



To Our Clients and Friends:

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Certain Taxpayers May Avoid Penalties If They File Delinquent Information Returns Relating to Foreign Accounts, Foreign Entities, and Foreign Gifts

Taxpayers are subject to numerous reporting requirements relating to foreign accounts, foreign entities, and foreign gifts. These reporting requirements include:

- Report of Foreign Bank and Financial Accounts, TD F 90.22-1 (“FBAR”)
- Annual Return To Report Transactions with Foreign Trusts and Receipt of Certain Foreign Gifts (Form 3520)
- Annual Information Return of Foreign Trust with a U.S. Owner (Form 3520-A)
- Information Return of U.S. Persons With Respect to Certain Foreign Corporations (Form 5471)
- Information Return of a 25% Foreign-Owned U.S. Corporation or a Foreign Corporation Engaged in a U.S. Trade or Business (Form 5472)
- Return by a U.S. Transferor of Property to a Foreign Corporation (Form 926)
- Return of U.S. Persons With Respect to Certain Foreign Partnerships (Form 8865)
- Information Return of U.S. Persons With Respect To Foreign Disregarded Entities (Form 8858)

Depending upon the circumstances, the civil penalties for failing to file such information returns may be substantial. For example, the maximum penalty for a willful failure to disclose a foreign financial account on an FBAR is the *greater* of \$100,000 or 50% of the value of the account on a specified date; and separate penalties may be imposed for each account, for each year. In the case of a nonwillful failure, the maximum penalty is \$10,000 for each account, for each year. The penalty for failing to disclose a distribution from a foreign trust on Form 3520 is equal to 35% of the distribution. These are just a few examples of applicable penalties.

In connection with the new Offshore Voluntary Disclosure Initiative, the Internal Revenue Service (“IRS”) recently announced that certain taxpayers who paid all of their tax due for prior years, but failed to file FBARs or other information returns listed above, may qualify for relief from penalties *if the necessary information returns are filed in a specified manner by August 31, 2011*. Taxpayers who qualify for such penalty relief are not required to enter the voluntary disclosure program.

Each taxpayer's individual facts and circumstances must be carefully analyzed to determine whether the requirements for penalty relief are available.

If you have any questions concerning this release, please contact Michael J. Miller (212) 903-8757, Richard A. Levine (212) 903-8729, Howard J. Levine (202) 293-3408, Mark David Rozen (212) 903-8743, or Ellen S. Brody (212) 903-8712.