



DEPUTY COMMISSIONER

DEPARTMENT OF THE TREASURY  
INTERNAL REVENUE SERVICE  
WASHINGTON, D.C. 20224

March 23, 2009

MEMORANDUM FOR COMMISSIONER, LARGE AND MID-SIZE BUSINESS  
DIVISION  
COMMISSIONER, SMALL BUSINESS/SELF-EMPLOYED  
DIVISION

FROM: Linda E. Stiff *Linda E. Stiff*  
Deputy Commissioner for Services and Enforcement

SUBJECT: Authorization to Apply Penalty Framework to Voluntary  
Disclosure Requests Regarding Unreported Offshore Accounts  
and Entities

The purpose of this memorandum is to set forth a penalty framework to be applied to voluntary disclosure requests containing offshore issues. The outlined framework will be applied to all such requests that have been submitted to the IRS and are not yet resolved, and will remain in effect for six months from the date of this memorandum. All voluntary disclosure requests are mandatory work.

As Criminal Investigation (CI) makes preliminary determinations that taxpayers are eligible to make voluntary disclosures, it will forward voluntary disclosure requests with offshore implications to the Philadelphia Offshore Identification Unit (POIU) for civil processing. Those requests will be distributed to and worked by examiners who specialize in offshore examinations. All resulting closing agreements will be reviewed and executed as prescribed by existing delegation orders.

Effective as of the date of this memorandum, you are authorized to execute agreements to resolve the tax liabilities related to offshore issues of taxpayers who make voluntary disclosure requests in the following manner:

- (1) Assess all taxes and interest due going back six years (exception: where an account/entity was formed or acquired within the six year look back period, taxes and interest will be assessed starting with the earliest year in which an account was opened/acquired or entity formed). Require the taxpayer to file or amend all returns, including information returns and Form TD F 90-22.1, Report of Foreign Bank and Financial Accounts, commonly known as an "FBAR",

- (2) Assess either an accuracy or delinquency penalty on all years (no reasonable cause exception may be applied), and
- (3) In lieu of all other penalties that may apply, including FBAR and information return penalties, assess a penalty equal to 20% of the amount in foreign bank accounts/entities in the year with the highest aggregate account/asset value.

If, (a) the taxpayer did not open or cause any accounts to be opened or entities formed, (b) there has been no activity in any account or entity (no deposits, withdrawals, etc.) during the period the account/entity was controlled by the taxpayer, and (c) all applicable U.S. taxes have been paid on the funds in the accounts/entities (where only account/entity earnings have escaped U.S. taxation), then the penalty in (3) is reduced to 5%.

The terms outlined herein are only applicable to taxpayers that make voluntary disclosure requests, and who fully cooperate with the IRS, both civilly and criminally.

cc: Acting Chief Counsel  
Senior Advisor to the Commissioner  
Commissioner, Tax Exempt and Government Entities  
Chief, Criminal Investigation