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New IRS streamlined filing procedure for delinquent filers

September 4, 2012

All U.S. citizens and Greencard holders are subject to U.S. tax rules and a number of annual U.S. filing obligations – even if they reside outside the United States – and can face substantial financial penalties if they fail to comply. A number of campaigns are currently underway by the IRS to identify non-compliant U.S. taxpayers. In certain situations, the penalty exposure can exceed the value of the unreported assets.

The IRS recently indicated that they recognize there are numerous U.S. taxpayers living abroad who have only recently become aware of their filing obligations and who now wish to become compliant. On August 31, 2012, the IRS released the anticipated guidance regarding a new streamlined filing procedure available to delinquent taxpayers who reside outside the U.S. This procedure was first announced on June 26, 2012 and became effective on September 1, 2012, and is intended for taxpayers who present low compliance risk.

The streamlined procedure is available for U.S. taxpayers who meet all of the following criteria. The taxpayer must:

- (A) have lived outside of the U.S. since January 1, 2009;
- (B) have not filed a U.S. tax return for the years 2009 through 2011;
- (C) have a valid Taxpayer Identification Number (for U.S. citizens, this is a Social Security Number); and
- (D) present a low compliance risk, and owe little or no back taxes.

This procedure may be appealing given the limited number of years of delinquent tax returns that would need to be filed, and because the IRS has indicated that where a taxpayer presents low compliance risk, they will not assert late filing penalties. The procedure also allows taxpayers to retroactively make an election under a tax treaty to defer U.S. taxation on income earned within certain retirement savings plans (such as Canadian RRSP and RRIF plans).

Taxpayers opting for the new streamlined procedure are required to file the following as part of their submission:

- (1) Delinquent FBARs (Form TD F 90-22.1), for the past six years;

- (2) Delinquent tax returns (Form 1040), for the past three years; and
- (3) If applicable, related information returns (e.g. Forms 3520 and 5471), for the past three years.

The IRS has indicated that all submissions will be reviewed; however the intensity of the review will vary depending on the level of compliance risk presented. They have also indicated that where a taxpayer represents a low compliance risk, the review will be expedited and the IRS will not assert penalties or pursue follow-up actions.

Taxpayers will be required to submit a Questionnaire in order to assist the IRS in determining the level of compliance risk presented by the submission. A submission will generally be treated as low risk if, absent high risk factors, the tax return shows less than \$1,500 in tax due for each year.

The IRS has indicated that the risk level may rise if any of the following factors are present:

- If any of the returns submitted through this program claim a refund;
- If there is material economic activity in the United States;
- If the taxpayer has not declared all of his/her income in his/her country of residence;
- If the taxpayer is under audit or investigation by the IRS;
- If FBAR penalties have been previously assessed against the taxpayer or if the taxpayer has previously received an FBAR warning letter;
- If the taxpayer has a financial interest or authority over a financial account(s) located outside his/her country of residence;
- If the taxpayer has a financial interest in an entity or entities located outside his/her country of residence;
- If there is U.S. source income; or
- If there are indications of sophisticated tax planning or avoidance.

This streamlined procedure is not suitable for taxpayers who are concerned about the risk of criminal prosecution because of their particular circumstances. Taxpayers who are seeking protection from criminal prosecution may instead wish to consider the 2012 Offshore Voluntary Disclosure Program.

How Deloitte can help

There are currently a number of options for delinquent U.S. taxpayer to consider. As each program offers different benefits and conditions, a taxpayer must carefully consider their needs and exposures. Deloitte can help quantify the potential tax and penalty exposure, discuss the implications of the various programs, and prepare the tax returns and other forms required to be submitted to the IRS.

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