

GAO Encourages IRS to Clamp Down on Quiet Disclosures

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The Government Accountability Office in a report released April 26 lauded the success of the IRS's offshore voluntary disclosure programs but encouraged the agency to use the obtained information to identify taxpayers with unreported accounts who might be trying to stay under the radar.

The IRS has conducted four special voluntary disclosure programs in the past decade targeting taxpayers who held offshore bank accounts that were not properly disclosed to the U.S. government. The programs have collectively resulted in the participation of 39,000 taxpayers and the collection of \$5.5 billion in tax revenue, according to the report (GAO-13-318 ) , dated March 27.

The GAO study focused on the 2009 offshore voluntary disclosure program (OVDP), analyzing tax return data for all program participants and a random sampling of exam files for taxpayers in the program who had assessed penalties higher than \$1 million. The GAO found that nearly all OVDP participants paid the standard special 20 percent civil penalty. The median account balance of the more than 10,000 cases closed so far from the 2009 OVDP was \$570,000, the report states. Participant cases with offshore penalties greater than \$1 million represented about 6 percent of all 2009 OVDP cases but accounted for almost half of all offshore penalties.

However, one of the GAO's most significant conclusions is that "taxpayer attempts to circumvent taxes, interest, and penalties by not participating in an offshore program, but instead simply amending past returns or reporting on current returns previously unreported offshore accounts, result in lost revenues and undermine the programs' effectiveness." The GAO undertook its own review of amended return filings from 2003 to 2009, matched its findings to data available to the IRS, and discovered many instances of taxpayers with offshore accounts that the IRS was unaware of.

The GAO observed that the number of taxpayers reporting offshore accounts has increased significantly in recent years and posited that the increase may reflect attempts to circumvent taxes, interest, and penalties that would otherwise be owed. From 2007 to 2010, the estimated number of taxpayers reporting offshore accounts on Form 1040, Schedule B nearly doubled. The number of foreign bank account reports filed showed a similar increase. "There could be legitimate reasons for these trends," the GAO acknowledged, suggesting that taxpayers who had reported income from accounts may have filed FBARs or reported the accounts on Schedule B for the first time.

The GAO made several recommendations to the IRS, including more targeted outreach to groups of taxpayers likely to be unaware of offshore account filing requirements, such as immigrants. The report also suggests that the IRS "explore options for employing a methodology to more effectively detect and pursue quiet

disclosures and implement the best option" and "analyze first-time offshore account reporting trends to identify possible attempts to circumvent monies owed and take action to help ensure compliance."

In a response included in the report, acting IRS Commissioner Steven Miller wrote that the IRS will review and analyze the GAO's data on quiet disclosure and that "appropriate action will be taken including examinations, if warranted." The IRS will also work on finding new ways to identify quiet disclosures, he wrote.

Miller agreed with the GAO's recommendation that the IRS determine how often taxpayers are reporting existing foreign accounts on Schedule B or FBARs. "The IRS is currently analyzing filed Forms 8938, Statement of Specified Foreign Financial Assets, to identify specific characteristics of the filing population and to assess filing behaviors indicating potential compliance issues," he added.

The IRS has taken a stronger stance in the past several years against the practice of quiet disclosures, warning that taxpayers not using the voluntary disclosure programs are subject to criminal prosecution. (Prior coverage )

Megan L. Brackney of Kostelanetz & Fink LLP told Tax Analysts that the voluntary disclosure program "would be more effective and have greater participation if the agents had some discretion or if there were different levels of penalties." A taxpayer who funneled untaxed U.S.-source income offshore and hid it in sham foreign structures "is treated the same as the taxpayer who earned income abroad before becoming a U.S. taxpayer or who inherited money from foreign relatives," she said.

"The high price of participating in the program and the inherent unfairness of assessing the same penalties against everyone despite the relative level of culpability turns away many taxpayers who would like to be fully compliant and transparent with the Service," Brackney said.

Jeffrey A. Neiman, a former assistant U.S. attorney now in private practice, said, "The IRS should be doing more to treat taxpayers more fairly as it pertains to their particular fact pattern." The IRS's one-size-fits-all approach encourages taxpayers to find a reasonable solution to getting into compliance, which they sometimes see as necessitating quiet disclosure, he said. "Go ahead and hold my clients accountable to whatever they did and owe, but the IRS approach is stretching the limits of justice in straightforward fact patterns," he said.