

## Offshore Tax Evaders Taking Big Risk, Former IRS Attorney Says

*Data on taxpayers with offshore accounts may help government find those who held accounts but didn't report income in previous years* - By Gil Weinreich

April 30th 2013

Government programs allowing Americans with offshore bank accounts to come clean to the IRS have netted the government \$5.5 billion from 39,000 taxpayer disclosures.

But a Government Accountability Office (GAO) investigation, released over the weekend, suggests that even more funds have yet to be recovered, citing one estimate that offshore noncompliance may total "several tens of billions of dollars."

One of the GAO report's findings is that many taxpayers, in an effort to avoid onerous penalties and back taxes, are not joining the IRS' offshore voluntary disclosure programs, instead filing amended returns or simply disclosing offshore accounts in current returns, without acknowledging past years' nondisclosure.

But these "quiet disclosures" could backfire, in the view of Dennis Brager (right), a former IRS senior tax attorney with a tax litigation practice in Los Angeles. That is because the IRS now has the means at its disposal to identify noncompliant taxpayers.

"People are filing the quiet disclosures because they want to avoid paying a penalty of 27.5% of the highest balance in the offshore account at any time during the prior eight years," Brager told AdvisorOne in an interview.

The principal of the Brager Tax Law Group said taxpayers who were not disclosing their offshore accounts must pay all back taxes for the past eight years, an additional penalty of 20% of the tax, plus interest—all on top of the 27.5% of their offshore account's highest balance.

As painful as that might seem to those who failed to report their offshore money, failure to do so could result in penalties of 50% or higher, he says. So that is the reason why offshore account holders should give serious consideration to a "noisy disclosure," Brager adds.

"If [offshore account holders are] caught, they are subject to a potential penalty of 50% of the balance of the account and that penalty can be imposed for multiple years. You can have a penalty equal to several times the value of the account," he says.

"In addition, if what you did was intentional, there are potential criminal penalties, jail time. That's why somebody might be motivated to make a noisy disclosure."

One of the key points of the GAO report is that the IRS has not done enough to pursue taxpayers taking corrective action without reporting it, hoping to avoid penalties, as well as those reporting foreign accounts for the first time without correcting past returns.

"For some of those people, that gamble will pay off, and some are going to get nailed," Brager says.

Not everyone with an offshore account set out to evade taxes, Brager says.

"In my practice, [many clients] immigrated from other countries, left money over there, and didn't really give it too much thought. It was earning interest, invested in stocks. It's over there in India, Hong Kong. 'I'm paying tax on it over there,' the thinking goes.

"There are a lot of people who didn't set out to hide it but didn't affirmatively report it," Brager adds. "Those people are getting hit with the same penalties as those who were purposely hiding."

Brager sees a role here for financial advisors—CPAs particularly—to nudge their wealthy clients.

"When clients come to me and we discuss how the money got off shore and how it was that it didn't get reported and how it is that they didn't file foreign bank reports; they say: 'Well, my financial advisor never told me I needed to do this. I didn't know any better.'

"So financial advisors need to be very careful about what they're saying to their clients," Brager continues. "If the financial advisor becomes aware that the client has assets overseas, they need to advise the client they need to consult with somebody who can advise on the legal issues at stake.

Brager's conclusion: "People who have offshore accounts are very vulnerable. If they don't go into the [voluntary disclosure] program, they're taking a substantial risk."

The IRS has said it concurs with the GAO's findings and intends to take more active measures to find taxpayers with offshore accounts who are not joining the IRS voluntary disclosure programs.