



News From Giordani, Swanger, Ripp & Phillips, LLP

IRS Reopens Offshore Voluntary Disclosure Program

For Clients and Friends of GSRP, LLP

In January, as part of its push to bring U.S. persons with unreported foreign assets back into the U.S. tax system, the IRS reopened its Offshore Voluntary Disclosure Program ("OVDP").

Background

U.S. persons are taxed on worldwide income, regardless of the location of the account or asset that generates the income. Not only must that income be reported on an annual income tax return, the U.S. person is also required to file annual information returns to report ownership of foreign accounts and entities.

In 2009 and 2011, the Internal Revenue Service offered two separate voluntary disclosure programs to U.S. persons with undisclosed foreign assets. Taxpayers participating in the programs filed remedial or amended returns reporting the income from unreported accounts and paid applicable taxes, interest, and filing penalties. In lieu of all other potential civil and criminal penalties, the taxpayer paid a penalty of 20% of the highest balance in his or her foreign accounts under the 2009 program, and 25% under the 2011 program. The IRS reports that 33,000 taxpayers have participated and that it has collected more than \$4.4 billion so far from those taxpayers.

Participation

Under the 2012 OVDP, eligible taxpayers with unreported accounts and entities will be required to file delinquent and amended returns, including information returns, for the eight-year period prior to the initial disclosure and will be required to pay all taxes, interest, and accuracy-related and delinquency penalties reflected on those returns. In lieu of all other civil and criminal penalties that might apply and in exchange for coming forward voluntarily, the taxpayer will be eligible for a penalty of 27.5% of the highest aggregate balance in his or her unreported foreign accounts (or 27.5% of the value of certain unreported foreign assets) during the eight-year period. As with the 2011 program, taxpayers may qualify for a 5% penalty in limited situations, and smaller offshore accounts or assets (that did not surpass \$75,000 in value in any of the eight years covered by the 2012 OVDP) will face a 12.5% penalty. Moreover, the IRS is continuing to offer taxpayers who believe that the standard

penalties are too severe under the facts of their cases the ability to opt out of the program, submit to a full examination, and attempt to negotiate lower penalties than would otherwise apply.

Unlike the previous programs, the 2012 OVDP will be open indefinitely (until otherwise announced). However, the IRS cautioned that it could end the program at any time and could decide to increase the penalties applicable to all taxpayers or certain classes of taxpayers.

Need Help?

The U.S. Congress, the U.S. Treasury and the IRS, and other governmental agencies are continuing to enhance their enforcement efforts against U.S. persons with unreported foreign assets. Since the failure to comply with reporting and disclosure requirements can result in criminal penalties outside of the OVDP context, it is important that discussions regarding participation in the 2012 OVDP be covered by the attorney-client privilege. We strongly recommend that taxpayers with undisclosed accounts seek legal counsel regarding their participation in the program.

With our depth of experience in international tax compliance and tax controversy work (including the 2009 and 2011 OVDPs), GSRP is uniquely qualified to help evaluate whether the 2012 OVDP is suitable for you or your client. We can prepare the required forms and returns, if necessary, and are happy to work with existing tax and legal advisors.

Please contact us to learn how we can help with the 2012 OVDP.

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