A New IRS Voluntary Disclosure Initiative for Offshore Account Holders | Coupled with New Enforcement Tools Against Those Who Do Not Participate

Legal Alert

February 27, 2012

The IRS has announced a continuation of its Offshore Voluntary Disclosure Initiative (OVDI) permitting taxpayers with undisclosed foreign accounts to come forward and avoid significant civil and criminal penalties. Similar to the 2009 and 2011 OVDI, taxpayers who choose to participate in the OVDI would be required to disclose their offshore accounts and assets, prepare and file amended income tax returns over an eight year period, prepare and file FBAR returns, and pay the appropriate penalty under the 2012 OVDI together with any additional income tax, interest and penalties for previously undisclosed income. The 2012 penalty is slightly increased to 27.5 percent of the taxpayer's offshore assets (not just bank deposits) compared to the 2011 initiative's 25 percent penalty on offshore assets. The two lower penalties remain for taxpayers with total foreign assets of less than $75,000 (at 12.5 percent), and the other for certain taxpayers with inherited accounts who have not withdrawn more than $1,000 and actively invested the offshore assets (at 5 percent). Taxpayers may also still opt-out of the initiative if they believe their circumstances would allow for a lower penalty using the statutory penalty regime outside of the initiative.

Although the IRS has continued the OVDI with a slightly higher penalty rate, taxpayers need to be aware of the IRS's continued and new enforcement measures and tools. In addition to the IRS efforts and successes in obtaining the names of account holders from foreign banks, the IRS now requires U.S. taxpayers with foreign assets to disclose and report those holding on Form 8938 along with their annual Form 1040 filings. Additionally, as part of the Foreign Account Tax Compliance Act (FATCA), starting in 2013 foreign financial institutions must monitor the identities of their account holders and assure that U.S. taxpayers pay the appropriate U.S. taxes. FATCA generally requires foreign financial institutions to withhold a 30 percent tax on any payment of U.S. source income, unless they enter into a qualified intermediary agreement whereby they would have to identify and inform the IRS of accounts held by one or more U.S. persons or U.S.-owned foreign entities.

Members of the Flaster Greenberg Taxation Practice have assisted multiple clients in successfully navigating through the OVDI to avoid the significant civil and criminal penalties associated with undisclosed foreign accounts, and to properly mitigate the penalties within the OVDI. Should you have any questions about the 2012 OVDI or the IRS new enforcement mechanisms, please contact a member of the Taxation Practice Group at Flaster Greenberg PC.

ATTORNEYS MENTIONED

Steven Poulathas