



CERTIFIED PUBLIC ACCOUNTANTS

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Dear Client:

We want to make sure that you are aware of some important new reporting requirements that may impact your federal tax filings for 2011. These provisions are part of a broad initiative by the federal government to increase tax compliance, particularly by taxpayers who own foreign accounts or other assets located in foreign countries. Failure to comply with these new requirements can result in significant penalties. These penalties generally begin at \$10,000 and go up from there. In addition, criminal penalties may apply for willful disregard of the rules.

Beginning with the 2011 tax year, the new provisions impose a requirement for filing Form 8938, Statement of Specified Foreign Financial Assets. It is possible that the provisions will affect you, even though you may believe that you do not own "anything foreign." Some of the financial assets that must be reported on the new Form 8938 include:

- Financial accounts maintained at foreign financial institutions (including foreign bank accounts and investment accounts);
- Direct ownership of stock in a foreign corporation (outside of a financial institution such as a U.S. brokerage firm);
- Foreign partnership interests (including foreign hedge funds and foreign private equity funds);
- A note, bond, debenture or other forms of indebtedness issued by a foreign person;
- Interests in foreign trusts or estates;
- Foreign retirement accounts;
- Foreign life insurance products;
- Foreign deferred compensation arrangements;
- An interest rate swap, currency swap, or similar agreement with a foreign party; and
- An option or other derivative instrument entered into with a foreign counterparty or issuer.

If Form 8938 is required, it must be attached to your annual income tax return. There are various thresholds at which the Form 8938 foreign reporting requirement kicks in. Single taxpayers living in the U.S. are required to report if they have foreign assets or foreign accounts with an aggregate value of more than \$50,000 at December 31, 2011, or if the value was more than \$75,000 at any time during the year. The filing thresholds for married taxpayers living in the U.S. are doubled to \$100,000 and \$150,000, respectively. The filing thresholds for business entities, trusts and estates have not yet been announced.

As stated above, there are significant possible civil and criminal penalties for failure to file Form 8938 when required. In addition to the penalties that may apply, the statute of limitations for assessing tax for the tax year remains open until 3 years after the date on which Form 8938 is actually filed.

Please note that Form 8938 reporting is *in addition to* other filing requirements that may apply with respect to foreign assets, including the annual Foreign Bank Account Report or "FBAR." Thus, you may be required to file both Form 8938 and the FBAR.

Due to these new reporting requirements, tax practitioners, including us, will be asking more questions before preparing your 2011 tax returns. If you are subject to Form 8938 reporting, we likely will need more information to prepare Form 8938.

At this time, we do not have full guidance from the IRS detailing all of the rules associated with the new reporting requirements. We will continue to closely monitor developments in this area. If you have any questions, please call us to discuss these rules and how they apply to your situation.

Sincerely,

*Peterson Sullivan LLP*