

## IRS ANNOUNCES “LAST CHANCE” OFFSHORE VOLUNTARY DISCLOSURE INITIATIVE WITH AUGUST 31, 2011 DEADLINE

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On February 8, 2011, the Internal Revenue Service (**IRS**) announced a special voluntary disclosure initiative designed to both bring offshore money back into the U.S. tax system and help people with undisclosed income from hidden offshore accounts become current with their tax obligations. The deadline for the new program, formally titled the “2011 Offshore Voluntary Disclosure Initiative” (**2011 OVDI**) is August 31, 2011<sup>1</sup>.

IRS Commissioner Doug Shulman has stated many times that “combating international tax evasion is a top priority for the IRS.” Commissioner Shulman has further stated that “[t]his new disclosure initiative [2011 OVDI] is the last, best chance for people to get back into the system. This new effort gives those hiding money in foreign accounts a tough, but fair way to resolve their tax problems once and for all. And it gives people a chance to come in before we [the IRS] find them.”

The 2011 OVDI follows on the heels of the IRS’s first special Offshore Voluntary Disclosure Program (**2009 OVDP**) which ended on October 15, 2009, and resulted in over 15,000 voluntary disclosures.

Under the 2011 OVDI, participants with undisclosed foreign accounts and unreported foreign income may be able to avoid significant civil penalties and criminal prosecution by making a voluntary disclosure. The following are the general requirements for participation in the



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### 2011 OVDI:

- The filing of delinquent foreign bank account reports (FBARs) and amended income tax returns for the last eight (8) years (i.e., 2003 through 2010, inclusive). (Note: Under the 2009 OVDP, participants were only required to file for the past six (6) years.)
- Payment of the tax, the 20% accuracy – related penalty, and interest for the eight (8) years of returns.
- Payment of a penalty equal to 25% (and in limited cases, 12.5% or 5%) of the highest aggregate balance in the undeclared foreign accounts during the tax years 2003 through 2010. (Note: Under the 2009 OVDP, participants were only required to pay 20%.)

Although the 2011 OVDI penalty structure may appear a bit extreme, the IRS has noted that such total penalties under the 2011 OVDI may be very favorable compared to the

total civil penalties (and possible criminal exposure) which could be asserted by the IRS in many cases.

Lastly, IRS Commissioner sent the following message to those who can benefit from the 2011 OVDI: “For those hiding cash or assets offshore, the time to come in is now. The risk of being caught will only increase.”

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<sup>1</sup> IRS Commissioner Doug Shulman noted that taxpayers who want the benefits of the 2011 OVDI must submit their tax returns, paperwork, and a check to the U.S. Treasury by August 31, 2011. Shulman warned “start now, not in August.”

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*Mr. Swenson’s practice encompasses both tax controversy/audit and tax planning. Mr. Swenson has represented corporations, partnerships and individuals in federal, state and local tax disputes including audits, appeals and litigation before and against the IRS, Franchise Tax Board (income taxes), Employment Development Department (payroll taxes), Board of Equalization (sales taxes), and San Diego County Assessor (property taxes). Mr. Swenson also advises on complex business transactions, including structuring and planning corporate mergers and acquisitions, debt and equity restructuring, litigation settlements, and the formation and operation of corporations, limited liability companies, and nonprofit organizations. Mr. Swenson was previously employed as an attorney for the IRS District Counsel Office in San Diego for 6 years prior to going into private practice.*

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