



IRS CLARIFIES VOLUNTARY DISCLOSURE PROCESS FOR TAXPAYERS WITH UNDISCLOSED OFFSHORE ASSETS

In our April 2009 Client Alert, we described an Internal Revenue Service (“IRS”) initiative to encourage taxpayers who hold assets in foreign financial accounts to disclose the holdings through the IRS voluntary disclosure process (“Initiative”). On May 6, 2009, the IRS published frequently asked questions and answers (“FAQ”) that clarify issues raised by the Initiative.

One issue of particular interest to many taxpayers is the effect of the Initiative on a taxpayer who failed to file Form TD F 90-22.1, Report of Foreign Bank and Financial Accounts (“FBAR”). Generally, a taxpayer is required to disclose foreign accounts by filing the FBAR. Failure to file an FBAR may subject a taxpayer to an annual penalty of up to 50% of the account balance for each FBAR that is not filed. Under the Initiative, the 50% annual FBAR penalty is replaced with a single penalty of 20% of the account balance. However, in many situations, taxpayers actually have reported and paid taxes on the income derived from foreign accounts but, being unaware of the FBAR requirement, never filed the FBAR. A taxpayer in such situation should not use the voluntary disclosure process, according to the FAQ. Instead, the taxpayer should, by September 23, 2009, file the delinquent FBARs along with copies of their tax returns for all relevant years and a statement explaining why the FBARs were filed late. The IRS will not impose a penalty on such taxpayer for the failure to file the FBARs.

In other situations, some taxpayers with undisclosed foreign accounts have belatedly filed amended returns to report and paid tax on the income generated by such accounts, without otherwise notifying the IRS. The FAQ encourages taxpayers who made such “quiet disclosures” to come forward under the voluntary disclosure process by September 23, 2009 to take advantage of the penalty

framework under the Initiative. Taxpayers who wish to use the voluntary disclosure process should send a letter to the appropriate IRS agent stating the desire to make voluntary disclosure and providing other required information. A taxpayer is expected to file correct delinquent or amended tax returns for tax year 2008 back to 2003.

The FAQ also provides clarification on other issues in connection with the Initiative and the voluntary disclosure process. Taxpayers who seek to take advantage of the Initiative should consult tax advisors in regard to its requirements and implications.

* * *

To ensure compliance with requirements imposed by the IRS, we inform you that, unless explicitly provided otherwise, any U.S. federal tax advice 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 penalties under the Internal Revenue Code or (ii) promoting, marketing or recommending to another party any transaction or matter addressed herein.



MAY 2009

ABOUT CURTIS

Curtis, Mallet-Prevost, Colt & Mosle LLP is a leading international law firm. Headquartered in New York, Curtis has 14 offices in the United States, Mexico, Europe, the Middle East and Asia. Curtis represents a wide range of clients, including multinational corporations and financial institutions, governments and state-owned companies, money managers, sovereign wealth funds, family-owned businesses, individuals and entrepreneurs.

Curtis' worldwide practice includes corporate law, banking and finance, capital markets, private equity, mergers and acquisitions, project finance and infrastructure development, investment management, restructuring and insolvency, taxation, real estate, litigation and international arbitration.

For more information about Curtis, please visit www.curtis.com.

Attorney advertising. The material contained in this Client Alert is only a general review of the subjects covered and does not constitute legal advice. No legal or business decision should be based on its contents.

FOR FURTHER INFORMATION, CONTACT:

ALAN S. BERLIN

TAX GROUP CHAIR

CURTIS, MALLET-PREVOST, COLT & MOSLE LLP

101 PARK AVENUE

NEW YORK, NEW YORK 10178

E-MAIL: ABERLIN@CURTIS.COM

TEL: (212) 696-6038

MARCO A. BLANCO

PARTNER

CURTIS, MALLET-PREVOST, COLT & MOSLE LLP

6, AVENUE VÉLASQUEZ

PARIS 75008, FRANCE

E-MAIL: MBLANCO@CURTIS.COM

TEL: +33 1-42-68-72-18

WILLIAM L. BRICKER, JR.

PARTNER

CURTIS, MALLET-PREVOST, COLT & MOSLE LLP

101 PARK AVENUE

NEW YORK, NEW YORK 10178

E-MAIL: WBRICKER@CURTIS.COM

TEL: (212) 696-6039

EDUARDO A. CUKIER

PARTNER

CURTIS, MALLET-PREVOST, COLT & MOSLE LLP

101 PARK AVENUE

NEW YORK, NEW YORK 10178

E-MAIL: ECUKIER@CURTIS.COM

TEL: (212) 696-6107

KUANG-CHU CHIANG

COUNSEL

CURTIS, MALLET-PREVOST, COLT & MOSLE LLP

101 PARK AVENUE

NEW YORK, NEW YORK 10178

E-MAIL: KCHIANG@CURTIS.COM

TEL: (212) 696-6058