



PORTCULLIS TRUSTNET

PTN eUpdates – Keeping you informed (Issue 36 – March 2011)

UNITED STATES OF AMERICA (“US”) UPDATE
Declaring Offshore Accounts for US Taxpayers
Second Special Voluntary Disclosure Initiative
Ends 31 August 2011

On 8 February 2011, the US Internal Revenue Service (“IRS”) announced a special voluntary disclosure initiative designed to encourage US taxpayers with undisclosed offshore accounts to comply with their tax obligations. This initiative called the 2011 Offshore Voluntary Disclosure Initiative (“OVDI”) will be available through 31 August 2011.

Under the 2011 OVDI, individuals will pay a penalty of 25% of the amount in the foreign bank accounts in the year with the highest aggregate account balance covering the 2003 to 2010 time period. Where individuals hold offshore accounts of less than US\$75,000 in any calendar year during 2003 to 2010, a lower penalty rate of 12.5% will apply. Taxpayers in very limited cases may qualify for a reduced penalty rate of 5%.

The 2011 OVDI penalty applies to all assets directly owned by the taxpayer including financial accounts holding cash, securities or other custodial assets; tangible assets such as real estate or art and intangible assets such as patents or stock or other interests in a US or foreign business. If such assets are indirectly held or controlled by the taxpayer through an entity, the penalty may be applied to the taxpayer’s interest in the entity, or if the IRS determines that the entity is an alter ego or nominee of the taxpayer, to the taxpayer’s interest in the underlying assets.

The 2011 OVDI is a good opportunity for taxpayers with undisclosed foreign accounts or entities to make a voluntary disclosure to become compliant with their IRS tax reporting obligations, avoid substantial civil penalties and eliminate the risk of criminal prosecution by the IRS. The IRS is increasingly committed to identifying and seeking information on US taxpayers with undisclosed foreign accounts. Such information will become more readily available to the IRS through various international tax treaties, submissions by whistleblowers and the Foreign Account Tax Compliance Act (“FATCA”) which was enacted in 2010.

Please note that the information contained herein is intended to provide general information to the client and professional contacts of Portcullis TrustNet. It does not purport to be comprehensive and is in no way intended and should not be relied upon as legal advice.

FATCA seeks to identify US taxpayers that have accounts at foreign financial institutions (“FFI”) by requiring all FFIs to enter into disclosure compliance agreements with the IRS. FFIs are defined to include not just banks but brokers, investment companies and fund structures. The agreement will require the FFI to report directly to the IRS with certain information about financial accounts held by US taxpayers or by foreign entities in which US taxpayers hold a substantial ownership interests. Failure to enter into and comply with such an agreement will result in a 30% penal withholding tax on all US investment income and gross sale proceeds from US stocks and securities.

FATCA also requires US taxpayers with foreign financial assets of aggregate value exceeding US\$50,000 to report certain information about such assets on a new form attached to their annual tax return. Reporting is required in taxable years beginning on or after 1 January 2011. Failure to comply with these reporting obligations will result in a penalty of US\$10,000. Further, underpayments of tax attributable to non-disclosed foreign financial assets will be subject to an additional substantial understatement penalty of 40%.

For more information on the OVDI and FATCA, please refer to the Inland Revenue Service’s website at www.irs.gov.

Please note that the information contained herein is intended to provide general information to the client and professional contacts of Portcullis TrustNet. It does not purport to be comprehensive and is in no way intended and should not be relied upon as legal advice.