

# FBAR

## Foreign Bank Account Reporting

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Form TD F 90-22.1 is required when a U.S. Person has a financial interest in or signature authority over one or more foreign financial accounts with an aggregate value greater than \$10,000 at any time during the year. If a report is required certain financial records must also be kept.

### **What Do I Have To Do Between Now and September 23, 2009 (if anything)?**

There is a minimum penalty of \$10,000 if Form TD F 90-22.1 (sometimes referred to as the “FBAR”) is filed late. If there is reasonable cause for the late filing the IRS will abate the penalty but it is not automatically granted. However, as described in more detail below, recent IRS pronouncements create an exception and eliminate penalties automatically for failure to timely file Form TD F 90-22.1 **if** certain facts are present and the taxpayer takes certain actions. Specifically, the taxpayer’s foreign income in prior years has been timely reported and paid, the taxpayer **recently** learned of the FBAR filing requirement, **and** the late FBAR is filed by September 23, 2009 with an explanation of why it was late.

More specifically, this guidance, is found in an IRS news release “Voluntary Disclosure: Questions & Answers” (Q&A) #9 and #43, and provides important detail. These exceptions are limited to the facts given in them.

**Q&A #9** addresses a taxpayer who reported and paid the tax in **prior years** on all of its taxable income but only recently **learned** of the FBAR requirement. It appears that Q&A #9 applies to all years prior to 2008, as Q&A #43 issued after Q&A #9 applies only to 2008. In addition to the “recently learned” requirement other conditions must be met, among which are filing the FBAR at the correct address, explaining why the FBAR is being filed late, and attaching tax returns for the relevant year(s).

**Q&A #43** (as mentioned above) is **specific to the 2008** tax year only and addresses two situations:

(1) when and how to file the TD F 90-22.1 if the return reporting all of the tax has already been filed, the taxpayer **recently learned** of FBAR requirement, and there is **insufficient time** to get the information to file the FBAR? Note this last requirement is not found in Q&A #9.

(2) when to file the TD F 90-22.1 if the **return is on extension?**

In the former situation, guidance is given to file the TD F 90-22.1 before September 23, 2009 with a copy of the 2008 return that was filed. In the latter, guidance is given to file just the TD F 90-22.1 before September 23, 2009 (as the return is on extension).

In both cases penalties will be waived.

If you have clients who disclosed to you that they have omitted foreign income on prior year returns please review CAMICO's article on the IRS Voluntary Disclosure Program. **Your client must act before September 23, 2009 to enter into this program.**

### **FBAR Background And Recent Changes**

The IRS released a new version of Treasury Form TD F 90-22.1 in October 2008 which made significant changes to the reporting of foreign financial accounts held by U.S. citizens and others. These changes have generally expanded the definition of those who have to file, expanded the definition of financial accounts, changed the financial information which is reported on the form, and added more parts to the form.

These new rules don't change the basic statutory framework found in 31 U.S.C. §5314 which is the basis for Treasury Regulation 31 C.F.R. §103.24 which provides:

“Each person subject to the jurisdiction of the United States (except a foreign subsidiary of a U.S. person) having a financial interest in, or signature or other authority over, a bank, securities, or other financial account in a foreign country shall report such relationship to the Commissioner of the Internal Revenue for each year in which such relationship exists, and shall provide such information as shall be specified in a reporting form prescribed by the Secretary to be filed by such persons. Persons having a financial interest in 25 or more foreign financial accounts need only note that fact on the form. Such persons will be required to provide detailed information concerning each account when so requested by the Secretary or its delegate.

Acting under the authority granted to the Secretary of the Treasury in §5314 the Treasury Department has amended the instructions to the Form TD F 90-22.1 to obtain greater compliance in the reporting of foreign financial accounts.

### **THE FILING REQUIREMENT**

A TD F 90-22.1 must be filed on or before June 30<sup>1</sup> of the year following the calendar year in which **ALL** of the following apply:

1. The filer is a U.S. Person
2. The U.S. Person has a financial account(s) in a foreign country
3. The U.S. Person has a financial interest in the account **or** signature authority over the foreign financial account

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<sup>1</sup> There are no extensions of time available for filing the TD F 90-22.1

4. The aggregate amount(s) in the accounts(s) valued in dollars exceed \$10,000 at any time during the calendar year

### Who is a U.S. Person?

The term “United States Person” means a citizen or resident of the United States, or a person in and doing business in the United States<sup>2</sup> as well as domestic partnerships, domestic corporations, or domestic estates and trusts.

