



TAX & ESTATES DEPARTMENT

ALERT

INTERNAL REVENUE SERVICE ANNOUNCES SECOND VOLUNTARY DISCLOSURE PROGRAM FOR OFFSHORE BANK ACCOUNTS AND INTERNATIONAL TAX EVASION

On Feb. 8, 2011, the IRS announced the 2011 Offshore Voluntary Disclosure Initiative (OVDI 2011), which follows on the significant level of disclosures made in response to the 2009 Offshore Voluntary Disclosure Program (OVDP 2009). Prior offshore tax compliance initiatives included the 2003 Offshore Voluntary Compliance Initiative (OVCI 2003) and the 2003 Offshore Credit Card Program (OCCP). Each disclosure program offers qualifying individuals or persons the potential to avoid criminal investigation and prosecution as well as benefit from a reduced set of penalties. The initiatives' objective is to induce offending taxpayers to voluntarily come forward and report their delinquent filings and tax remittances—before the IRS learns of such violations—through the production of information from informants, foreign banks or other sources.

The 2009 OVDP reportedly yielded disclosures made by more than 14,000 delinquent U.S. taxpayers holding accounts in more than 60 countries. The OVDP was required to be filed with the Criminal Investigation Division of the IRS. In contrast to meeting the terms of the 2009 OVDP, many individuals may have opted instead to make a “quiet” disclosure by simply amending prior years’ returns and filing delinquent or erroneous foreign bank account reports (FBARs) with the government.

The IRS had announced only those who filed directly with the Criminal Investigation Division qualified under

the 2009 OVDP. This will remain the stated policy of the Service and Department of Justice with respect to the new OVDI.

Meeting the requirements of the 2009 OVDP generally provided the expectation of no criminal prosecution and reduced civil tax and FBAR penalties. Unpaid taxes from 2003 through 2008, interest and a 20 to 25 percent penalty would be charged, assessed and required to be paid. The IRS also imposed a 20 percent “FBAR-related” penalty equal to the highest aggregate value of the U.S. taxpayer’s foreign financial account balance for any year between 2003 and 2008. In limited situations, the FBAR-related penalty could be reduced to five percent of the account value or \$10,000 per tax year. The 2009 OVDP ended on Oct. 15, 2009. In the interim, it is reported more than 3,000 additional U.S. taxpayers have filed voluntary disclosures to the IRS.

The IRS’ announcement of the 2011 OVDI reflects a process of trying to convince U.S. taxpayers—who remain noncompliant—to make voluntary disclosures in an effort to avoid criminal prosecution. Under the 2011 OVDI, eligible taxpayers have until Aug. 31, 2011, to file all original and amended tax returns and include payment (or good faith arrangements to pay) for taxes, interest and accuracy-related penalties. The new penalty rules require a 25 percent FBAR-related penalty on the highest value of the taxpayer’s foreign financial accounts between 2003 and 2010. Only one 25 percent offshore penalty will be applied with respect to voluntary disclosures relating to

the same account. The penalty may be allocated among the taxpayers with beneficial ownership making the voluntary disclosures. Participants making disclosures under the 2011 OVDI are required to pay back taxes and interest for up to eight years as well as additional accuracy or delinquency penalties.

Individuals—whose names and concealed foreign financial account ownership have already been identified by foreign banks, financial advisors involved in such illegal conduct, informants, whistle-blowers or other forms of disclosure, including the recent posting of names of allegedly noncompliant U.S. taxpayers by WikiLeaks—will not be eligible for the 2011 OVDI and will be viewed by the government as eligible under the voluntary disclosure program.

Whether an individual should decide to make a voluntary disclosure under the new 2011 OVDI requires first having a full understanding of the required payments

of taxes, interests and penalties and knowledge of the potential for a criminal investigation. Producing such information is obviously incriminating and is a serious legal matter for which each individual should receive advice by experienced legal counsel before a decision is made. Members of Fox Rothschild's Tax and Estates Department have advised clients on civil and criminal tax and related matters, and as part of such practice, continue to evaluate and advise clients under the prior IRS offshore initiatives as well as the newly announced 2011 OVDI.

This Tax Alert is provided solely as a means of informing our friends and colleagues of recent developments in the IRS' efforts to battle offshore bank secrecy and international tax evasion. The information provided herein may not be relied upon in any way by anyone reading this Tax Alert as the rendering of legal advice of Fox Rothschild LLP.



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