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## IRS Announces New Voluntary Disclosure Procedures

*The Internal Revenue Service (“IRS”) has released a memorandum outlining new procedures for making voluntary disclosures of tax noncompliance, just two months after their 2014 Offshore Voluntary Disclosure Program had ended. The new procedures apply to disclosures of both foreign and domestic noncompliance.*

A voluntary disclosure allows a taxpayer with previously unreported, or underreported, income or assets to “come clean” in exchange for possible protection from criminal prosecution. However, under the new disclosure procedures, a criminal clearance could come at a significant cost, as the new procedures contemplate imposition of a civil fraud penalty and maximum Foreign Bank Account Report (“FBAR”) penalties. Although taxpayers will have an opportunity to request reduced penalties, and to appeal to the IRS Office of Appeals if they disagree with the final findings of the examination team, taxpayers can expect an uphill battle in challenging penalties, as the memo specifically provides that requests for reduced penalties will be granted only in “exceptional” cases. Under existing statute, the burden of proof to establish fraud, in the case of income tax noncompliance, or willfulness, in the case of FBAR noncompliance, is on the government. However, the memo seems to shift the burden of proof to taxpayers to establish that fraud and willful penalties are not appropriate based on their facts and circumstances.

As in prior voluntary disclosure programs, a voluntary disclosure is initiated by requesting pre-clearance from criminal investigation to determine eligibility for voluntary disclosure, and, if eligible, receive a criminal clearance.

Voluntary disclosures that are preliminarily accepted will then be referred to a civil agent for processing and penalty determination. Examiners will develop cases under standard examination procedures, but will apply the framework outlined in the memo, which generally requires six years of tax and information returns, imposition of a civil fraud penalty in the year with the highest income tax, and, in offshore cases, imposition of a willful FBAR penalty.

The voluntary disclosure program is available to taxpayers with any type of U.S. tax noncompliance, including (but not limited to) underreported income; underreported employment tax; and undisclosed foreign assets. Streamlined procedures are still available to taxpayers with unreported foreign assets and income who do not require criminal clearance. Taxpayers with historic noncompliance should speak to their tax adviser to discuss the best approach for bringing their tax accounts into compliance.

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