



Federal and New Jersey Offshore Bank Account Amnesty Program

FEBRUARY 2011

Opportunity. Earlier this month, the IRS announced a new 2011 Offshore Voluntary Disclosure Initiative (OVDI) for taxpayers to disclose their unreported offshore accounts. To participate in the OVDI, taxpayers must file or amend their tax returns and Form TD F 90-22.1, *Report of Foreign Bank and Financial Accounts (FBAR)*, and pay all delinquent taxes, interest and penalties by August 31, 2011. The initiative covers tax years 2003 through 2010.

In exchange for participating in the OVDI, taxpayers with undisclosed offshore accounts can avoid criminal prosecution for their unpaid taxes and may be subject to significantly reduced penalties. Generally, the civil penalty for willfully failing to file an FBAR can be as high as the greater of \$100,000 or 50 percent of the total balance of the foreign account per violation.

Penalties Imposed. Under the OVDI, taxpayers will be subject to a 25 percent penalty on the highest aggregate account balance on their undisclosed account(s) between 2003 and 2010. If the value of the undisclosed account(s) was less than \$75,000 at all times during the tax years in question, the penalty is reduced to 12.5 percent. Moreover, in limited situations, a penalty of 5% may be imposed.

This is the second amnesty offer from the IRS for taxpayers with unreported income from offshore accounts. The first amnesty period ended on October 31, 2009, and produced roughly 15,000 disclosures to the IRS. Participants were subject to a 20 percent penalty rate covering a six-year window.

IRS Commissioner Shulman has described the 2011 OVDI as “the last, best chance for people to get back into the system.”

Eligibility. The OVDI is open to taxpayers, including individuals, corporations, partnerships and trusts. Taxpayers under examination or under criminal investigation, however, are ineligible to participate in the program.

Deadline. The OVDI will be available to taxpayers that come forward and complete all requirements on or before August 31, 2011. Therefore, taxpayers looking to take advantage of the amnesty period should act quickly as it likely will take some time to obtain the requisite documentation from offshore financial institutions and to prepare an accurate disclosure to the IRS.

New Jersey Opportunity. Similar to the program offered by the IRS, the New Jersey Division of Taxation has offered a

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similar amnesty program. The New Jersey Offshore Voluntary Compliance Initiative (NJOVCI) covers years 2003 through 2010 and expires on September 30, 2011. Under the NJOVCI, all civil penalties will be waived except for the 5% late payment penalty and 5% amnesty penalty. More information about the NJOVCI can be found here:

http://www.state.nj.us/treasury/taxation/offshore_vci_notice.shtml

W&G Thoughts. The 2009 program was offered amid headlines of thousands of undeclared bank accounts maintained by Americans at UBS, a Swiss Bank. This second amnesty program comes into place at the same time as some high profile prosecutions of undisclosed accounts at Asian branches of HSBC, a UK-based bank.

Many US taxpayers have offshore accounts for legitimate reasons, but haven't been filing the required FBAR due to lack of understanding these requirements. Please see our previous Alert on these requirements for more information: http://www.wgcpas.com/pdf/tax_alert_2009_Jan4.pdf

Also, businesses with foreign operations may not have been filing required disclosure forms with the IRS such as Form 5471, *Information Return of U.S. Persons With Respect To Certain Foreign Corporations* or Form 5472, *Information Return of a 25% Foreign-Owned U.S.*

Corporation or a Foreign Corporation Engaged in a U.S. Trade or Business.

Similar information reporting for individuals who receive foreign gifts or have a relationship with a foreign trusts are also required to file Form 3520, *Annual Return to Report Transactions With Foreign Trusts and Receipt of Certain Foreign Gifts.*

Penalties for not filing these and other required disclosure forms can be steep. The OVDI provides an opportunity for taxpayers to file these prior information returns without additional penalties and file future returns as required.

Offshore tax compliance is an area of prime focus by the IRS. Taxpayers with unfiled returns or unpaid tax related to offshore accounts who didn't take advantage of 2009 program should seriously consider this program.

Please contact your WG Advisor to discuss this opportunity further.

Any U.S. tax advice contained in this communication is not intended or written to be used, and cannot be used, for the purpose of avoiding tax penalties that may be imposed on the taxpayer.

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