

January 19, 2012

Voluntary Disclosure Plan for Offshore Assets — Take #3

On January 9, 2012, the IRS issued a news release announcing that the IRS is opening a third Offshore Voluntary Disclosure Program for taxpayers who come forward (including taxpayers who have come forward since the 2011 disclosure program closed last September) to report previously undisclosed foreign accounts and assets. The disclosure program penalty structure applies in lieu of other applicable civil penalties, including penalties for failing to file an FBAR, penalties for failing to file information returns, and fraud penalties. The IRS also has stated in past offshore disclosure programs that taxpayers who come in voluntarily under these programs can avoid criminal prosecution. According to the IRS, it has seen 33,000 voluntary disclosures from the 2009 and 2011 disclosure programs and the IRS has collected \$3.4 billion and \$1 billion, respectively, from the 2009 and 2011 disclosure programs (and it expects to collect additional amounts under the 2011 program as it processes the 2011 disclosures).

The 2012 disclosure program is similar to the 2011 disclosure program which closed on August 31, 2011 (described in our [tax alert dated February 14, 2011](#)), except that, unlike the 2011 disclosure program, there is no set deadline for taxpayers to apply for the new disclosure program. In addition, taxpayers in the highest penalty category will face penalties of 27.5 percent of the highest aggregate balance in foreign bank accounts or value of foreign assets during the eight years prior to the disclosure (rather than 25 percent as under the 2011 disclosure program). Taxpayers who were eligible under the 2011 disclosure program for the 5 percent penalty (in general, foreign residents who were unaware they were U.S. citizens or who fulfilled the tax payment and reporting requirements of their country of residence, or taxpayers who have specific types of limited contact with the foreign account) or the 12.5 percent penalty (taxpayers whose highest aggregate account balance in each of the eight years covered by the disclosure program was less than \$75,000) will similarly qualify for 5 percent or 12.5 percent penalties, as applicable, under the 2012 disclosure program.

However, taxpayers should be aware that the IRS news release states that “the terms of the program could change at any time [and]...the IRS may increase penalties in the program for all or some taxpayers or defined classes of taxpayers — or decide to end the program entirely at any point.” The IRS news release also states that additional information regarding the 2012 disclosure program and updated Frequently Asked Questions will be available within the next month on the IRS website.

If you have any questions regarding this new development or would like to discuss any other tax concerns, please contact any of the attorneys listed below.

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