However, IRS Announcement 2009-51 issued on June 5, 2009 suspends for calendar 2008 the reporting obligation for those persons who are *not* citizens, residents, or domestic entities. Thus, the portion of the TD F 90-22.1 instructions which include “a person in and doing business in the United States” is removed from the definition of a U.S. Person for the time being. Announcement 2009-51 re-states the definition of a U.S. Person as being a citizen or resident of the United States, a domestic partnership, a domestic corporation, or a domestic estate or trust.

Announcement 2009-51 doesn’t further clarify what is meant by “resident of the United States.” The FBAR rules come under Title 31 not the Internal Revenue Code (Title 26) so the definition of “resident” found in IRC 7701(b) is generally inapplicable. However, the Internal Revenue Manual (IRM)<sup>3</sup> does provide guidance. It states that an individual can establish non-residency by showing that he/she:

- Doesn’t hold a green card
- Doesn’t meet the substantial presence test of IRC 7701(b)(3), or
- Has not made the first-year residency election under IRC 7701(b)(4)

There is no guidance for individuals who are part year residents, who have made an election under IRC 6013(g) or (h) to be treated as a resident for U.S. tax purposes, or who have invoked a treaty provision.

Others who are exempt from FBAR reporting.

*The previous instructions for the TD F 90-22.1 specifically exclude from the FBAR filing requirement any officer or employee of a qualifying corporation (defined as a domestic corporation whose securities are listed on a U.S. securities exchange, **or** which has assets exceeding \$10,000,000 **and** has 500 or more shareholders) if the officer or employee has no personal financial interest in the account and has been advised by the Chief Financial Officer that it has filed a current TD F 90-22.1 that includes the account.*

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<sup>2</sup> Instructions TD F 90-22.1

<sup>3</sup> Internal Revenue Manual 4.26.16.3.1.1

The instructions on the new TD F 90-22.1 permit the filing assurance to come from any responsible officer not just the CFO. These instructions further exclude officers and employees of domestic subsidiaries of qualifying corporation(s) from the filing requirement if the domestic parent corporation meets the reporting requirements, the subsidiary's officers and employees have *no* personal financial interest in the account, *and* the officer or employee has been advised **in writing** by a responsible officer that of the domestic parent that has filed a current report that includes that account.

If a U.S. subsidiary is named in a consolidated TD F 90-22.1 of the parent, the subsidiary will be deemed to have filed a report for purposes of this exception. An officer or employee of a foreign subsidiary more than 50 percent owned by such a qualifying corporation (see definition above) need not file this report concerning signature or other authority over the foreign financial account if the employee or officer has *no* personal financial interest in the account *and* he has been advised in writing by the responsible officer of the parent that the parent has filed a current report that includes that account.

### **What Is A Financial Account Subject to Reporting?**

The new instructions expand the definition of a financial account. This definition now includes:

Bank, securities, securities derivatives, or other financial instrument accounts, including accounts where the assets are held in a comingled fund and the filer holds an equity interest in the fund (which includes mutual funds *and potentially hedge funds*<sup>4</sup>);

Savings, demand, and time deposit accounts, debit card, and pre paid credit cards maintained with a financial institution or other person engaged in the business of a financial institution

**The definition** however, **excludes**, from reporting direct holdings of bonds, notes, or stock certificates (they aren't financial accounts) and excludes unsecured loans to a foreign trade or business that is not a financial institution.

### **What Is A Financial Interest?**

First, a financial interest includes an interest in a foreign financial account held directly by a U.S. Person.

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<sup>4</sup> Note that in guidance issued June 29, 2009 (question and answer) the IRS compares hedge funds to partnerships which create a FBAR filing requirement only if a U.S. Person owns more than 50% of the entity.

