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New IRS Guidance in the 2011 IRS Offshore Voluntary Disclosure Initiative

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In February 2011 the IRS announced the Offshore Voluntary Disclosure Initiative (OVDI) for taxpayers with undisclosed foreign accounts. This program was a follow up to a program initiated by the IRS in 2009 on the same topic following civil and criminal cases brought by the Department of Justice against Swiss bank UBS AG seeking the release of information concerning secret accounts maintained by U.S. persons with the Swiss bank. Approximately 15,000 taxpayers came forward under the 2009 program which required the payment of taxes on omitted income going back to 2003, a 20% penalty on those back taxes and a 20% miscellaneous penalty on the high balance of the undisclosed foreign account between 2003 and 2008.

The February 2011 OVDI is similar to the 2009 program with some exceptions including an increase in the penalty from 20% to 25%, and an eight year lookback rather than a six year lookback on back taxes. Taxpayers who do not come forward face much more severe penalties including a fraud penalty equal to 75% of the back taxes and a miscellaneous penalty equal to 50% of the high balance each year (potentially 300% in the aggregate) as well as possible criminal prosecution.

Guidance issued in June 2011 expands eligibility for a 5% penalty (in lieu of a 25% penalty) and clarifies the procedure for individuals choosing to “opt out” of the OVDI. Those who "opt out" are subject to a more detailed audit and penalties will be determined following the completion of that exam. Cole Schotz Partner Jeffrey Schechter was recently quoted on this issue in the following article titled, "[IRS Guidance on Offshore Asset Disclosure Program Perceived Beneficial to Taxpayers](#)" published by *BNA Daily Tax Report*, which provides some insight into the new guidance. Also, all of the updated frequently asked questions pertaining to the OVDI can be found [here](#).

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