



## News From Giordani, Swanger, Ripp & Phillips, LLP

### **IRS Announces Second Voluntary Disclosure Initiative**

#### **For Clients and Friends of GSRP, LLP**

In its continuing scrutiny of U.S. persons with international dealings, on February 8, 2011, the IRS announced a second voluntary disclosure initiative, called the 2011 Offshore Voluntary Disclosure Initiative (“OVDI”), for taxpayers not already under investigation by the IRS. IRS Commissioner Doug Shulman commented that the goal of the program is to “get people back into the U.S. tax system.”

#### **Background**

U.S. persons are taxed on worldwide income, regardless of the location of the account or asset generating income. In addition to reporting the income on an annual income tax return, the U.S. person is required to file annual information returns to report ownership of foreign accounts and entities.

Two years ago, the Internal Revenue Service offered a special program to U.S. persons with undisclosed foreign accounts. Taxpayers participating in the program, which ended October 15, 2009, filed remedial or amended returns for tax years 2003-2008 reporting the income from the accounts and paid applicable taxes, interest and filing penalties. In lieu of all other potential civil and criminal penalties, the taxpayer paid a penalty of 20% of the highest balance in his or her foreign accounts during that six-year period. An estimated 15,000 taxpayers participated.

#### **Requirements for Participation**

Under the 2011 OVDI, eligible taxpayers with unreported accounts and entities will be required to file delinquent and amended returns, including information returns, for the eight year period 2003-2010 and will be required to pay all taxes, interest, and accuracy-related and delinquency penalties reflected on those returns. In lieu of all other civil and criminal penalties that might apply and in exchange for coming forward voluntarily, the taxpayer will be eligible for a penalty of 25% of the highest balance in his or her foreign accounts. As with the 2009 program, taxpayers with inherited or gifted foreign accounts may qualify for a reduced 5% penalty. New to the 2011 OVDI are a reduced penalty of 5% for certain foreign residents unaware of their U.S. citizenship and a

penalty of 12.5% for taxpayers whose undisclosed foreign accounts remained below \$75,000 during the entire eight-year period.

Taxpayers who decide to participate in the program must file all original, amended, and remedial returns, and make a payment of all taxes, interest, and penalties (other than the 25% penalty) no later than August 31, 2011, though payment arrangements are possible.

### **Deadline Looming**

It is apparent that the U.S. Congress and the IRS will continue their efforts to seek additional information regarding U.S. persons with foreign assets and will continue to take enforcement action against non-filers. This may be the last opportunity for U.S. persons with undisclosed accounts to come forward and take advantage of a reduced penalty structure. And since only about six months remain before the window closes, the time to act is now.

### **We Are Here to Help**

Because these reporting failures can carry criminal penalties outside of the OVDI context, it is important that discussions regarding taxpayer participation in the program be covered by the attorney-client privilege. We therefore strongly recommend that taxpayers with undisclosed accounts seek legal counsel regarding their participation in the program.

With our depth of experience in international matters and tax controversy work, GSRP is uniquely qualified to assist you in evaluating whether the 2011 OVDI is suitable for you or your client. Our attorneys and professionals advised clients regarding participation in the 2009 program, assisted them in preparing the necessary returns and filings when participation was advisable, and represented them before the Internal Revenue Service throughout the process.

For further information regarding the OVDI, please contact:

Michael Ripp  
512.370.2735  
[mrripp@gsrp.com](mailto:mrripp@gsrp.com)

Peggy Ugent  
512.370.2756  
[pugent@gsrp.com](mailto:pugent@gsrp.com)



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