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No Safe Tax Havens Anymore. (Time to Disclose is Running Out)

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The 2011 , Second Supplement Offshore Voluntary Disclosure Initiative (OVDI) ends August 31, 2011 and with it goes the opportunity for taxpayers with offshore financial accounts to come clean, avoid criminal prosecution (for tax evasion, other crimes) and report unreported income . To emphasize the importance of making a voluntary disclosure there were three items of note are in the news during the week of July 11, 2011 week. First, Credit Suisse announced that its private banking unit was being investigated by the justice department for aiding U.S. taxpayer in evading income taxes. http://dealbook.nytimes.com/2011/07/15/credit-suisse-discloses-u-s-investigation-over-private-banking/. This investigation follows the investigation that led to the prosecution of UBS AG and the disclosure of thousands of account records to the IRS. UBS AG paid a reported $780 million USD as part of a deferred prosecution agreement. Over 18,000 voluntary disclosures were filed in the 2009 Voluntary Disclosure program. The prospect of thousands of account records being delivered by Credit Suisse should therefore seem very high.

Second, the IRS announced the phasing for the Foreign Account Tax Compliance Act (FATCA), IRC Sec 1471-1474. FATCA, which is not a tax treaty, but is a part of the Internal Revenue Code has the effect of forcefully ignoring tax treaties between the U.S. and treaty partners and otherwise seeks to impose U.S. law on foreign financial institutions. FATCA gets its power by requiring foreign financial institutions (FFI's) to enter into agreements with the IRS or face withholding of 30-percent on payments from U.S. investments. FATCA requires FFI's to identify all U.S. account holders and report specific information about the accounts to the IRS. Under the new phasing, FFI's must begin due diligence on their account holders by 2013 and begin reporting in 2014. This means that individuals who have accounts at FFI's, including dual nationals (U.S. citizens or Green Card holders) who are also citizens of another country may have their account information reported to the IRS. Also included will be accounts held in partnership, trust, corporation or other entity form if they account is held by or for the benefit of U.S. persons. Does this mean that some account holders will move their funds to FFI's that have no connection with the U.S.? Perhaps, but this is where the third item hits.

Senator Carl Levin introduce the Stop Tax Haven Abuse Act of 2011 (the Act) which is aimed, in part at dealing with FFI's and that are located in Tax Haven jurisdictions. Among the enforcement provisions of Act is Sec. 101 which authorizes the use of Special Measures against non-FATCA complaint FFI's. Section 101 amends Section 5318A of Title 31 of the United States Code (the Bank Secrecy Act) to allow the Federal Reserve to ban to opening or maintenance of a correspondent or pay through account or use of credit card or debit cards if the transactions are through the correspondent or pay through account. What this means is that taxpayers who seek to move to FFI's that are in non-compliant institutions or who already have their account in such institutions may find that their institution cannot clear any

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transactions in U.S. dollars. The legislation, if enacted in whole or in part would be another weapon that the U.S. uses to track down suspected tax evaders and force them to come clean.

For those taxpayers who have undisclosed foreign financial accounts the expectation of privacy and secrecy should be seriously reconsidered. Now may be the time to consider how best to report previously unreported accounts and pay tax on unreported income. There are multiple pathways to consider but now is the time to think through options, as August 31 is around the corner.

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