



IRS Announces New Program to Provide Relief to Nonresident U.S. Taxpayers

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Starting on September 1, 2012, eligible U.S. taxpayers living abroad who are delinquent in filing their U.S. income tax returns or informational returns will have an opportunity to bring themselves into compliance without triggering penalties or a formal examination. The new procedure, announced by the Internal Revenue Service (the "IRS") in IR-2012-65, is available only to non-resident taxpayers, including dual citizens, determined to present a low compliance risk.

Absent certain high risk factors, taxpayers will be considered a low compliance risk if they have simple tax returns and owe \$1,500 or less in tax for any of the covered years. The IRS will perceive the risk as elevated as the income and assets of the taxpayer rise, if there are indications of sophisticated tax planning or avoidance, if there is material economic activity in the U.S., or if the taxpayer had a history of noncompliance. Submissions that present higher compliance risk are not eligible for the procedure and will be subject to a more thorough review and possibly a full examination.

Under the procedure, taxpayers must file (i) delinquent U.S. income tax returns with appropriate related

information returns for the past three years, (ii) delinquent FBARs for the past six years, and (iii) additional information regarding compliance risk factors required by future guidance. Taxpayers must pay any unpaid taxes and interest at the time of the submission.

In addition, the program provides retroactive relief for failure to timely elect income deferral on certain retirement and savings plans where deferral is permitted by the relevant treaty. This feature is particularly relevant for U.S. taxpayers living in Canada who participate in certain Canadian retirement plans.

In sum, the new procedure is a welcome response to the dilemma facing many non-resident U.S. taxpayers who are delinquent in their US tax filings, but who owe little or no U.S. tax and whose tax affairs are relatively straightforward. However, for taxpayers who owe more substantial amounts of U.S. tax, or whose tax situation is more complex, the new procedure is unlikely of any benefit. For these individuals, the Offshore Voluntary Disclosure Program (OVDP) announced on January 9, 2012, for example, may be more appropriate.

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