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IRS Provides New Relief Procedures for Certain Former Citizens

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On September 6, 2019, the U.S. Internal Revenue Service (“IRS”) announced a new program that grants relief to certain individuals who renounced their U.S. citizenship or who may do so in the future. Under this procedure, qualifying persons who renounced U.S. citizenship after March 18, 2010, can avoid the imposition of otherwise applicable taxes, interest and penalties.

United States citizens are obligated to report and pay income tax on their world-wide income. In addition, U.S. citizens are required to disclose their ownership of certain foreign financial assets (*e.g.*, bank and investment accounts held outside the United States). Some U.S. citizens, born in the United States to foreign parents or born outside the United States to U.S. citizen parents, may be unaware they are U.S. citizens or that they are required to file tax returns and pay tax. Many of these “accidental Americans” have never filed U.S. tax returns or paid U.S. income tax.

Persons wishing to renounce their U.S. citizenship may do so at any time. However, the act of renouncing U.S. citizenship can trigger adverse U.S. tax consequences. To comply with existing laws and avoid potential tax liabilities, U.S. persons who renounce their citizenship are generally required to certify they have complied with all U.S. tax laws for the five years preceding the year of expatriation. Persons subject to this rule must file all tax returns and required disclosure forms for this five-year period plus the year in which the individual relinquishes his or her U.S. citizenship.

Under the new relief procedures, persons who have never filed U.S. tax returns can satisfy their compliance obligations by filing six years of tax returns and all required disclosure forms with the IRS after expatriating. The six-year reporting period must include a return for the year the individual expatriated plus returns for the preceding five years. In addition, a copy of Form DS-4083 (*Certificate of Loss of Nationality*) and valid identification (*e.g.*, copy of passport) must be included with the tax returns. Persons who don’t have a Social Security number can still submit under these procedures.

Persons eligible to participate in this procedure must have relinquished U.S. citizenship after March 18, 2010, have no filing history as a U.S. citizen or resident, have a net worth under \$2,000,000 and an aggregate tax liability of \$25,000 or less for the six years covered by the procedure. In addition, only individuals whose past compliance failures were due to non-willful conduct – *i.e.*, mistakes or good-faith misunderstandings -- may use this procedure. If the returns are accepted by the IRS, the taxpayer will incur no income tax liability, interest or penalties with respect to the six-year period.

While limited in scope and applicability, these procedures provide an alternative means for certain individuals who have expatriated or who have plans to expatriate to satisfy their U.S. tax obligations in a way that avoids tax and penalty liability.