Second, a financial interest includes an interest held by a U.S Person indirectly *through ownership* in:

(1) **a corporation**<sup>5</sup> in which the U.S. Person owns directly or indirectly more than 50% of the corporation's shares by value or by vote;

(2) **a partnership** in which the U.S. Person owns an interest in more than 50% of the profits (distributive share of income taking into account any special allocation agreement) or in more than 50% of the capital of the partnership;

(3) **a trust** in which the U.S. Person has a present beneficial interest, directly or indirectly, in more than 50% of the assets or the U.S. Person receives more than 50% of the present income;

(4) **each bank, securities, or other financial account** in a foreign country for which the owner of record or holder or legal title is a trust, or a person acting on behalf of **a trust that was established by a U. S. Person** and for which a trust protector<sup>6</sup> has been appointed

### **What Is Signature or Other Authority Over An Account?**

**Signature authority** over an account is the power of a person to control the disposition of money or other property into or out of that account by signing a document, whether one or more than one signature is required, and delivering it to the bank or person who maintains the account

**Other authority** over an account is the power of person to exercise power similar to signature authority by communicating directly or indirectly through an agent, nominee, attorney, or one in some other capacity on behalf of a U.S. Person, orally or by "some other means", with a bank or other person who maintains the account.

"Authority" does **not** include the ability to make investment decisions as regards assets in the account.

If a U.S. Person has signature or other authority over a foreign account, but **no** financial interest in that account, the U.S. Person must identify<sup>7</sup> any non-U.S. Person who does have a financial interest in that account in new Part IV of the TD F 90-29.1.

### **What is a Financial Account in a "Foreign Country?"**

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<sup>5</sup> If a New York corporation owns a foreign company that has foreign accounts and the corporation files a FBAR for the foreign company's accounts the individual owners of the domestic corporation must also file an FBAR if any of them, directly or indirectly, own more than 50% of the value of the shares or voting power of the domestic corporation.

<sup>6</sup> A trust protector is a person who is responsible for monitoring the activities of a trustee, with the authority to influence the decisions of the trustee or to replace, or recommend the replacement of the trustee.

<sup>7</sup> Name, address, and identifying number of the foreign person.

Financial accounts have been previously described in this article – but what makes it an account in a foreign country? **It is the geographical location of the account that counts.** The instructions say to report any financial account that is located in a foreign country even if it is held at a foreign affiliate of a United States bank or other financial institution<sup>8</sup> as it is a foreign account. Conversely, an account located in the United States maintained at a branch, agency, or office of a foreign bank or other foreign institution does not need to be reported as it is not considered to be a foreign account.

A **foreign country** is everywhere that isn't the United States. The United States includes the States of the United States, Territories and Insular Possessions of the United States, (Puerto Rico, Guam, U.S. Virgin Islands, and Northern Marianas Islands).

### **Form TD F 90-22.1 Preparation and Protocols**

The form is largely self explanatory and self guiding. There are some noteworthy points in the new form and about the new form to address:

The form requires that the **maximum value of the account** during the calendar year being reported **must be provided.** That value is the largest amount of currency or asset value that appears on any quarterly or more frequent account statements. If no periodic statements are issued then the maximum account value is the largest amount of currency and assets in the account during the year.

Foreign currency must be converted to U.S. dollars using official **exchange rates**<sup>9</sup> **at the end of the year.** The value of assets (stocks, bonds, other securities, or non monetary assets) in the foreign financial account is the **fair market value at end of the calendar year** or, if withdrawn during the year, then the value at the time of the withdrawal.

**There are no extensions of time available to file the form.** It is due on June 30 of year following the calendar year in which the U.S. Person had the foreign financial account. If a delinquent return needs to be filed, a statement explaining the reason for the late filing should attached. The Service will not assert the penalty if there is reasonable cause for the late filing.

Due to the fact that the TD F 90-22.1 is not a requirement created in the Internal Revenue Code (Title 26 U.S.C.) but rather under Title 31 U.S.C **the mail box rule does not apply.** The date on which the Treasury receives the form is that date it is deemed filed.

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<sup>8</sup> Excluded are United States military banking facilities even if they are located in a foreign country.

<sup>9</sup> Official Treasury Reporting rates of Exchange can be obtained at <http://fms.treas.gov/intn.html#rates>

If a previously filed form needs to be amended the “Amended” box on the form should be checked and stapled to a copy of the originally filed form. A statement explaining the changes should be attached.

Once it is determined that the form must be filed, a **record keeping requirement** also appends to the filer. Those records include:

- The name in which each account is held/maintained
  - The number or other designation of the account
  - The name and address of the foreign bank or other person with whom the account is maintained
  - The maximum value of each account during the reporting period
- These records must be kept for five (5) years**

A filer who has a financial interest in 25 or more foreign financial accounts should check the box on line 14 “Yes” sign and date the report. Detail about the 25 accounts is not required to be included in the report.

