BRYAN CAVE
A Broader Perspective
Bulletin

Tax Advice and Controversy Client Service Group

To: Our Clients and Friends January 2011

IRS May Be Close to Implementing New Off-Shore Voluntary Disclosure Program

It has been widely reported in the press and informally announced at the American Bar Association Section of Taxation Meeting in Boca Raton, Florida on January 21, 2011, that the Internal Revenue Service ("IRS") will soon reveal the details of a new offshore voluntary disclosure program ("new VDP"). It is anticipated that the new VDP will be similar in many respects to the voluntary disclosure program that ended on October 15, 2009 ("old VDP").

Under the new VDP, participants with undisclosed foreign accounts or unreported foreign income may be able to avoid criminal prosecution and limit their potential exposure to civil penalties by making a voluntary disclosure of such undisclosed accounts or unreported income to the IRS. It is anticipated that such persons generally will be required to (i) file delinquent foreign bank account reports ("FBARs") and amended returns for a specified period (such as tax years 2004 through 2009) and (ii) pay the tax and interest due on such amended returns along with a 20% accuracy penalty, along with a miscellaneous "offshore" penalty equal to a specified percentage of the highest aggregate balance in the undeclared foreign accounts (plus, where applicable, certain other foreign assets), during the specified period. Under the old VDP, the miscellaneous penalty was 20%, but it is anticipated that the miscellaneous penalty under the new VDP will be higher. For many taxpayers with undeclared foreign accounts or unreported foreign income, the specified penalty structure under the new VDP may be extremely favorable in comparison with the civil penalties that could otherwise be imposed. Each case is different, however, and the advantages and disadvantages of a voluntary disclosure must be carefully analyzed for each taxpayer based upon the individual facts and circumstances.

It has also been reported in the press that the U.S. government is currently (i) investigating certain major banks with offices in China, Hong Kong, India, Korea and the U.S., which promoted undeclared foreign accounts to U.S. persons, and (ii) attempting to obtain the names of U.S. account holders. If the IRS is successful in obtaining this information, it will then be too late for such taxpayers to make a voluntary disclosure. The message to non-compliant taxpayers is clear, act promptly before the government obtains your identity.

To discuss this issue further, please speak to your Bryan Cave contact, or to:

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