



BAUCUS SEEKS TO DETECT, DETER, DISCOURAGE OFFSHORE TAX EVASION

Senate Finance Committee Chairman Max Baucus (D-Mont.) is currently circulating a preliminary draft of legislation aimed at fighting offshore tax evasion – a problem that loses the U.S. tens of billions of dollars every year. The purpose of releasing the preliminary draft is to obtain stakeholder input that will make the proposal stronger, more implementable, and more likely to become law. Baucus intends to introduce a final bill that will detect, deter, and discourage tax evasion offshore as follows:

Detect offshore tax abuse by giving the IRS more time and better tools to spot and shut down offshore noncompliance.

Deter offshore tax abuse by requiring tax preparers to ask a few simple questions before returns are filed to make sure foreign accounts are being reported to the IRS, by requiring certain reports to be filed with the tax return, and by increasing penalties.

Discourage businesses from moving offshore by closing a loophole that results in employers in offshore tax havens avoiding payment of Social Security taxes on workers.

Proposals to Detect Offshore Tax Evasion

Offshore information reporting: Requires entities transferring funds offshore (other than on behalf of publicly traded companies) to report to the IRS the amount and destination/account information of funds transferred. This gives the IRS a trail of funds going offshore to deter and detect offshore noncompliance.

Statute of limitations (SOL): Extends the SOL from three to six years for tax returns that reported, or should have reported, certain international transactions, to give the IRS more time to detect and examine offshore activity.

Proposals to Deter Offshore Tax Evasion

Foreign Bank Account Reports (FBAR): Requires the FBAR form to be filed with the income tax return. Currently, the FBAR is filed only with the Treasury's Financial Crimes Enforcement Network (FinCEN). This will turn the FBAR into tax return information, making it easier for IRS to enforce FBAR filing requirements.

Due diligence: Requires preparers to ask a series of due diligence questions to determine whether an FBAR should be filed. This is similar to the existing EITC due diligence regime.

Foreign trust failure to file penalty: Enhances the penalty, particularly when the corpus of the trust is unknown, by establishing a \$10,000 minimum penalty.

Transfers from foreign trusts: Expands types of property considered to be a distribution (e.g., artwork and jewelry).

Double fines and penalties: Doubles applicable fines and penalties on tax underpayments attributable to certain offshore transactions. The Committee approved this proposal in the 2005 Tax Reconciliation Act.

Proposals to Discourage U.S. Companies from Moving Offshore

Foreign employers: Modifies a 2008 Heroes Act provision requiring treating as American employers any offshore entities that hire workers to perform services pursuant to a government contract. Proposal defines an employee as anyone providing at least 100 hours of service a month, to prevent offshore employers from sidestepping the rule by calling workers "independent contractors" instead of "employees."