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IRS Announces September 2018 End to Offshore Voluntary Disclosure Program

The Internal Revenue Service (“IRS”) announced it will close the highly successful Offshore Voluntary Disclosure Program (“OVDP”) on September 28, 2018, which presumably will be the final date for taxpayers to submit a request for OVDP consideration. Taxpayers with undisclosed offshore accounts should seriously consider entering the OVDP this summer before the program ends.

Created by the IRS in 2009, the OVDP permits U.S. persons to voluntarily disclose foreign bank accounts and other foreign investments which should have been identified on either a tax return or another disclosure form. Absent participation in this program, U.S. persons, whose offshore bank accounts and investments were identified by the IRS, were subject to draconian penalties which could exceed 50 percent of the balance in the foreign accounts. Under the OVDP, taxpayers who enter the program must pay 27.5 percent (or, in certain circumstances, 50 percent) of the balance of the offshore account, but they avoid paying other penalties and are given assurances that they will not be prosecuted criminally.

The IRS announced that, since the OVDP’s initial launch in 2009, more than 56,000 taxpayers have voluntarily come back into compliance with their foreign tax filing obligations. Those taxpayers paid a total of \$11.1 billion in back taxes, interest, and penalties.

However, despite its historic success, the number of taxpayers making voluntary disclosures has steadily

decreased over the past several years. Per the IRS announcement, the number of taxpayer disclosures under the OVDP peaked in 2011, when about 18,000 people came forward. In 2017, only 600 taxpayers made voluntary disclosures through the OVDP.

The steady decrease in the number of taxpayers using the OVDP is not surprising. Since the OVDP’s initial launch in 2009, the public has become aware of the IRS’s intense scrutiny of foreign tax arrangements. The IRS has also made a habit of publicizing deferred prosecution agreements entered into with foreign banks and other successful tax enforcement efforts ending in civil or criminal penalties. In addition, banks in 113 countries now must annually report basic account information to the IRS about U.S. persons under the Foreign Account Tax Compliance Act (“FATCA”). This legislation, enacted in 2010, has been robustly implemented. FATCA has provided the IRS with a treasure trove of information upon which it can act regardless of whether taxpayers are coming back into compliance through the OVDP.

The IRS's announcement does not change two other pre-existing programs. First, the IRS will continue to operate its domestic voluntary disclosure program which has been in existence since the 1950s. This program permits taxpayers with legal U.S. source income to step forward, report the income, and avoid criminal prosecution. Further, the IRS created a Streamlined Filing Compliance Procedures in July of 2014, offering a much more palatable path for taxpayers looking to come back into compliance. However, the Streamline program is not available to all since to qualify, the taxpayer must be able to certify under oath that s/he did not act willfully. The Streamlined Filing Compliance Procedures will not close, for the time being.

Taxpayers who have been indecisive about whether to make a voluntary disclosure should seek the assistance of counsel immediately, as for many taxpayers, this may be the best and last opportunity to come back into compliance, reduce potential civil penalties, and minimize risk of criminal prosecution.

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