January 10, 2012

IRS Announces Reopening of Offshore Disclosure Program

On January 9, 2012 the Internal Revenue Service announced it is reopening its Offshore Voluntary Disclosure Program (OVDP), designed to allow U.S. taxpayers with unreported offshore income and assets to come into compliance with their tax obligations. This is being done because of continued strong interest after the completion of the 2009 and 2011 programs, which together brought in 33,000 voluntary disclosures and the collection of more than $4.4 billion to date. Since the 2011 OVDP closed in September, hundreds of additional taxpayers have come forward to make voluntary disclosures. These taxpayers will be eligible to be treated under the provisions of the new OVDP. The penalty framework for the new OVDP is similar to that for the 2011 OVDP except the penalty is 27.5 percent of the highest aggregate balance in foreign bank accounts/entities or value of foreign assets during the eight full tax years before the disclosure. The 2011 OVDP imposed a 25 percent penalty of the amount in the foreign bank accounts in the year with the highest aggregate account balance. Participants must also pay taxes and interest for the last eight years and accuracy-related and/or delinquency penalties. There is virtual assurance, though no guarantee, that the IRS will forgo criminal prosecution and will not assert other civil penalties, including FBAR penalties, for taxpayers who enter the new OVDP. As under the 2011 OVDP, some taxpayers may be eligible for a reduced 5 percent penalty for inherited accounts they have never accessed. Also as under the 2011 OVDP, the new OVDP will impose a reduced penalty of 12.5 percent for offshore accounts or assets that did not exceed $75,000 during the applicable tax years. Unlike the 2011 OVDP, the new program asserts no fixed deadline for enrollment in or completion of the program. However, the IRS cautions, the terms of the new OVDP, including the penalty framework and taxpayer eligibility, may change at any time and may be terminated at any time. The IRS will be providing additional information about the new OVDP over the course of the next month and will continue to update the OVDP FAQs on the IRS website. Both the IRS and the Justice Department have significantly increased their efforts to pursue the criminal prosecution of international tax evasion cases, making it more important than ever for taxpayers to review carefully the tax and legal status of any undisclosed offshore accounts or business activities. Our firm can advise clients on whether the OVDP is the best option for them and, in appropriate cases, on alternative methods for becoming tax-compliant.