

AN ALERT FROM THE BDO INTERNATIONAL TAX PRACTICE

BDO KNOWS: INTERNATIONAL TAXATION



► SUBJECT

OPPORTUNITY FOR PENALTY-FREE LATE FILINGS UNDER THE 2011 OFFSHORE VOLUNTARY DISCLOSURE INITIATIVE

► AFFECTING

United States taxpayers who have failed to file certain foreign information reporting forms but who have no unreported income from international activities in prior taxable years.

► DETAILS

On February 8, 2011, the Internal Revenue Service announced a new Offshore Voluntary Disclosure Initiative (“OVDI”) for United States taxpayers. See our earlier February 2011 alert which discusses the initiative in more detail at www.bdo.com/download/1606. The OVDI allows taxpayers with unreported income or undisclosed accounts to voluntarily provide the information under a defined program. In addition, United States taxpayers who have failed to file foreign information returns and have no unreported income may submit previously unfiled forms without having penalties assessed for late filing. These provisions are discussed in frequently asked questions (“FAQs”) 17 and 18 of the OVDI which may be accessed at www.irs.gov/businesses/international/article/0,,id=235699,00.html.

This OVDI relates to missed filings of Treasury Form T DF 90-22.1, Report of Foreign Bank and Financial Accounts (commonly referred to as the “FBAR” form), and certain information reporting requirements including Form 5471, Information Return of U.S. Persons With Respect to Certain Foreign Corporations, and Form 3520, Annual Return To Report Transactions With Foreign Trusts and Receipt of Certain Foreign Gifts.

CONTACT:

ROBERT C. PEDERSEN

New York
212-885-8000 / rpedersen@bdo.com

J. SCOTT HENDON

Dallas
214-969-7007 / shendon@bdo.com

WILLIAM F. ROTH, III

Grand Rapids
616-774-7000 / wfroth@bdo.com

DON JONES

San Jose
408-352-1978 / djones@bdo.com

BYRON D. LAMBERT

Atlanta
404-979-7147 / blambert@bdo.com

MARTIN KARGES

New York
212-885-8156 / mkarges@bdo.com

HOLLY L. CARMICHAEL

San Jose
408-278-0220 / hcarmichael@bdo.com

JOEL P. MITCHELL

Chicago
312-233-1838 / jpmitchell@bdo.com

TODD SIMMENS

Woodbridge, NJ
732-491-4170 / tsimmens@bdo.com

Mark G. Janulewicz, CPA
mjanulewicz@lumsdenca.com
716-856-3300

► Read more

In addition, although not specifically stated in the FAQs, the penalty-free filing window may also apply to other information reporting forms including:

- Form 5472, Information Return of a 25% Foreign-Owned U.S. Corporation or a Foreign Corporation Engaged in a U.S. Trade or Business,
- Form 8865, Return of U.S. Persons With Respect to Certain Foreign Partnerships,
- Form 8858, Information Return of U.S. Persons With Respect to Foreign Disregarded Entities,
- Form 3520-A, Annual Information Return of Foreign Trust with a U.S. Owner, and
- Form 926, Return by a U.S. Transferor of Property to a Foreign Corporation.

The OVDI covers taxable years 2003 through 2010. Taxpayers who qualify for this initiative have until August 31, 2011, to file any missed forms required for these periods.

Under FAQ 17 of this initiative, “The IRS will not impose a penalty for the failure to file the delinquent FBARs if there are no underreported tax liabilities and the FBARs are filed by August 31, 2011.” Delinquent FBAR reports should be sent to the Department of Treasury, Post Office Box 32621, Detroit, Michigan 48232-0621, and should be accompanied by a statement explaining why the forms are being filed late and a statement that they are being filed pursuant to the penalty relief offered by FAQ 17. Note that this process applies to prior-year unfiled FBAR forms for the look-back periods specified above. FAQ 17 expressly provides that 2010 FBAR forms are due on or before June 30, 2011, and must be filed by that date. FBAR forms for 2010, therefore, appear to be excluded from the relief provided by FAQ 17.

Penalties for failure to file the FBAR include civil penalties up to \$10,000 or, for a person who willfully fails to report an account, a civil penalty equal to the greater of \$100,000 or 50 percent of the balance of the account. Willful failure to file may also trigger criminal penalties.

FAQ 18 addresses the Service’s information returns and provides for the waiver of penalties for failure to file missed forms if there is no unreported income and delinquent forms are filed with the appropriate service center by August 31, 2011. This late-filing procedure is generally done by filing an amended income tax return with the information return attached for the prior taxable year. FAQ 18 also indicates that a statement should accompany the form explaining why the information forms are being filed late and that the forms are being filed pursuant to FAQ 18.

If prior-year information forms were incomplete, FAQ 18 may also provide an opportunity to provide the missing or incomplete information for earlier taxable year. Once again, an amended return with the information return attached may be required along with an explanation for the late filing. In determining whether to file the prior-year international information returns, appropriate consideration should be given to any applicable period of limitation.

Penalties for failure to file IRS forms can be as high as \$10,000 per missed form or a percentage of the unreported amounts (35 percent of the value of assets transferred in the case of a transfer to a foreign grantor trust).

The OVDI, including the guidance in FAQ 17 and 18, offers a significant opportunity for United States taxpayers who have missed foreign information reporting requirements to bring their compliance up to date without the risk of penalties and avoid uncertainty with respect to these missed filings. Time is limited, however, as the relief afforded under the OVDI and FAQs 17 and 18 will expire on August 31, 2011.

The Tax Practice at BDO is among the largest tax advisory practices in the United States. With 40 offices and more than 400 independent alliance firm locations in the United States, BDO has the bench strength and coverage to serve you.

BDO is the brand name for BDO USA, LLP, a U.S. professional services firm providing assurance, tax, financial advisory and consulting services to a wide range of publicly traded and privately held companies. For 100 years, BDO has provided quality service through the active involvement of experienced and committed professionals. As an independent Member Firm of BDO International Limited, BDO serves multinational clients through a global network of 1,082 offices in 119 countries.

BDO USA, LLP, a Delaware limited liability partnership, is the U.S. member of BDO International Limited, a UK company limited by guarantee, and forms part of the international BDO network of independent member firms. BDO is the brand name for the BDO network and for each of the BDO Member Firms. For more information please visit: www.bdo.com.

To ensure compliance with Treasury Department regulations, we wish to inform you that any tax advice that may be contained in this communication (including any attachments) is not intended or written to be used, and cannot be used, for the purpose of (i) avoiding tax-related penalties under the Internal Revenue Code or applicable state or local tax law provisions or (ii) promoting, marketing or recommending to another party any tax-related matters addressed herein.

Material discussed in this tax alert is meant to provide general information and should not be acted on without professional advice tailored to your firm's individual needs.