

Client Alert.

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IRS Unveils 2011 Offshore Voluntary Disclosure Initiative

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On February 8, 2011, the IRS unveiled the 2011 Offshore Voluntary Disclosure Initiative (“OVDI”), pursuant to which taxpayers may come forward, through August 31, 2011, to report previously undisclosed foreign accounts, assets, and income. The IRS’s press release and accompanying Frequently Asked Questions can be accessed here:

<http://www.irs.gov/newsroom/article/0,,id=235695,00.html>, and here:

<http://www.irs.gov/businesses/international/article/0,,id=235699,00.html>, respectively.

The OVDI follows the 2009 Offshore Voluntary Disclosure Initiative (“OVDP”), which was effective from March through October of 2009 and elicited disclosures from about 15,000 taxpayers. However, the overall penalty structure for OVDI is higher than the penalty structure that was in place for OVDP.

Under the OVDI, taxpayers with previously undisclosed foreign accounts, assets, and income may be able to avoid criminal prosecution and may be able to limit their exposure to civil penalties if they meet all the requirements on or before August 31, 2011. Pursuant to the new framework, taxpayers will be required to (i) file amended tax and information returns including Form TD F 90-22.1, Report of Foreign Bank and Financial Accounts (the “FBAR” form) with respect to the years from 2003 to 2010, (ii) pay all taxes and interest due with respect to such returns (including any accuracy or delinquency penalties), and (iii) pay a penalty equal to 25% of the amount in foreign bank accounts in the year with the highest aggregate account balance covering the 2003 to 2010 time period. The 25% penalty may be reduced to 12.5% for taxpayers with aggregate offshore accounts of less than \$75,000 for each calendar year covered by the OVDI. The OVDI also retains a 5% reduced penalty from the prior OVDP program and sets forth specific criteria that must be satisfied to obtain this reduced penalty.

Taxpayers with undisclosed foreign accounts, assets, and income should consider participating in the OVDI and should not wait too long since gathering records and preparing proper amended returns can take some time. IRS Commissioner Douglas H. Shulman noted that “[c]ombating international tax evasion is a top priority for the IRS. We have additional cases and banks under review. The situation will just get worse in the months ahead for those hiding assets and income offshore. This new disclosure initiative is the last, best chance for people to get back in the system.” Morrison & Foerster’s Tax Controversy Group regularly advises taxpayers in connection with voluntary disclosure of foreign accounts, assets, and income. Please contact any of the attorneys listed below or your regular Morrison & Foerster contact.

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