

September, 2009

## Client Alert

### The IRS Offers Amnesty.....For a Price

#### VOLUNTARY DISCLOSURE

In the wake of the recent settlement agreement between the United Bank of Switzerland (“UBS”) and the U.S. Department of Justice whereby UBS agreed to release the identities of 4,450 secret Swiss bank account holders, the IRS has offered individuals, corporations, partnerships, trusts and all taxpayers with unreported offshore accounts the option to voluntarily disclose any such accounts, by September 23 2009, in return for a reduced and more lenient set of penalties. With the deadline rapidly approaching, taxpayers with offshore accounts holding unreported income must soon decide whether or not to take advantage of the IRS’s limited amnesty offers before UBS releases the names.

The penalty framework set forth under the IRS’s proposed voluntary disclosure program is that the disclosing taxpayer would be required to pay all back-taxes and interest on the foreign accounts for the past 6 years along with a delinquency penalty of between 20% - 40% on those amounts. In addition to those penalties, the disclosing taxpayer would also be required to pay 20% of the highest aggregate value of the foreign bank account(s) from the past six years.

The benefits of making such a voluntary disclosure are (i) a clear and straightforward penalty calculation; and (ii) the avoidance of severe civil penalties and possible criminal prosecution. A voluntary disclosure can only be made by taxpayers who have not yet been subject to investigation by the IRS. In order to

take advantage of the program, a taxpayer must provide the following information to the IRS: (i) taxpayer identification information; (ii) account information and balances; (iii) unreported income; (iv) sources of the funds; (v) reason for setting up the account; (vi) names of people with access to the accounts; (vii) contacts at the financial institution; and (viii) names of any individuals who advised the taxpayer regarding the creation of the accounts.

Should a taxpayer choose not to make a voluntary disclosure and is subsequently investigated by the IRS and found to have failed to report offshore accounts, the non-reporting taxpayer could potentially face criminal prosecution for tax evasion, failure to file a tax return and filing a false return, which could subject the non-reporting taxpayer to a prison term of between 1 and 10 years as well as fines of up to \$500,000. In addition, a non-reporting taxpayer could also be subject to numerous civil penalties, including but not limited to delinquency penalties, failure to file foreign accounts penalties and fraud penalties representing up to 75% of the back-taxes owed.

Our Firm is intimately involved in monitoring these events and will continue to provide you with pertinent updates as more information becomes available. In the meantime, if you have any questions about the matters covered in this client alert, or wish to schedule a private consultation, please contact Terrence A. Oved, Esq. at Oved & Oved LLP, 212.226.2376 or [terry@ovedlaw.com](mailto:terry@ovedlaw.com).