If the group of entities covered by a consolidated report has a financial interest in 25 or more foreign financial accounts the reporting parent only needs to complete Part V items 34-42 but need not complete the account information. **However, that detailed information which would otherwise be required (but for the 25 or greater number of accounts) must be kept for five (5) years.**

If the filer has a financial interest in one but less than 25 foreign financial accounts and is unable to determine whether the maximum value of these accounts exceeded \$10,000 at any time during the year the Parts II, II and V should be completed for each account and enter “value unknown”.

### **Penalties for FBAR Non-Compliance.**

**The Civil penalties** for noncompliance with the FBAR reporting requirements are separate and apart from those penalties that can be assessed for under-reporting or non-reporting of foreign income from foreign financial accounts.

The FBAR penalties are assessed on a per account basis not on an unfiled FBAR basis. There may be multiple penalties arising out of the same account against those who have a financial interest, or signing or other authority over the account. The IRS has up to 6 years to assess the penalty and 2 years to collect it.

Civil penalties are assessed now under 31 USC 5321 (a)(5)<sup>10</sup> and they are easier now for the IRS to assert, as the prior statute’s threshold requirement of “willfulness” has

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<sup>10</sup>(a)(5) Foreign financial agency transaction violation.--

(A) Penalty authorized.--The Secretary of the Treasury may impose a civil money penalty on any person who violates, or causes any violation of, any provision of section 5314.

been eliminated. For violations after October 22, 2004 (FBAR forms due on June 30, 2005 and thereafter) the IRS may assess a civil monetary penalty up to \$10,000 on anyone who violates, or causes any violation of the FBAR reporting requirements.

The penalty may not be assessed or may be abated if the filer meets **both** of the following:

- (1) “such violation was due to reasonable cause”, and
- (2) “the amount of the transaction or the balance in the account at the time of the transaction was properly reported.”

The “reasonable cause” requirement, similar to that found in other IRC penalty provisions, will likely be exercised in a similar fashion although there is little guidance as yet. **However, the Service mentions several places in its “question and answer” news releases that a late FBAR won’t incur a penalty only in circumstances where the foreign income has been timely reported and paid and the only failure was the delinquent FBAR<sup>11</sup>.** It is uncertain how the requirement that “the amount of the transaction or the balance in the account at the time of the transaction was properly reported.” will be interpreted. The penalty abatement process, the factors the IRS will consider in considering an abatement request, and the criteria the IRS will use to impose or abate penalties, is beyond the scope of this article.

In addition the civil penalty for **willful** violations is the **greater** of \$100,000 or 50% of the amount of the transaction, or 50% of the balance in the account at the time of the violation.

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(B) Amount of penalty.--

(i) In general.--Except as provided in subparagraph (C), the amount of any civil penalty imposed under subparagraph (A) shall not exceed \$10,000.

(ii) Reasonable cause exception.--No penalty shall be imposed under subparagraph (A) with respect to any violation if--

(I) such violation was due to reasonable cause, and

(II) the amount of the transaction or the balance in the account at the time of the transaction was properly reported.

(C) Willful violations.--In the case of any person willfully violating, or willfully causing any violation of, any provision of section 5314--

(i) the maximum penalty under subparagraph (B)(i) shall be increased to the greater of--

(I) \$100,000, or

(II) 50 percent of the amount determined under subparagraph (D),

and

(ii) subparagraph (B)(ii) shall not apply.

(D) Amount.--The amount determined under this subparagraph is--

(i) in the case of a violation involving a transaction, the amount of the transaction, or

(ii) in the case of a violation involving the failure to report the existence of the account or any identifying information required to be provided with respect to an account, the balance in the account at the time of the violation.

<sup>11</sup> If the taxpayer has filed amended returns reporting the foreign income (i.e. the timely filed returns **omitted** the foreign income) willingness of the IRS to abate the penalties is less than clear.

There are also Criminal Penalties for violation of the FBAR rules and too are beyond the scope of this article. However, it is the existence of potential criminal prosecution that makes it a very important consideration for taxpayers who have unreported foreign income.

