

IRS Dirty Dozen - Increased Risks for Taxpayers with Undisclosed Overseas Accounts

On January 28, 2015, the Internal Revenue Service [announced](#) that undisclosed offshore accounts would be included in its annual “Dirty Dozen” list. The list serves as a warning to taxpayers that ownership of undisclosed offshore accounts will be targeted in the coming year. The IRS will be devoting increased resources to locate such accounts and pursue noncompliant taxpayers. For taxpayers with undisclosed offshore accounts or assets, this IRS announcement is another important signal to take prompt measures to address these reporting delinquencies.

Potential Liability

When a taxpayer fails to disclose the existence of her offshore accounts or assets with an FBAR or other information return, she can be subject to significant penalties, interest, and possible criminal prosecution. The civil liability for such reporting delinquencies can be up to 50% of the highest aggregate balance of all undisclosed accounts, interest on any undisclosed income from the accounts, and an accuracy related penalty of up to 40% on the undisclosed income. In addition, IRS Criminal Investigation works closely with the Department of Justice (DOJ) to prosecute taxpayers who have willfully failed to disclose their offshore accounts.

Disclosure Programs

Since 2009, the IRS has provided several programs for taxpayers to disclose their offshore accounts, potentially reduce their financial liability, and avoid criminal prosecution. The [Offshore Voluntary Disclosure Program](#) (OVDP) provides protection from criminal prosecution and offers fixed terms for resolving civil tax and penalty liabilities. Instead of the multitude of potential penalties, the OVDP generally allows taxpayers to pay a 27.5% miscellaneous penalty on the highest aggregate balance of undisclosed accounts, pay tax on any undisclosed income for the last 8 years, and pay interest on such income. The OVDP offers significant benefits, but a successful conclusion requires multiple complex steps.

Effective July 1, 2014, the [Streamlined Disclosure Programs](#) provide potential alternative methods for taxpayers to address their offshore reporting delinquencies. Under the Streamlined



by Christopher A. Karachale

Disclosure Programs, taxpayers file three years of amended or delinquent returns and six years of FBARs, but are subject to a reduced penalty structure. U.S. residents pay a penalty of 5% of the highest balance of their offshore accounts, while non-U.S. resident taxpayers are subject to no penalty on their account balances. However, to participate in the Streamlined Disclosure Programs, the IRS requires taxpayers to certify that their failure to disclose their accounts was non-willful.

Given the complexity of the offshore account disclosure programs and the risk of increased penalties as numerous financial institutions disclose information required by FATCA, taxpayers with undisclosed offshore accounts should consider the benefits and burdens of the programs and explore options to craft a workable solution for resolving these issues.

Advice and Counsel

Hanson Bridgett attorneys have extensive experience addressing clients' offshore compliance concerns and guiding them through the voluntary disclosure process. The firm currently represents numerous individuals, companies, and trusts as they negotiate voluntary disclosures of undisclosed offshore accounts and assets. Hanson Bridgett has developed a deep knowledge base necessary to comply with each program's requirements and secure favorable results for taxpayers.

Taxpayers with questions about the IRS's voluntary disclosure programs should contact Christopher Karachale at ckarachale@hansonbridgett.com or the Hanson Bridgett LLP Tax Group.

For more information, please contact:

Christopher A. Karachale, Partner
415-995-5863
ckarachale@hansonbridgett.com