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IRS Commences Second Voluntary Disclosure Program for Taxpayers with Foreign Assets

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The IRS recently announced a second voluntary disclosure program to encourage US taxpayers to reveal their foreign assets, file tax returns for missing years and otherwise come into compliance with the tax laws.

The IRS had a similar voluntary disclosure program which ended in 2009 and resulted in approximately 15,000 taxpayers entering the program, well more than the IRS anticipated.

“Voluntary disclosure” is a long-term IRS policy that a taxpayer who may have committed a tax crime can disclose and correct past wrongs, and in doing so, avoid criminal prosecution. Correcting past wrongs generally includes filing or amending tax returns for prior years and paying all related taxes, interest and penalties.

The new voluntary disclosure program carries stiffer penalties than the first program, reflecting a policy choice that delinquent taxpayers should not be rewarded for waiting. To enter into the new program, a taxpayer must file complete and accurate original or amended returns, any related information returns, including Form TD F 90-22.1, also known as an “FBAR,” which reports the taxpayer’s foreign bank accounts, cooperate in the voluntary disclosure process, and pay all interest and penalties.

Under the new program, taxpayers must pay accuracy related penalties, failure to file and failure to pay penalties (if applicable), and also pay an additional penalty generally equal to 25% of the highest aggregate balance in the foreign bank account during the period covered by the voluntary disclosure.

There is a reduced penalty structure for taxpayers whose offshore accounts or assets did not surpass \$75,000 in any calendar year, and for certain other taxpayers who did not open the account or had minimal contact with it.

The program reflects the IRS' increasingly aggressive approach to enforcing the tax laws in the international area. The IRS recently opened offices in several other countries, particularly in Asia, as part of these efforts. The agency continues to negotiate mutual assistance agreements with other countries' tax authorities. Moreover, recent legislation (the Foreign Account Tax Compliance Act or "FATCA") requires foreign banks to disclose information about account holders with US ties. In short, the US landscape for international taxpayers is changing dramatically. For those not in compliance, it is getting more and more difficult to hide.

The deadline for the program is August 31. If you desire further information about the voluntary disclosure program, please contact us.

Cole, Schotz, Meisel, Forman & Leonard, P.A.

Court Plaza North
25 Main Street
Hackensack, NJ 07601
Phone: (201) 489-3000

900 Third Avenue
16th Floor
New York, NY 10022
Phone: (212) 752-8000

500 Delaware Avenue
Suite 1410
Wilmington, DE 19801
Phone: (302) 652-3131

300 East Lombard Street Suite 2000
Baltimore, MD 21202
Phone: (410) 230-0660

301 Commerce Street
Suite 1700
Fort Worth, TX 76102
Phone: (817) 810-5250