



## **TAX ALERT**

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### **U.S. PERSONS WITH UNDISCLOSED FOREIGN FINANCIAL ACCOUNTS**

The Internal Revenue Service (IRS) has recently announced a new amnesty, reduced-penalty voluntary disclosure program for U.S. owners of previously undisclosed foreign financial accounts. This program will provide the best, and possibly the last, opportunity for such persons to voluntarily come forward.

**This new voluntary disclosure initiation will be available through August 31, 2011.**

#### *Background*

Any U.S. person, whether residing in the United States or abroad, who has a financial interest in or signature authority over any financial account in a foreign country must file a Report of Foreign Bank and Financial Accounts (FBAR) (Form 90-22.1) disclosing their interest in such accounts, if the aggregate value of these accounts exceeds \$10,000. The FBAR is due by June 30 of the year following the year that the account holder meets the \$10,000 threshold.

There is no extension for filing the FBAR. Accordingly, if you are a U.S. person with such an interest or signature authority over a foreign financial account and you have not previously filed an FBAR with respect to such account, we would strongly urge you to consider taking advantage of the voluntary disclosure process, before the IRS finds you first.

#### *History*

The IRS implemented the first reduced-penalty offshore voluntary disclosure program that ended in October 2009 and yielded a number of taxpayer disclosures.

The 2009 reduced penalty voluntary disclosure program permitted taxpayers to effectively avoid criminal prosecution, if they disclosed all of their previously undisclosed foreign financial accounts and for the prior six years agreed to: (1) pay all unpaid taxes (and interest with respect thereto); (2) pay a delinquency penalty on the overdue tax; and (3) in lieu of all other penalties that may apply, pay a penalty equal to 20% of the highest aggregate balance held in the account during the six-year period.



In the absence of a reduced-penalty voluntary disclosure program, a U.S. person's non-willful violation of the requirement to disclose his interest in a foreign financial account could result in a civil penalty up to \$10,000. A willful violation could result in a civil penalty equal to the greater of \$100,000 or 50% of the balance in the account at the time of the violation. These penalties would be in addition to any criminal penalties, including fines and imprisonment that could apply.

The terms of the new voluntary disclosure program are not as favorable as the terms of the first program. However the new reduced-penalty framework is still significantly more favorable for many taxpayers than the penalties and uncertainty such taxpayers would face in the absence of voluntarily coming forward under this amnesty program.

### **Voluntary Disclosure**

According to long-standing IRS procedure, a voluntary disclosure occurs when: (1) the IRS has not started a review of the taxpayer's nonfiling; (2) the taxpayer makes a communication with the IRS that is truthful, timely and complete; (3) the taxpayer shows a willingness to cooperate (and does in fact cooperate) with the IRS in determining his correct tax liability; and (4) the taxpayer makes good faith arrangements with the IRS to pay in full the tax, interest, and any penalties determined by the IRS to be applicable.

A letter from an attorney which encloses complete and amended tax returns from a client which reports legal source income omitted from the original returns and which offers to pay the tax, interest, and any penalties determined by the IRS to be applicable in full and which meets the timeliness standard, will generally constitute a voluntary disclosure for these purposes.

Any taxpayer who faces this issue should consider the possible benefits of voluntary disclosure.

Please contact Larry Blair at 412-918-1123 or e-mail at [lblair@metzlewis.com](mailto:lblair@metzlewis.com) if you would like additional information on your options for reporting a previously undisclosed foreign financial account.

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