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# IRS VOLUNTARY DISCLOSURE PROGRAM

## Voluntary Disclosure Program

This article covers some of the details of the IRS's Voluntary Compliance Program (VDP) in order to foster awareness of its existence and of its terms. However, there is a known risk that taxpayers who have undisclosed foreign accounts or foreign entities that result in undisclosed foreign income may face criminal prosecution. That you, as the taxpayer's CPA, may be the first to alert the taxpayer about the VDP issues, should not suggest that you be the sole counselor for taxpayers on the VDP<sup>12</sup>. If a CPA has a taxpayer client who reveals that there is undisclosed foreign income in prior years it is **strongly recommended** that the CPA tell the taxpayer to immediately retain an attorney<sup>13</sup> who is skilled in taxation and criminal tax law (criminal tax attorney) to provide the sole advice and counsel on whether or not to enter into the VDP.

The CPA may of course work with the client's criminal tax attorney to assist in determining the tax and penalties that may be due under the VDP guidelines and to provide other non-criminal tax information, but the decision whether to enter into VDP should be that solely of the client guided by the attorney with the CPA's role<sup>14</sup> expressly limited<sup>15</sup> to determining the tax, penalties, and interest called for under VDP.

The IRS, in a series of news releases, in a 'question and answer' format, has announced the structure of the VDP for unreported foreign income. The IRS has issued this guidance to encourage disclosure by taxpayers by making the consequences of disclosure more predictable, offer a uniform penalty structure, and to centralize the processing of these disclosures for consistency. As the news releases point out, the voluntary disclosure program has been a practice of the IRS for many years as a non statutory avenue for taxpayers to come forward and disclose serious omissions in previous year's tax returns.

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<sup>12</sup>Indeed, question and answer # 29 says that the "IRS expects taxpayers to seek **qualified legal advice** and representation in connection with considering and making a voluntary disclosure." (emphasis added.)

<sup>13</sup> If you have worked with an attorney skilled in taxation and criminal law who possesses these skills you may refer the client to that attorney but we suggest that you include in the referral at least 2 other candidates. If you don't have any such referral source you can direct your client to the local Bar Association (state and regional bar association referral services, Martindale – Hubbell, and the American Bar Association lawyer referral service, to name a few)

<sup>14</sup> A current engagement letter setting the limitation on the scope of your assistance as regards the VDP is also strongly recommended.

<sup>15</sup> A new engagement letter or engagement memo should be generated in this situation.

In brief, the VDP program allows taxpayers to make a **voluntary disclosure** of previously unreported foreign income for tax years 2003<sup>16</sup> through 2008, <sup>17</sup> inclusive, by **no later than September 23, 2009**. If accepted into the VDP program the taxpayer will pay: (1) the tax on the unreported income<sup>18</sup>; (2) plus interest on the tax; (3) an accuracy related penalty of 20% on the tax due; (4) an additional 20% penalty on the highest account balance in the six years (2003 – 2008)<sup>19</sup>. Note that this is a package offer – a rejection of any one of the above conditions by the taxpayer will prevent the taxpayer from being permitted to take advantage of the limited penalty assessment.

Guidance on how disclosure is to be made can be found in the Internal Revenue Manual at IRM 9.5.11.9 and IRS question and answer # 6.

### **Who Is Eligible For VDP**

**Taxpayers** (individuals, corporations, partnerships and trusts) **with undisclosed foreign income** are eligible for VDP. **This includes** those who have made “**quiet disclosures**” by amending prior year returns but who have **not otherwise** made a disclosure to the IRS of the offshore income. The IRS emphasizes that those who made a “quiet disclosure” but who fail to enter into the VDP program may be subject to criminal prosecution.<sup>20</sup> There is no VDP program guidance concerning taxpayers who have unfiled original tax returns that are late. It is strongly recommended that the taxpayer be directed to retain a skilled tax attorney for counsel.

### **Who Is Not Eligible For VDP (or doesn’t need it)?**

Taxpayers for whom the IRS has notified the taxpayer of the intent to initiate an examination, or the IRS has initiated an examination even if the issue hasn’t come up in the examination;

Taxpayers whose income comes from an illegal source

Taxpayers for whom the IRS has received “specific information”<sup>21</sup> of taxpayer noncompliance before the taxpayer attempts to make a voluntary disclosure;

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<sup>16</sup> Even though some of these tax years would ordinarily be closed under IRC 6501 the IRS advises that reporting undisclosed income in these “closed years” is nonetheless a mandatory condition of the program. It also mentions that the 6 year statute (6501(e)) may, in any event, be applicable or if there was fraud there is no statute of limitations.

<sup>17</sup> The guidance says that 2002 income generally need not be reported in the VDP.

