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IRS Announces the Second Voluntary Disclosure Initiative for Undisclosed Foreign Financial Accounts

On February 8, 2011, the IRS announced a special voluntary disclosure initiative that will be available through August 31, 2011, for taxpayers who have undisclosed foreign financial accounts.

Individuals and entities subject to the jurisdiction of the United States are required to submit Form TD F 90-22.1, the Report of Foreign Bank and Financial Accounts (FBAR), on or before June 30 of each year to report any financial interest in or signature authority over foreign financial accounts maintained during the previous calendar year if the aggregate value of those accounts exceeded $10,000. Taxpayers who fail to file FBARs could potentially face both criminal prosecution and civil penalties of up to 50 percent of the total balance of the foreign accounts for each annual violation.

In response to widespread failure to comply with the FBAR filing requirements and the obligation of U.S. taxpayers to report all worldwide income, the IRS and the U.S. Department of Justice launched significant efforts to bring taxpayers with foreign assets and income into compliance. Over the last three years, these enhanced enforcement efforts have resulted in increased criminal prosecutions and civil penalties, as well as cooperation from foreign governments and banks in a number of jurisdictions that previously safeguarded the identities of their accountholders. While steadily increasing the risk that taxpayers with undisclosed foreign financial accounts will get caught, the IRS continues to encourage taxpayers to come forward voluntarily to report prior noncompliance.

The first special voluntary disclosure program for offshore accounts closed on October 15, 2009, with over 15,000 taxpayer participants. The IRS decided to open a second disclosure initiative following continued interest from taxpayers with foreign accounts, including approximately 3,000 taxpayer submissions after the official close of the 2009 program.

Under the 2011 initiative, individuals are subject to a penalty of up to 25 percent of the amount in the foreign bank accounts in the year with the highest aggregate account balance between 2003 and 2010. Some taxpayers will be eligible for 5 percent or 12.5 percent penalties. Participants also must pay back taxes and interest for up to eight years, along with accuracy-related and delinquency penalties. If a taxpayer makes a timely, truthful and complete disclosure prior to the deadline, the IRS will not recommend criminal prosecution.

Unlike the 2009 program, in which submission of the taxpayer's identifying information to the IRS prior to the October 15, 2009, deadline was sufficient to participate in the program, the 2011 initiative requires submission of a complete and extensive package of information and payment of the amounts owed to the IRS prior to the August 31, 2011, deadline.

We strongly encourage any U.S. taxpayers with undisclosed foreign accounts to consider participation in this disclosure initiative promptly.

For more information on the terms and conditions of the 2011 initiative and details on how to make a voluntary disclosure, please contact your Katten Muchin Rosenman LLP attorney or any of the following members of the **Tax Planning** and **Tax Controversy** Practices.

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