UPDATES AND OTHER TIDBITS

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UPDATE TO STREAMLINED PROCEDURES: DIFFERENT STROKES FOR THE SAME FOLKS

In our prior issue, Insights Vol. 1, No. 1, we noted that, for a U.S. taxpayer entering into the Streamlined Procedures (*i.e.*, fast-track program) in 2013, an I.R.S. agent informally advised filing tax returns for the years 2009, 2010, and 2011. Upon further discussions with the I.R.S., the agent revisited the issue, advising that a taxpayer entering into the program today would need to file the last three years of tax returns (*i.e.*, 2010, 2011, and 2012). In the event the taxpayer does not file a timely 2013 return prior to the submission, the applicable look-back period is 2011, 2012, and 2013.

This advice is consistent with the 2012 O.V.D.P. F.A.Q. # 9, which answers the question "What years are included in the OVDP disclosure period?" as follows:

> For calendar year taxpayers the voluntary disclosure period is the most recent eight tax years for which the due date has already passed. <u>The eight-year period does not include current years for which there has not yet been non-compliance</u>. Thus, for taxpayers who submit a voluntary disclosure prior to April 15, 2012 (or other 2011 due date under extension), the disclosure must include each of the years 2003 through 2010 in which they have undisclosed foreign accounts and/or undisclosed foreign entities. Fiscal year taxpayers must include fiscal years ending in calendar years 2003 through 2010. For taxpayers who disclose after the due date (or extended due date) for 2011, the disclosure must include 2004 through 2011. For disclosures made in successive years, any additional years for which the due date has passed must be included, but a corresponding number of years at the beginning of the period will be excluded, so that each disclosure includes an eight year period.
>
> For taxpayers who establish that they began filing timely, original, compliant returns that fully reported previously undisclosed offshore accounts or assets before making the voluntary disclosure, the voluntary disclosure period will begin with the eighth year preceding the most recent year for which the return filing due date has not yet passed, but will not include the compliant years. For example, a taxpayer who had historically filed income tax returns omitting the income from a securities account in Country A, who began reporting that income on his timely, original tax and information reporting returns for 2009 and 2010 without making a voluntary disclosure,

and who files a voluntary disclosure in January 2012, the voluntary disclosure period will be 2003 through 2008.

DIRTY DOZEN TAX SCAMS: HIDING OFFSHORE INCOME

Each year the I.R.S. produces a list of twelve common tax scams a taxpayer may encounter. While taxpayers should be advised to these schemes (*e.g.*, identity theft, phishing, and return prepare fraud) throughout the year, publication of the list coincides with the peak in activity experienced during filing season. Since 2008, hiding income offshore has been listed as one of the top six dirty dozen tax scams by the I.R.S.[22] It was the first item listed in 2011. In 2009 and 2010, it was the second item listed, in 2012 and 2013, the third, and in 2008, the fifth. This year, it is listed as number six. In particular, the I.R.S. states:

> **Hiding Income Offshore**
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> Over the years, numerous individuals have been identified as evading U.S. taxes by hiding income in offshore banks, brokerage accounts or nominee entities and then using debit cards, credit cards or wire transfers to access the funds. Others have employed foreign trusts, employee-leasing schemes, private annuities or insurance plans for the same purpose.
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> The IRS uses information gained from its investigations to pursue taxpayers with undeclared accounts, as well as the banks and bankers suspected of helping clients hide their assets overseas. The IRS works closely with the Department of Justice to prosecute tax evasion cases.
>
> While there are legitimate reasons for maintaining financial accounts abroad, there are reporting requirements that need to be fulfilled. U.S. taxpayers who maintain such accounts and who do not comply with reporting and disclosure requirements are breaking the law and risk significant penalties and fines, as well as the possibility of criminal prosecution.[23]

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[22] The topic was not listed in 2007, as such, but going back to at least 2003 it has been listed in some form or another.

[23] See http://www.irs.gov/uac/Newsroom/IRS-Releases-the-%E2%80%9CDirty-Dozen%E2%80%9D-Tax-Scams-for-2014;-Identity-Theft,-Phone-Scams-Lead-List.

FINAL F.A.T.C.A. REGULATIONS REISSUED: ADDITIONAL TECHNICAL CORRECTIONS MAY BE FORTHCOMING

On February 20, 2014, the I.R.S. pre-released the final F.A.T.C.A. regulations.[24] They were officially submitted for publication on February 28, 2014, and speaking at a conference on that day, an I.R.S. official reaffirmed that the F.A.T.C.A. effective date, July 1, 2014, will not be delayed. Furthermore, the official stated that additional technical corrections to the final regulations will likely be forthcoming. As we have mentioned in prior publications, it is worth noting that the deadline appears to be real, and time is running out.

24 See http://www.irs.gov/Businesses/Corporations/Additional-FATCA-Guidance-Submitted-for-Publication.