

2011 IRS Voluntary Disclosure Program

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The IRS recently announced the 2011 Offshore Voluntary Disclosure Initiative (the Initiative) which provides taxpayers the opportunity to disclose previously unreported offshore accounts. The Initiative is available to eligible taxpayers until August 31, 2011.

This Initiative is similar to one offered in 2009 when UBS was disclosing foreign account information to the IRS. This Initiative appears to be motivated by WikiLeaks' acquisition and the anticipated release of Swiss bank account information. However, while the current Initiative is similar to the 2009 voluntary disclosure program, the costs of participating in this Initiative are generally more substantial.

If a taxpayer is eligible to participate in the Initiative and fully complies with its terms, then the Initiative allows taxpayers who have unreported foreign accounts to minimize their exposure for civil penalties and criminal prosecution. While the Initiative may permit taxpayers to obtain reduced penalties, there will typically be substantial tax, interest and penalties associated with participating in this Initiative. A taxpayer is generally required to take the following actions in order to be eligible for the Initiative:

1. File original or amended U.S. income tax returns that include all previously unreported income from foreign accounts for the 2003-2010 tax years and pay all U.S. tax due on such returns;
2. File foreign bank account reports for such years;
3. Pay a 20% accuracy penalty on previously unreported income and all applicable failure to file and/or pay penalties;
4. Pay a penalty equal to 25% of the highest aggregate balance in previously unreported foreign accounts during the 2003-2010 tax years;
5. Pay all interest due on previously unreported tax liabilities.

It is possible that some of these penalties may be reduced based on the particular circumstances of the taxpayer and the nature of the unreported offshore accounts.

Participation in the Initiative does not guarantee immunity from criminal prosecution and potentially involves significant costs. However, such costs and the risks of criminal prosecution in connection with a voluntary disclosure under the Initiative should be substantially lower than the costs if the unreported accounts are discovered by the IRS on audit. U.S. taxpayers (including non-resident U.S. citizens) who have undisclosed foreign bank accounts and/or unreported income from such accounts should consult with their tax advisors to determine whether they are eligible to participate in the Initiative and whether it would be appropriate for them to submit a voluntary disclosure based on their particular circumstances.

Miller Canfield has handled numerous voluntary disclosures under the 2009 program and otherwise. If you have questions regarding the issues discussed herein or are considering making a voluntary disclosure under the Initiative, please contact us.

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Federal Tax Group