International Tidbits

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Latest Sequel to IRS "Dirty Dozen" Plus New FBAR Form

The IRS has published its 2011 "Dirty Dozen Tax Scams" (IRS News Release IR-2011-39, April 7, 2011) with "Hiding Income Offshore" #1 in the spotlight and with IRS Commissioner Doug Shulman stating that these schemes represent the "worst of the worst tax scams." I admit that I have not paid a lot of attention to this annual IRS News Release, preferring instead the 1967 film version of the Dirty Dozen, starring Lee Marvin, about the fictitious exploits of a band of felons freed from prison to help the Allies prepare for D-Day.

The IRS' annual listing had its premiere in 2002 with various scams repeating their starring roles from year to year, while others made only cameo appearances. It is interesting how the list has evolved over the years, from con-artist fare such as kits to "untax youself" for $49.95, sold to a gullible public, to taxpayer-initiated schemes including abuse of charitable organizations and misuse of trusts. "Con-artists shamelessly take advantage of people, charging fees for their illegal tax schemes," IRS Commissioner Charles O. Rossotti said in announcing the initial list in 2002. "People should be on-guard for these scams. If something sounds too good to be true, it probably is."

The international component, initially called "Offshore Transactions," debuted in 2003 at the top of the list, along with the first iteration of the Offshore Voluntary Compliance Initiative related to failure to report foreign financial accounts and the income earned from them. Back then, the focus was on devices, such as offshore credit cards and trusts, used to hide income or claim false deductions. By 2004, Offshore Transactions was demoted to #4 on the list, but with offshore employee leasing arrangements, brokerage accounts, and wire transfers, as additional devices being used to evade tax. The 2005 list saw Offshore Transactions further demoted to 9th place, but with the addition of private annuities and life insurance.

By 2006, Offshore Transactions had reached its lowest rank yet in the Dirty Dozen, at 10th place, with the Commissioner touting the conviction of 68 individuals on charges of promotion and use of such schemes. Perhaps thinking the worst was over, Offshore Transactions was dropped from the list entirely in 2007. 2008 saw a re-release of Offshore Transactions with a new title, "Hiding Income Offshore" and ranked as #5, but with the same expanded list of devices as the 2006 Dirty Dozen. By 2009, the ranking was #2 and the emphasis, presumably connected to the UBS case, expanded to include private banking arrangements and offshore business merchant accounts. In 2010, the #2 ranking was maintained, mentioning the success of the 2009 Voluntary Disclosure Program and the risk of criminal prosecution for those not coming forward to report the existence of foreign financial accounts.

The 2011 Dirty Dozen gives international matters top billing with "Hiding Income Offshore" ranked first. Again, the emphasis is on voluntary disclosure under a new program announced in February, "designed to bring offshore money back into the U.S. system and help people with undisclosed income from hidden offshore accounts get current with their taxes." This time around, the IRS has produced information about the initiative in eight foreign languages. One can speculate that these languages may be indicative of the countries with the most offshore accounts from the 2009 Voluntary Disclosure Program, or perhaps the bulk of U.S. citizens or residents coming forward in 2009 had roots in those countries? The foreign languages are: Chinese, Farsi, German, Hindi, Korean, Russian, Spanish and Vietnamese. Another indicator of who is being targeted came on April 7, when the U.S. Justice Department sought a court order authorizing the IRS to request information from HSBC Bank USA NA about U.S. residents who may be using HSBC India to evade U.S. taxes.

With offshore accounts at the top of this year's Dirty Dozen, another voluntary disclosure program underway, and attempts to learn the identity of account holders progressing, it is clear that the IRS is not contemplating a happy ending for those with undisclosed foreign financial accounts. Unlike the heroes of Hollywood's Dirty Dozen, for whom the prospect of freedom from prison was their reward, the IRS has other outcomes in mind.

In a related matter, the IRS has issued a revised Form TD F 90-22.1 (Report of Foreign Bank and Financial Accounts or "FBAR") for reporting information for calendar year 2010 (by June 30, 2011). Based on final regulations issued in February by the Financial Crimes Enforcement Network, there are some key changes from the prior version of the form and instructions. Especially helpful is that it does not adopt the expanded definition of "U.S. person" that had included a foreign person doing business in the U.S. There is also a more specific definition of funds, such as mutual funds and private equity funds, considered to be foreign financial accounts. However, anyone relying on the provisions in the prior version of the FBAR regarding signature authority over an employer's foreign financial account and reliance on information supplied by others should note the changes in the latest version of the FBAR instructions or contact their UHY Advisors tax professional.

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