

IRS Hot Topics

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August 31, 2011 deadline for certain voluntary disclosures

The IRS's Offshore Voluntary Disclosure Initiative (OVDI) will close on Wednesday, August 31, 2011. Taxpayers who are U.S. persons (e.g., individuals, corporations, partnerships, trusts), and who are not currently under examination, should review their U.S. tax filing obligations for previous years to determine whether to use the OVDI to make a voluntary disclosure of:

- Unreported income;
- Failure to file Form TD F 90-22.1 (Report of Foreign Bank and Financial Accounts) ("FBAR"); and
- Failure to file certain international information returns (e.g., Form 5471).

The IRS announced the OVDI in February 2011 to give taxpayers who are U.S. persons, and who did not make a voluntary disclosure under the 2009 Offshore Compliance Initiative, a

second opportunity to return to compliance with U.S. tax laws. The complete set of "Frequently Asked Questions" (FAQs) that comprise the OVDI are available on the IRS's website at:

<http://www.irs.gov/businesses/international/article/0,,id=235699,00.html?portlet=7>

Taxpayers with undisclosed foreign financial accounts or undisclosed foreign business entities, and unreported income from these sources, have until August 31 to make a voluntary disclosure to the IRS.

Taxpayers who are concerned about potential criminal prosecution for concealing income from taxation, or for concealing foreign financial accounts, should consult their legal advisor before engaging in substantive discussions with PwC



to determine whether the protection of attorney-client privilege is necessary.

The OVDI may also allow certain taxpayers who have failed to meet their U.S. tax or FBAR filing obligations, and who want to return to compliance, the opportunity to come forward and pay reduced or no penalties.

Taxpayers with unreported income and unreported foreign financial accounts

The IRS recognizes that there are many potential reasons why a U.S. person may not have reported all income or may not have reported an interest in a foreign financial account or controlled foreign company. Each taxpayer's facts are different and must be considered within the full context of the OVDI.

- A taxpayer who has consistently filed U.S. income tax returns, but has not reported income from a foreign financial account or controlled foreign company, and has not filed timely FBARs, can use the OVDI to pay tax, plus certain penalties and interest, and avoid criminal prosecution. The OVDI requires taxpayers to file amended returns going back to 2003.
- A taxpayer who is a U.S. person, who has lived outside

the U.S. for many years, and who has filed returns in the country of residence but not with the IRS, may also use the OVDI to return to compliance with their U.S. obligations and avoid criminal prosecution. Or, this taxpayer may choose to "opt out" of the OVDI if the penalties that are imposed by the OVDI are disproportionate to the U.S. compliance failure. Such a taxpayer may still be selected for examination but may not have to pay some or all of the tax and FBAR penalties required under the OVDI.

Taxpayers who have reported all income timely but failed to file FBARs

FAQ 17 of the OVDI allows a U.S. person that should have filed the FBAR form for 2009 and for prior years, but did not, to file the required forms without incurring a late filing penalty if they are filed by August 31, 2011. The penalty for failing to file a timely FBAR can be as high as 50 percent of the total balance of the foreign account. To use FAQ 17, however, the U.S. person who is the owner of the account must have reported all the income, and paid the associated tax, from the foreign account. A U.S. person who has a reporting responsibility as a result of having signature authority over a foreign account, but no financial

interest in the account (e.g., accounts of employers), may also use FAQ 17 to file delinquent FBARs for the accounts. A statement explaining why the FBAR was not timely filed must be included with the FBAR, but no explanation of why reasonable cause exists under published IRS guidance or applicable case law is needed. FAQ 17 penalty relief is not available with respect to FBAR accounts maintained during calendar year 2010.

Note that a person with signatory authority over, but no financial interest in, a foreign account may, in some situations, be able to file FBARs outside of the OVDI program for years prior to 2010 without incurring a penalty. For example, IRS Notice 2011-54 provides a filing deadline of November 1, 2011, to timely file FBARs for years prior to 2010 for certain individuals who had signature authority over, but no financial interest in, foreign financial accounts.

Taxpayers who have reported all income timely but failed to file international information returns

FAQ 18 of the OVDI allows a taxpayer that should have filed an international information return (e.g., Forms 926, 3520, 3520-A, 5471, 5472, 8858, 8865), but did not, to file the form (or, when required, an amended return with the required form). A taxpayer may use

FAQ 18 only when all income with respect to all transactions related to the entity reported on the late-filed form was reported on the income tax return filed for the year, and all tax has been paid. A statement explaining why the international information return was not timely filed must be included with a "zero" amended return, but no explanation of why reasonable cause exists under published IRS guidance or applicable case law is needed.

Taxpayers who want to participate in the OVDI but who are unable to file returns by August 31, 2011

FAQ 25.1 allows a taxpayer to request an extension to complete a submission if the taxpayer can show it made a good faith attempt to comply with the terms of the OVDI by August 31, 2011. A good faith attempt to comply includes executing a required agreement to extend the period of time to assess tax and penalties and to assess FBAR penalties.

A request may be made for up to a 90 day extension and must include a statement of the items that are missing, the reasons why the items are not included in the submission, and the steps the taxpayer is taking to obtain the missing items.

A request for an extension must be made in writing and sent on or before August 31, 2011, to the Austin Campus:

Internal Revenue Service
3651 S. I H 35 Stop 4301 AUSC
Austin, TX 78741
ATTN: 2011 Offshore Voluntary
Disclosure Initiative

Questions regarding the OVDI should be directed to:

Louis Carlow (Los Angeles)	(213) 356-6319	louis.e.carlow@us.pwc.com
Kevin Curran (National Tax)	(202) 312-7730	kevin.curran@us.pwc.com
Susan Stanley (Houston)	(713) 356-5080	susan.w.stanley@us.pwc.com

Questions regarding FAQ 18 for late filed international information returns should be directed to:

Louis Carlow (Los Angeles)	(213) 356-6319	louis.e.carlow@us.pwc.com
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Questions regarding preparation of Form TD F 90-22.1 (Report of Foreign Bank and Financial Accounts) (FBAR), and extended deadlines for filing FBAR, should be directed to:

Candace Ewell (National Tax)	(202) 312-7694	candace.b.ewell@us.pwc.com
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