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GETTING PERSONAL: Stressing Over Offshore Tax Filing

By Arden Dale
OF DOW JONES NEWSWIRES

NEW YORK (Dow Jones)--Let's call the whole thing off. A crackdown on secret offshore accounts has tax advisers at odds over a key form that reports them to the IRS.

When to file the FBAR, or Report of Foreign Bank and Financial Accounts, and who should do it are matters of debate as the official June 30 deadline nears.

Some experts say to file on time, others say to wait. Some say the same cast of characters must file, while others say a new group may be roped in.

Big penalties may be involved for those who get it wrong.

Controversy stems from changes to the form, along with booming use of an IRS program that lets owners or managers turn themselves in voluntarily.

Hedge funds and financial firms that have ignored the form in the past are taking a close look to make sure they are dealing with the FBAR properly. They are anxious now as IRS pressure mounts on tax evaders who fail to report income from U.S. securities in offshore accounts.

The agency has conducted a high-profile crackdown on tax evaders involving thousands of people with Swiss bank accounts managed by UBS AG (UBS). Many account owners and managers are coming forward under an IRS voluntary disclosure program to seek leniency. A worry for some is that filing an FBAR on June 30 before starting a voluntary disclosure could make the IRS reject the disclosure.

Douglas Stransky, an attorney at Sullivan & Worcester LLP, says that while it's generally best to err on the side of over-disclosure, some people may want to hold off on filing the June 30, 2009, FBAR if they are going through a voluntary disclosure. In these cases, taxpayers would explain as part of their disclosures that they are awaiting IRS feedback on their cases.

But some attorneys say there's no advantage to waiting, and others say it's not legal to wait.

Bryan Skarlatos, a partner at New York law firm Kostelanetz & Fink, for example, says it's best to start a formal voluntary disclosure and file the FBAR by June 30.

A client who comes in on June 29 should file the form on time, as required by law, and then start a voluntary disclosure as soon as possible, according to Skarlatos. If the person comes in after the June 30 deadline, he or she should start a voluntary disclosure immediately and include the 2008 FBAR as part of it. (The 2008 FBAR is due on June 30, 2009).

Teig Lawrence, a tax attorney in Miami, says that skipping the June 30 deadline is violating the law.

"Some taxpayers are clearly in a Catch-22 situation if they haven't yet filed their voluntary disclosure," says Lawrence.

Another big question for hedge funds and others now is who has to file. The U.S. Treasury revised the FBAR last year to make it clearer that hedge fund managers and other investment managers with control over offshore

accounts must file. Many managers overlooked the requirement in the past.

Scott D. Michel, an attorney in the Washington D.C. office of law firm Caplin & Drysdale, says financial firms "now have to go back and reexamine this more extensive form."

One concern is making sure that everyone at a hedge fund or investment management firm who is required to file does in fact comply. Language on the IRS form and instructions is broad and can lead to ambiguities.

It's possible, according to Stransky of Sullivan & Worcester LLP, that hedge funds that didn't have to file in the past could be required to file now.

Generally, it's "better to err on the side of over-disclosure, even though that can be administratively burdensome," he adds.

The IRS declined to comment beyond several discussions of the FBAR it has published on its Web site.

-By Arden Dale, Dow Jones Newswires; (201)938-2052; arden.dale@dowjones.com