

## A WELCOME AND TIMELY INITIATIVE!

### IRS ANNOUNCES NEW DELINQUENT FILING COMPLIANCE PROCEDURES FOR U.S. CITIZENS LIVING IN CANADA AND ABROAD



On June 26, 2012, the IRS announced new filing compliance procedures for those U.S. persons (U.S. citizens, Green Card holders and resident aliens) living in Canada who have been delinquent in filing their U.S. income tax returns or the *Report of Foreign Bank and Financial Accounts* ("FBAR").

These *catch-up* tax filing compliance procedures appear to be the IRS's easy pass route to allow **tax amnesty** to **innocent** non-filers, who present a low compliance risk.

These new procedures, to take effect on **September 1, 2012**, will greatly benefit many U.S. persons as they can reduce the exposure to assessment of significant interest and penalties.

#### Description of the Proposed New Procedures

A U.S. person, seeking to make submissions, will be required to submit: (1) delinquent income tax returns, with all appropriate information returns, for the past **three** years; (2) delinquent FBARs for the past **six** years; (3) any additional information regarding compliance risk factors (the IRS will release instructions prior to the effective date of September 1, 2012); and (4) the payment of any federal tax and interest due.

The new procedures will apparently also allow the late-filed election with respect to the treaty deferral of income earned in an RRSP or RRIF, pursuant to the Canada-U.S. Tax Treaty, which includes filing form 8891 for each RRSP or RRIF covered by the submission, together with a statement providing pertinent information to the IRS.

A U.S. person will be able to file current year late tax returns through this procedure.

A taxpayer, who seeks to assert reasonable cause as a defense against penalties, will be required to submit a dated statement, signed under penalties of perjury with explanations why there was reasonable cause for the failure to file income tax and information returns in previous years.

#### Compliance Risk Determination

While there is no complete amnesty in all circumstances, the IRS will review all submissions, with the intensity of review varying according to the level of **compliance risk** presented by the submission.

For taxpayers representing a **lower** compliance risk, the review will be expedited and the IRS *will not assess penalties* or pursue follow-up actions. A submission is considered low risk if it is a simple tax return with little or no U.S. tax due (that is, tax less than \$1,500 USD per year).

However, for submissions representing a **higher** compliance risk, these will be subject to a more thorough review, possibly a full examination, and could include more than three years of filings. The risk level increases as both the income and assets of the taxpayer rise; if there is indication of an elaborate tax planning or avoidance scheme; or, if there is significant economic activity in the U.S. where income would have been subject to U.S. tax.

This procedure does not protect the *non-innocent filer* taxpayer who could face the risk of criminal prosecution. In such a situation, the taxpayer may consider filing under the Offshore Voluntary Disclosure Program (OVDP) after consultation with their legal counsel.

If you are a U.S. person and have failed to file U.S. tax and information returns, we urge you to contact us to discuss your particular situation.

The new IRS compliance procedures provide greater flexibility to file *catch-up* tax returns and FBARs and to avoid potential penalty and interest assessments.

More news to come as it is released by the IRS!

The matters highlighted in this tax memo are presented in broad general terms and, of course, cannot be applied without consideration of all circumstances. The firm will be pleased to discuss with recipients the possible effects of these matters in specific situations.

**FOR ADDITIONAL INFORMATION, PLEASE CONTACT A MEMBER OF OUR TAX DEPARTMENT:**

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