



To Our Clients and Friends

February 9, 2011

## **IRS Announces 2011 Offshore Voluntary Disclosure Initiative With August 31, 2011 Deadline**

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On February 8, 2011, the Internal Revenue Service (“IRS”) announced a new offshore voluntary disclosure initiative (“2011 OVDI”) for taxpayers with undeclared foreign accounts and/or unreported foreign income. Taxpayers who participate in the 2011 OVDI generally will avoid criminal prosecution and may substantially reduce their exposure to civil penalties. The 2011 OVDI is similar to the offshore voluntary disclosure program that closed on October 15, 2009, but there are also many significant differences, some of which are favorable.

Taxpayers who wish to participate in the 2011 OVDI must, among other things, file complete and accurate amended (or original) returns and FBARs (and other applicable information returns) for each year during the 2003-2010 period in which they have undisclosed foreign accounts and/or undisclosed foreign entities. This process (including the submission of all such returns) must be completed by August 31, 2011.

Participants in the OVDI generally must pay (i) all tax due with interest, (ii) an accuracy penalty equal to 20% of the underpayment of tax, with interest, for each year, and (iii) an “offshore” penalty equal to 25% of the highest aggregate balance in the undeclared foreign accounts (plus the value of the taxpayer’s interests in certain foreign entities and other foreign assets) during the period covered by the voluntary disclosure.

The 25% offshore penalty may be reduced to 5% for certain taxpayers who (i) did not open (or cause anyone else to open) any foreign accounts (unless a bank required a new account to be opened, instead of allowing a change in ownership, upon the death of a prior account holder), (ii) have had no more than minimal, infrequent contact with any financial institution about any foreign account, (iii) have not withdrawn more than \$1,000 from any foreign account (or possibly from all foreign accounts in the aggregate) in any year covered by the voluntary disclosure, and (iv) can establish that all applicable U.S. taxes were paid on the funds deposited in each foreign account.

The 25% offshore penalty may be reduced to 12.5% for taxpayers whose undeclared foreign accounts (and other foreign assets to which the 25% penalty would apply) had an aggregate value that was less than \$75,000 at all times during the years covered by the voluntary disclosure.

For many taxpayers with undeclared foreign accounts and/or unreported foreign income, the penalty structure under the 2011 OVDI is extremely favorable in comparison with the civil

penalties that could otherwise be imposed. There are, however, cases in which such penalty structure would be relatively unfavorable, and it may be preferable to pursue other alternatives. For each taxpayer considering participation in the 2011 OVDI, the advantages and disadvantages must be carefully considered based on all of the facts and circumstances particular to such taxpayer.

As noted above, taxpayers who wish to participate in the 2011 OVDI must complete the process, including the filing of required returns, by August 31, 2011. **Early action will be needed to meet this deadline.**

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