

would have significant negative consequences for non-QIs.

Other reforms proposed by the administration are based on a presumption that non-QI foreign financial institutions are facilitating tax evasion. Accordingly, U.S. financial institutions would be required to withhold 20 to 30% of U.S. payments to foreign individuals who use non-QIs. Investors entitled to a lower rate would have to prove their status to obtain refunds. There also would be a rebuttable evidentiary presumption that an account held by a U.S. citizen at a non-QI contains enough funds to require the filing of a Report of Foreign Bank and Financial Accounts ("FBAR"), and any failure to file an FBAR with respect to an account at a non-QI would be considered willful if the account had a balance

of greater than \$200,000 at any point during the year. In addition, U.S. individuals would also be required to report on their income tax returns most transfers of money or property made to or from non-QI accounts more than 50% owned, actually or constructively, by the individual. Reforms like this would make doing business with non-QIs unattractive for both foreign and U.S. investors.

### Conclusion

The Service has indicated that it will announce final changes to the QI agreement and audit procedures "soon," and proposed regulations with respect to withholding are also expected "soon." It is likely to take some time for the PSI and Obama administration proposals to work their way through Congress, but

it is clear that major changes are in the pipeline that will affect not only the QI program, but also foreign financial institutions generally. If many of the reform proposals are adopted, foreign financial institutions will be facing a difficult choice between participating in a QI program with increasingly burdensome requirements, some of which arguably push the limits of what the U.S. government can ask foreign financial institutions to do, and dealing with significant restrictions imposed on non-QIs, which would have major negative consequences for the financial institutions' ability to do business and attract customers. Altogether, the reform proposals are likely to advance the goal of preventing tax evasion, but it will be at the cost of alienating foreign investors and foreign financial institutions. ■

## NEWS BRIEFS

## News Briefs

### Section of Taxation White Papers

The Tax Section has created a series of White Papers that provide clear statements of tax policy issues that are important to the Section, and on which the Section has worked for many years. Some of the issues reflect the Section's policy advocacy positions that have been adopted by the ABA House of Delegates and are now reflected in tax-related ABA policies. Other issues may include information from specific Tax Section policies that have not been adopted by the ABA House of Delegates or its Board of Governors, and are specific only to the Tax Section. We hope that the papers will be useful to policymakers and the public, and will inform debate on these issues going forward. The following White Papers are available on the Section's website at [www.abanet.org/tax/pubpolicy](http://www.abanet.org/tax/pubpolicy).

- Statement of Policy Regarding U.S. International Taxation
- Joint Statement on Tax Issues in Health Care Reform
- Statement of Policy Favoring Reform of Federal Civil Tax Penalties
- Statement of Policy Favoring Tax Simplicity, Stability, and Transparency

### Important Developments Reports

As a service to its members, the Tax Section features on its website Annual Reports on Important Developments as well as interim updates presented by a number of committees at Section Meetings. These reports are an important work product of the Section's committees and track recent legislative changes, regulations, cases, and rulings, as well

as forecast upcoming developments in over 30 substantive areas of the tax law. Reports for 2000-2008 are available. To access the online index, go to: [www.abanet.org/tax/developments](http://www.abanet.org/tax/developments).

### Tax Bridge to Practice for Law Students

The ABA Tax Section's Young Lawyers Forum is offering a Tax Bridge to Practice Program at the Section's Joint Fall CLE Meeting with the Trust and Estate Division of the Real Property Section. The event will be held on Thursday afternoon, September 24, 2009, in Chicago and is open to all 2L, 3L and LL.M. students in the area. The program will provide substantive lectures in tax by the best tax professors in the country, along with career advice and a series of practice-focused workshops. For more information, please contact the ABA Tax Section at 202-662-8680.

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## Call for VITA Volunteers

The IRS Volunteer Income Tax Assistance (VITA) nationwide programs provide free assistance to low-income, elderly, disabled, and other individuals who require assistance in preparing their tax returns and who, now more than ever, cannot afford the services of a paid professional tax preparer. The program is an excellent pro bono opportunity for Tax Section members who want to dedicate their time. For information on how and where to volunteer, please contact Catherine B. Engell at [engellc@staff.abanet.org](mailto:engellc@staff.abanet.org).

## State and Local Tax Lawyer Symposium Editions— Now Available

The *State and Local Tax Lawyer—Symposium Edition* explores current issues and trends in the evolving area of state and local taxation. This annual, peer-reviewed journal features papers presented by leading law professors and practitioners at the annual State and Local Tax Symposium cosponsored with Georgetown University Law Center. Recent topics include:

- SALT and Tax Shelters – Policy, Practices, and Problems (2006 – available)
- The Commerce Clause and State Taxation (2007 – available)
- The Story Behind Combined Reporting (2008 – forthcoming)
- Multijurisdictional Enterprises (2009 – forthcoming)

The 2006 and 2007 Editions are available at a discounted price of \$75 for Tax Section members. For more information, go to [www.abanet.org/tax/pubs](http://www.abanet.org/tax/pubs).