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## New IRS Amnesty Program Announced - 31 August 2011 Deadline

Widespread speculation has existed within the US tax community for a number of months about a new IRS "amnesty" program focused on US taxpayers with non-disclosed assets held outside of the US. Today, IRS formally announced the program entitled the 2011 Offshore Voluntary Disclosure Initiative (the "2011 OVDI").

Though IRS has stressed that the 2011 OVDI is no more generous than the prior IRS amnesty program that expired on 15 October 2009, the penalty provisions of the new program may, in fact, provide better results for some taxpayers. US citizens, US residents and US green card holders who considered coming forward under the 2009 amnesty program but declined to do so should reconsider their positions in light of the new 2011 OVDI and the success IRS has experienced in piercing the veil of bank secrecy in many jurisdictions throughout the world since 15 October 2009 – a trend that will only intensify in the years to come.

### Highlights of the new 2011 OVDI include:

1. Participant generally avoids criminal prosecution;
2. Participant pays up to 8 years of back taxes and interest plus a 20%<sup>[1]</sup> penalty on tax underpayments;
3. Participant pays penalties for failure to disclose non-US assets/income as follows:
  - a. For aggregate values greater than US\$75,000, 25% of the highest annual aggregate value of non-disclosed assets between 2003 and 2010;
  - b. For aggregate values not greater than US\$75,000, 12.5% of the highest annual aggregate value of non-disclosed assets between 2003 and 2010; and
  - c. For certain inherited or gifted bank accounts with minimal account activity or for a non-US resident who did not know he was a US citizen, 5% of the highest aggregate annual value of assets between 2003 and 2010;
4. Participant with a non-US mutual fund or other passive foreign investment company ("PFIC") may opt into a "mark to market" tax regime with simplified tax charges;
5. Participant must come forward before being identified by the IRS; and
6. Participant must come forward on or before 31 August 2011.

The IRS Criminal Investigations Division ("CID") has placed international tax evasion at the top of its agenda, and CID agents have recently traveled to (among other jurisdictions) Hong Kong, Singapore, Korea and India investigating non-compliance.

In light of the substantial criminal penalties that non-filers may face, Butler Snow's International Tax team and White Collar Criminal Defense team have formed a dedicated working group to assist

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taxpayers who choose to take advantage of the new 2011 OVDI. Our working group includes nationally recognized criminal lawyers James Tucker (former US Attorney with over 40 years of criminal litigation experience), Ken Turner (former District Attorney with over 30 years of criminal litigation experience), Bob Anderson (former Assistant US Attorney with over 20 years of criminal litigation experience), Kari Sutherland (former Special Agent, United States Secret Service with over 15 years of litigation and law enforcement experience), and Amanda Barbour (former Deputy District Attorney with over 10 years of criminal litigation experience).

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[1]Under certain circumstances, this penalty could be higher.

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