# IRS Announces Voluntary Disclosure Program Affecting U.S. Persons with Offshore Financial Accounts

**March 27, 2009**

On March 26, 2009, the Internal Revenue Service ("IRS") made public a program allowing U.S. persons with foreign financial accounts to greatly reduce their exposure to significant civil penalties and, in many cases, to eliminate the prospects of criminal prosecution.

The program comes in the wake of UBS's admission to the existence of some 50,000 accounts held by U.S. persons and of increasing pressure on the IRS to deal with tax avoidance schemes utilizing offshore financial structures.

Many U.S. persons with undisclosed offshore financial arrangements have been hesitant to disclose them to the government for fear of the multiple steep penalties that may apply to such offshore financial accounts and arrangements. In many instances, particularly where trusts or foreign corporations are involved, the panoply of penalties may exceed the highest balance in the offshore account.

The new Penalty Framework for Voluntary Disclosure Requests applies to all voluntary disclosure requests containing offshore issues. It will apply to all pending voluntary disclosure requests and will remain in effect until September 23, 2009. After a preliminary determination by IRS Criminal Investigation that a taxpayer is eligible for voluntary disclosure, all voluntary disclosure requests will be sent to the Philadelphia Offshore Identification Unit ("POIU") for civil processing.

The POIU is authorized to enter into closing agreements relative to offshore issues in the following manner:

- Assess all tax and interest going back six years unless the account/entity was formed or acquired within the six-year period, in which case the lookback period will start with the earliest year in which the account/entity was formed/acquired;
- File or amend all returns, including a Report of Foreign Bank and Financial Account ("FBAR");
- Assess an accuracy-related penalty or delinquency penalty on all years (the reasonable-cause exception will not apply);
- In lieu of all other penalties that may apply, including FBAR and information return penalties, assess a penalty equal to 20 percent of the amount in the foreign bank accounts/entities in the year with the highest aggregate account/asset value; and
- A 5-percent penalty is substituted for the foregoing 20-percent penalty where: (a) the taxpayer did not open or cause to be opened any accounts or formed any entities, (2) there has been no activity (deposits, withdrawals) in the account or entity during the period the taxpayer controlled the account/entity, and (3) all applicable U.S. taxes have been paid on the funds in the account/entity and only account/entity earnings have escaped U.S. taxation.

This is not the first occasion that the IRS has offered an "amnesty" program for U.S. persons with tax-evading offshore financial arrangements. In 2003, the IRS uncovered evidence suggesting that tens of thousands of U.S. persons accessed untaxed dollars through the use of credit and debit cards issued by institutions in so-called bank secrecy jurisdictions. The 2003 Offshore Voluntary Compliance Initiative offered incentives but was generally avoided by U.S. persons with offshore financial arrangements.[1]

The IRS anticipates that the new penalty framework will result in significant participation by U.S. persons with undisclosed foreign accounts. Several advantages of participation in voluntary disclosure exist. U.S. persons taking advantage of voluntary disclosure are likely to be in a position to repatriate their funds to the U.S. without concern. The new penalty structure is far less steep than the penalties that could otherwise be imposed. For most U.S. persons, participation in voluntary disclosure is likely to eliminate the prospect for criminal prosecution.

The new penalty structure is open to U.S. persons until September 23, 2009, at which time its benefits will expire. Those U.S. persons who do not participate may face stiff penalties and the prospect of criminal prosecution.

Voluntary disclosure may be appropriate for many U.S. persons with a financial interest in or signature authority over one or more undisclosed offshore accounts. Before making a voluntary disclosure, the particular circumstances of each U.S. person should be considered by a qualified tax advisor, and the pros and cons of disclosure should also be weighed, given the particular circumstances of the case.

## For Further Information

If you would like more information about this new IRS initiative, please contact Thomas Ostrander, the author of this Alert, Hope Krebs or Stan Barg in Philadelphia, Jon Grouf inNew York, any member of the International Practice Group, Michael A. Gillen of the Tax Accounting Group or the attorney in the firm with whom you are regularly in contact.

*As required by United States Treasury Regulations, you should be aware that this communication is not intended by the sender to be used, and it cannot be used, for the purpose of avoiding penalties under United States federal tax laws.*

## NOTES

1. *See* Thomas Ostrander, "The Offshore Credit Card and Financial Arrangement Probe: Fraught with Danger for Taxpayers," *Journal of Taxation*, August 2003.