

March 6, 2011

**2011 OFFSHORE VOLUNTARY DISCLOSURE INITIATIVE (OVDI)**

**AUGUST 31, 2011 DEADLINE**

**Background:**

On February 8, 2011, the IRS announced the 2011 Offshore Voluntary Disclosure Initiative (OVDI), designed to bring offshore money back into the U.S. tax system and help people with undisclosed income from hidden offshore accounts get current with their taxes. The OVDI covers calendar years 2003 to 2010, and is available through August 31, 2011 for individuals as well as entities such as corporations, trusts and partnerships.

As with other programs in the past, the OVDI eliminates the risk of criminal prosecution for taxpayers that are accepted into the program, and provides for reduced civil penalties than would apply if the IRS were to discover the taxpayer's noncompliance in this area. The terms of the 2011 OVDI differ from the terms of the 2009 Offshore Voluntary Disclosure Program (OVDP). In general, taxpayers will pay taxes for eight years and will pay an offshore penalty of 25% of the highest aggregate account balance in the taxpayer's foreign bank accounts during the years 2003 through 2010. This offshore penalty is in lieu of all other penalties that might apply, except for the failure to file, failure to pay, and accuracy-related penalties. Taxpayers with offshore accounts of less than \$75,000 in each calendar year covered by the OVDI will qualify for a 12.5% penalty rate. In very limited circumstances will taxpayers qualify for a 5% rate, including the case of a foreign resident who was unaware they were considered U.S. citizens.

Participants in the OVDI must pay the back taxes and interest for up to eight years as well as the accuracy-related and/or delinquency penalties. The participants must file all original and amended income tax returns for the affected years and include payment for taxes, interest and accuracy-related penalties by the August 31, 2011 deadline. As there are multiple steps involved in a submission under the OVDI, taxpayers will need to start well in advance of the August 31, 2011 deadline.

The IRS has made numerous resources available immediately with the announcement of the program, including a frequently asked questions list (FAQ) that includes 53 Q&A items. The FAQ includes

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many important pieces of information that taxpayers and practitioners will find especially helpful. Some highlights include:

- overview of the 2011 OVDI;
- key features of the 2011 OVDI, including details on the terms and penalties, as well as an alternative computation to resolve passive foreign investment company (PFIC) issues;
- eligibility for the 2011 OVDI, including information for those taxpayers who may have previously filed a “quiet” disclosure;
- the 2011 OVDI process;
- calculating the offshore penalty;
- statute of limitations;
- FBAR questions;
- taxpayer representatives information, including responsibilities under Circular 230 and a sample Form 2848, Power of Attorney and Declaration of Representative; and,
- case resolution.

One other significant item of note regarding the OVDI is that taxpayers who properly reported all taxable income from foreign accounts and paid the associated federal income tax, but who did not file all required annual Forms TD F 90-22.1, Report of Foreign Bank and Financial Accounts (FBAR), should not use the OVDI, but rather are advised by the IRS to just file the delinquent FBAR reports and attach a statement explaining why the reports are filed late. The IRS has indicated that they will not impose a penalty for the failure to file the delinquent FBARs if there are no underreported tax liabilities and the FBARs are filed by August 31, 2011 (or by the June 30, 2011 due date for calendar 2010 FBARs). Similar guidance exists for other tax information returns such as Form 5471, Information Return of U.S. Persons With Respect To Certain Foreign Corporations.

Please call Tom Millett at 617.723.4300 if you have questions or would like assistance in this matter.

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