



JANUARY 2012 ISSUE

### **Third IRS Offshore Voluntary Disclosure Program Just in Time for Many Taxpayers Prior Programs Net US\$4.4 Billion for Uncle Sam**

On 9 January 2012, the US Internal Revenue Service (“IRS”) issued a new notice creating the Offshore Voluntary Disclosure Program (“OVDP”) under terms that differ only slightly from the recently completed 2011 Offshore Voluntary Disclosure Initiative (“2011 OVDI”). The most important difference is that the OVDP does not include an expiration deadline, though IRS reserves the right to bring the program to a close at any time.

Under the new OVDP, individuals who failed to report income from offshore assets will face an “in lieu of” penalty rate of up to 27.5% (up from 25% in the 2011 OVDI) on their highest offshore account balance or offshore asset value over the last 8 years. However, many clients will qualify for a reduced 5% or 12.5% in lieu of penalty.

The in lieu of penalty applies to asset/account values rather than US taxes owed and has been particularly burdensome for non-US resident US citizens or green card holders (expatriates) who have diligently paid their taxes in their home countries, but have failed to file US federal income tax returns as a result of poor advice or mere lack of understanding. Many of these taxpayers will qualify for a 5% in lieu of penalty.

In addition to the in lieu of penalty, taxpayers electing to use the OVDP must pay back US taxes and interest for 8 years. Program participants will also face penalties based

ABOUT BUTLER SNOW

TAX GROUP

LATEST NEWS

CONTACT US

Butler, Snow, O’Mara, Stevens & Cannada, PLLC, is a full-service law firm with more than 175 attorneys representing local, regional, national and international clients from offices in Montgomery and Birmingham, Alabama; Greater Jackson, Gulfport, Bay St. Louis and Oxford, Mississippi; Greater Nashville and Memphis, Tennessee; Baton Rouge and New Orleans, Louisiana; and Greater Philadelphia, Pennsylvania. For more information, visit [www.butlersnow.com](http://www.butlersnow.com).

Copyright © 2012 Butler, Snow, O’Mara, Stevens & Cannada, PLLC. All Rights Reserved.

PLANNING NOTES INTERNATIONAL is published by the International Tax Team of Butler Snow on selected issues. The content of this publication is intended for general informational purposes only. It is not legal advice, does not form or constitute an attorney-client relationship with any recipient, and should not be acted upon without first seeking legal counsel. For further information or specific questions relating to this publication, please contact [Kurt G. Rademacher](#). The invitation to contact firm attorneys should not be construed as a statement of availability to perform legal services in any jurisdiction in which such attorneys are not permitted to practice. No representation is made that the quality of the legal services to be performed is greater than the quality of legal services performed by other lawyers.

IRS Circular 230 Disclosure: As required by U.S. Treasury Regulations, you are hereby advised that any federal tax advice contained in this communication or any attachment does not constitute a formal tax opinion.

on the amounts of unpaid US tax. For many US expatriates, the US taxes/interest/penalties owed are greatly reduced after taking into account foreign tax credits for income taxes paid in their home countries, so the in lieu of penalty often comprises the bulk of a US expatriate participant's total US liability.

As in prior voluntary disclosure programs, taxpayers who apply voluntarily generally avoid criminal prosecution. However, taxpayers are only eligible for the OVDP if they submit their applications before IRS learns of their nonpayment from another source. Swiss authorities are currently sifting through US clients of Swiss banks whose names will be turned over to IRS. Such clients should take advantage of the OVDP immediately or risk much higher penalties and potential criminal prosecution when the Swiss authorities divulge their identities to IRS.

In the same notice, IRS also announced that it has collected US\$4.4 billion so far from its 2009 and 2011 offshore voluntary disclosure initiatives.

Butler Snow will continue to keep you informed of new and changing information that could affect your business. In the meantime, if you have any questions concerning this e-alert, please contact the Butler Snow attorney with whom you usually work, or you may contact the editors of this e-alert, [Kurt G. Rademacher](#), [Samantha R. Moore](#), [John B. \(Jack\) Nichols](#) or [Phillip \(Seth\) Rowland](#).

This ad is authorized by Donald Clark, Jr. Chairman, 1020 Highland Colony Parkway, Suite 1400, Ridgeland MS 39157

Advertising Material

Accordingly, any federal tax advice contained in this communication or any attachment is not intended, or written to be used, and cannot be used, by any recipient for the purpose of avoiding penalties that may be asserted by the Internal Revenue Service.

FREE BACKGROUND INFORMATION IS AVAILABLE UPON REQUEST.

Advertising Material