

## IRS Announces Relief Program for Undisclosed Offshore Accounts and Assets

by Cameron L. Hess, Esq., CPA

The IRS has recently adopted its second taxpayer relief period for unreported offshore accounts and assets. The IRS's prior Offshore Voluntary Disclosure Program (2009 OVDP), which closed on October 15, 2009, provided a uniform penalty relief structure for taxpayers who came forward voluntarily and reported their previously undisclosed foreign accounts and assets.

Subsequent to October 15, 2009, relief was being granted on a case-by-case basis. In considering its options, the IRS had adopted a second relief program. This new initiative, the 2011 Offshore Voluntary Disclosure Initiative (2011 OVDI) will be available to those taxpayers and other similarly situated taxpayers who come forward and complete all requirements on or before August 31, 2011.

Taxpayers with undisclosed foreign accounts or entities may elect to make a voluntary disclosure under this program to avoid substantial civil penalties and generally eliminate the risk of criminal prosecution. The IRS will offer in-lieu civil penalties, which may in many cases be more favorable than the civil penalties outside of the OVDI program. In addition, Taxpayers who do not participate in OVDI may be subject to fraud penalty, foreign information return penalties, and an increased risk of criminal prosecution. Criminal charges related to tax returns include tax evasion (26 U.S.C. § 7201), filing a false return (26 U.S.C. § 7206(1)) and failure to file an income tax return (26 U.S.C. § 7203). Willfully failing to file an FBAR and willfully filing a false FBAR are both violations that are subject to criminal penalties under 31 U.S.C. § 5322.

The basic elements of the 2011 Offshore Voluntary Disclosure Initiative are relatively straightforward but may in some cases require extensive filings. These include:

- Provide copies of previously filed original (and, if applicable, previously filed amended) federal income tax returns for tax years covered by the voluntary disclosure;
- Provide complete and accurate amended federal income tax returns (for individuals, Form 1040X, or original Form 1040 if delinquent) for all tax years covered by the voluntary disclosure, with applicable schedules detailing the amount and type of previously unreported income from the account or entity (e.g., Schedule B for interest and dividends, Schedule D for capital gains and losses, Schedule E for income from partnerships, S corporations, estates or trusts).
- File complete and accurate original or amended offshore-related information returns (see FAQ 29 for certain dissolved entities) and Form TD F 90-22.1 (Report of Foreign Bank and Financial Accounts, commonly known as an "FBAR") for calendar years 2003 through 2010;
- Cooperate in the voluntary disclosure process, including providing information on offshore financial accounts, institutions and facilitators, and signing agreements to extend the period of time for

assessing tax and penalties;

- Pay 20% accuracy-related penalties under IRC § 6662(a) on the full amount of your underpayments of tax for all years;
- Pay failure to file penalties under IRC § 6651(a)(1), if applicable;
- Pay failure to pay penalties under IRC § 6651(a)(2), if applicable;
- Pay, in lieu of all other penalties that may apply, including FBAR and offshore-related information return penalties, a miscellaneous Title 26 offshore penalty, equal to 25% (or in limited cases 12.5% or 5% of the highest aggregate balance in foreign bank accounts/entities or value of foreign assets during the period covered by the voluntary disclosure;
- Submit full payment of all tax, interest, accuracy-related penalty, and, if applicable, the failure to file and failure to pay penalties; or enter into an installment payment arrangement with the IRS as determined by the IRS; and
- Execute a Closing Agreement on Final Determination Covering Specific Matters, Form 906.

This program will have value to a number of clients and may be used in conjunction with California's relief program. See article on California Amnesty Program. If you need any assistance with respect to this program, our office can help.