

TAX ALERT: Approaching Deadline – IRS Voluntary Disclosure Initiative for Foreign Bank Account Holders

U.S. Citizens must disclose foreign bank accounts by June 30, 2010

There has been a great deal of publicity regarding the quickly approaching deadline of June 30, 2010 for U.S. citizens, residents and domestic entities to voluntarily disclose to the IRS the existence of foreign bank accounts, foreign financial assets and entities by filing Form TD F 90-22.1, Report of Foreign Bank and Financial Accounts (FBAR) with the U.S. Treasury Department (whether previously unreported or otherwise).

The IRS is aggressively pursuing taxpayers, even where they may have already reported and paid the requisite taxes in a foreign country (such as Israel). While there may not be any practical U.S. income tax consequence of the failure to include the foreign based income or to disclose the account, the IRS is still insisting that **all** U.S. citizens, residents and domestic entities disclose the existence of any and all foreign accounts. The IRS has indicated that the failure to disclose these accounts can result in more severe civil penalties and, in certain circumstances, even criminal prosecution.

The laws requiring taxpayers to disclose foreign accounts both on their U.S. income tax returns and by filing a disclosure form with the U.S. Treasury Department are not new. For many years, there has been a requirement that taxpayers disclose their foreign based accounts. However, these matters have received increased attention due to the publicity surrounding the IRS's Voluntary Disclosure Initiative that expired in October 2009.

In addition to the problem of failure to file the FBAR Form, a complicating tax compliance problem occurs when a taxpayer "checks the box" on a timely filed U.S. income tax return indicating that they have no

foreign bank accounts when, in fact, they have signature authority over, or ownership of, a foreign account. It is extremely important that individuals provide full disclosure to their accountants so that their tax returns can be prepared properly. Taxpayers should consult with an appropriate tax advisor to ascertain whether they have a disclosure requirement.

At the same time, a separate initiative is available for individuals that have signatory authority of an account but **no** financial interest, or individuals that have a foreign financial account but such assets are held in a foreign commingled fund. While the IRS has once again extended the deadline for filing these FBAR forms until June 30, 2011, there are many individuals that may not only have those types of accounts but also have other accounts in their own names which are clearly subject to disclosure and must be filed by the regular annual deadline of June 30th of each year.

At the same time, the IRS has renewed its efforts to obtain account information about accounts held by U.S. taxpayers in Swiss banks, as well as in other jurisdictions, and some individuals have recently received correspondence from the Swiss tax authorities (or from other similar foreign jurisdictions). Taxpayers who have been contacted by Swiss tax authorities should seek the immediate advice of tax counsel as to how to properly proceed.

These matters can become quite serious and appropriate planning may reduce the taxpayer's exposure to penalties or help to mitigate any penalties that may be assessed.

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About Ober|Kaler

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