



IRS Announces Another Offshore Voluntary Disclosure Initiative For Foreign Financial Accounts

Client Advisories

04.02.2012

Less than six months after the expiration of the deadline for the 2011 Offshore Voluntary Disclosure Initiative ("OVDI"), the IRS announced the implementation of a new program to enable taxpayers to avoid criminal fraud actions, and limit penalties arising from the failure to report the ownership and control of foreign accounts and the income earned from foreign financial accounts. The new program will be similar to the OVDI in effect in 2011 but has two important differences. First, the penalty amount which must be paid to participate in the program will be 27.5% of the maximum value of the foreign accounts, rather than 25% which was the amount used in the 2011 plan. Second, there is no pre-determined termination date for admission to the program. While the IRS can announce an end to the program at any time, the expectation is that the program will remain in place much longer than any of the previous programs.

The announcement provides welcome relief for taxpayers who missed the earlier program. The IRS has not yet issued specific guidelines for the new OVDI but is expected to do in the spring of 2012.

The new program provides a way out for taxpayers who may feel the tax enforcement walls closing in on them. Besides the IRS effort to obtain information from foreign financial institutions through legal actions, the IRS has two new vehicles for forcing U.S. taxpayers to report and pay tax on all of their worldwide income. The first, the Foreign Account Tax Compliance Act (FATCA), encourages foreign financial institutions doing business in the U.S. to report to the IRS income earned by U.S. citizens with foreign accounts. Foreign financial institutions which fail to provide this information are subject to onerous withholding rules in the United States and most have chosen to comply with the IRS reporting requirements.

Second, beginning with the 2011 tax return filing season, another information return, Form 8938, will be required of U.S. Form 1040 filers with substantial foreign financial assets. The foreign assets that must be reported include accounts in foreign financial institutions, foreign securities, any interest in a foreign entity, and any foreign financial instrument or contract held for investment. An 8938 Form may be required if the aggregate

value of the foreign financial assets is greater than \$50,000. More details on Form 8938 filing requirements are available at the IRS website and in a separate client advisory. Severe penalties are imposed for failing to complete and file an accurate Form 8938. This form is in addition to the foreign bank account report 90-22.1 form, which is required of anyone with more than \$10,000 in foreign accounts. For the U.S. person who has not reported their foreign income in the past, and must be concerned about foreign reporting under FATCA and the new information filing requirements of Form 8938, the new OVDI may look like a good exit strategy and a way to get into compliance with the law.

If you have any questions about or would like to discuss the latest offshore voluntary disclosure initiative or a related matter, please contact Kenneth E. Ahl, Partner in Archer's Tax Law and International Law Practice Groups, at (215) 246-3132 or kahl@archerlaw.com.

DISCLAIMER: This client advisory is for general information purposes only. It does not constitute legal advice, and may not be used and relied upon as a substitute for legal advice regarding a specific legal issue or problem. Advice should be obtained from a qualified attorney licensed to practice in the jurisdiction where that advice is sought.

Related Services

- Tax

© 2024 Archer & Greiner, P.C. All rights reserved.

