streamline-question/>
- 7 See <http://www.expattaxprofessionals.com/resident-owns-foreign-corporation-trust-failed-file-required-offshore-information-forms-irs-painless-cure/>
- 8 See <http://www.expattaxprofessionals.com/irs-crackdown-foreign-accounts-future-tax-amnesty-programs/>
- 9 See <http://www.expattaxprofessionals.com/wp-content/uploads/2016/10/Expat-Tax-Handbook.pdf>