<sup>18</sup> This means that amended returns will have to be filed reporting this additional tax either before applying for the VDP, or as part of the VDP.

<sup>19</sup> See the example in question and answer #12.

<sup>20</sup> See IRS question and answer #10 and #49 which say the IRS is reviewing amended returns and if the taxpayer doesn’t timely enter into the VDP program the IRS may recommend criminal prosecution to the Department Of Justice

<sup>21</sup> E.g., through informants, third party subpoenas, etc)

Taxpayers who fail to disclose by September 23, 2009;

Taxpayers who only failed to file information returns (FBARs, 5471's, 3521's, etc.) but who timely disclosed and paid tax on foreign income in the years earned<sup>22</sup>.

Taxpayers who have timely reported and paid tax on their foreign income;

There is a great deal of detail contained in the Internal Revenue Manual at IRM 9.5.11.9 on how to enter into the VDP program, who to contact, what constitutes a voluntary disclosure, what specific disclosures are required, and some of the process and criteria the IRS uses to determine if a taxpayer will be accepted into VDP.

There is an open question how the various states will deal with taxpayers who have entered into the IRS's voluntary disclosure practice. It is another compelling reason why taxpayers should be directed to retain criminal tax attorneys when the issue of unreported foreign income is revealed.

It should be kept in mind when assessing the VDP program that intentionally failing to report income is a tax crime. VDP may appear to contain onerous terms and significant penalties but without VDP those taxpayer's who are caught with unreported foreign income face a far worse outcome. With the federal government's successes in piercing foreign bank secrecy laws, third party subpoenas, and informants the risk of being caught has never been higher.

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<sup>22</sup> As in delinquent FBARs where there was no failure to disclose and pay he delinquent returns should be filed with an explanation. The IRS will not impose a penalty. See question and answer #9 and #43.

SAMPLE LETTER FROM CPA TO CLIENT  
ON THE VOLUNTARY DISCLOSURE PROGRAM

Dear \_\_\_\_\_,

The Internal Revenue Service (IRS) has recently announced that U.S. taxpayers who have undisclosed foreign financial accounts or entities or have income generated in foreign countries but who have not reported that income on their income tax returns have until **September 23, 2009** make a voluntary disclosure to the IRS of all unreported income, pay the tax on this income and tax interest, and pay certain penalties. In return the IRS will not recommend criminal prosecution to the Department of Justice, or assess other penalties, if the disclosure is truthful, timely, and completely complies with all provisions of the voluntary disclosure practice (VDP).

The offer the IRS is making requires taxpayers to make a **voluntary disclosure** of previously unreported foreign income for tax years 2003 through 2008, inclusive, by **no later than September 23, 2009**. If accepted into the VDP program the taxpayer must pay: (1) the tax on the unreported income; (2) interest on the tax; (3) an accuracy related penalty of 20% on the tax due; (4) an additional 20% penalty on the highest aggregate foreign account balance in the six years (2003 – 2008).

Note that this is a package offer – a rejection of any one of the above conditions by the taxpayer will prevent the taxpayer from being permitted to take advantage of the limited penalty assessment and avoid the risk of criminal sanctions.

Taxpayers who have previously reported the foreign income **timely**<sup>23</sup>, and have paid the tax on that income but who have not filed the required<sup>24</sup> disclosure forms for foreign financial accounts or ownership of foreign entities also have until September 23, 2009 to file the delinquent disclosure forms without penalty. There are special rules for tax year 2008 depending on whether you have already filed your return reporting all foreign income or it is still on extension. I will be happy to explain them to you.

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<sup>23</sup> Filing amended returns to report previously undisclosed foreign income **will not provide** protection from greater penalties or criminal prosecution..

<sup>24</sup> The disclosure forms are required if you have an interest in, or signature or other authority over, a financial account(s) located in a foreign country whose aggregate value during any calendar year exceeds \$10,000, or you hold a more than 50% interest in an entity that has such an interest. Disclosure may also be required if you own an interest in a foreign entity (corporation, partnership, etc)

Due to the fact that there are criminal sanctions associated with the willful failure to report income as well as the rules regarding VDP **we strongly encourage you to retain an experienced criminal tax attorney** who will be necessary to provide an understanding of the ramifications of the VDP, protect privileged communications, manage the disclosure, provide counsel regarding whether you enter into it, and any related state law issues and risks.

Please let us know if we can be of assistance.