IRS Renews Offshore Account Voluntary Disclosure Initiative

For those with undisclosed offshore accounts, the Internal Revenue Service is again open for business. The IRS announced on February 8, 2011 a renewed voluntary disclosure initiative — called the 2011 Offshore Voluntary Disclosure Initiative (OVDI) — designed to repatriate undisclosed offshore funds and help offshore account holders get current with their taxes. The IRS's decision to establish a second voluntary disclosure initiative follows considerable success with its predecessor, which generated approximately 15,000 voluntary disclosures. The new initiative will be available through August 31, 2011.

The OVDI contains several changes from the 2009 Offshore Voluntary Disclosure Program (OVDP), which expired on October 15, 2009. Most significant, the overall penalty structure is higher so as not to reward those who waited rather than participate in the OVDP. For the 2011 initiative, taxpayers are required to pay a penalty of 25% of the amount in their foreign accounts for the year with the highest aggregate balance during the period 2003 to 2010. Under the 2009 program, taxpayers paid penalties of up to 20% of the highest aggregate balance during a six-year period.

Taxpayers whose offshore accounts did not exceed $75,000 in any calendar year during the covered period may qualify for a reduced penalty of 12.5%. Some taxpayers may qualify for a 5% penalty in limited situations. Taxpayers participating in the 2011 initiative must pay back taxes and interest for up to eight years, as well as accuracy related and/or delinquency penalties. Taxpayers who fail to come forward face drastically higher civil penalties: up to the greater of $100,000 or 50% of the account balance for each year in which an account was not reported. Potential criminal penalties are up to five years imprisonment and a $250,00 fine.

Although the initiative primarily targets those who have failed to file Report(s) of Foreign Bank and Financial Accounts (Treasury Department Form 90-22.1, commonly known as the FBAR), taxpayers with offshore interests may be required to file a myriad of additional information returns. Also, the Foreign Account Tax Compliance Act of 2009 (FACTA) established new information reporting rules for individuals with foreign. The disclosures are similar — but not identical — to those required in FBARs, and must be made along with account holders' income tax returns. (FBARs are filed separately, due June 30 of each year.)