

## **IRS Announces End to Offshore Amnesty Program**

The IRS recently [announced](#) that it would end the Offshore Voluntary Disclosure Program (OVDP). The OVDP is an amnesty program that tens of thousands of taxpayers have used since 2009 to report previously undisclosed foreign bank accounts and other assets, reducing often substantial civil penalties and avoiding criminal prosecution. The program will end on September 28, 2018. Taxpayers with foreign compliance issues have until then to enter the program, and those wishing to do so should consult with an experienced tax advisor immediately.

The IRS initiated the OVDP in 2009 to permit taxpayers to voluntarily report previously undisclosed foreign assets and accounts. Taxpayers who enter the program must file or amend their last eight years of tax returns and pay a penalty of either 27.5% or 50% of the highest aggregate value of their "OVDP assets" (foreign account balances, interests in foreign business entities, etc.) during those eight years. The current (fourth) incarnation of the program began in 2014. Each change to the OVDP has generally increased penalties and/or required more detailed information from taxpayers. While it is possible—although unlikely—that the IRS could introduce a new OVDP in the future, it would likely also have stiffer associated penalties and requirements.

### **Benefits of the OVDP**

The primary benefit of the OVDP is protection from criminal prosecution. In exchange for a taxpayer filing or amending her last eight years of tax returns and paying a penalty of 27.5% or 50% of the highest aggregate value of her OVDP assets, the IRS agrees not to recommend criminal prosecution of the taxpayer. The OVDP can also allow taxpayers to substantially reduce civil penalties for failure to report foreign assets and accounts, imposing a single penalty in place of what could otherwise be a multitude, such as:

- Failure to report foreign bank accounts on Foreign Bank and Financial Accounts (FBAR) returns (penalties as high as the greater of \$100,000 or 50% of the unreported account's highest aggregate balance in a given year);
- Failure to report foreign financial assets, including interests in foreign business entities (\$10,000 per failure to file);
- Failure to report transfers to, or distributions from, foreign trusts (up to 35% of the value of the transferred property or distributions); and
- Failure to report receipt of gifts or bequests from foreign individuals (up to 25% of the value of the gifts or bequests).

In addition, the OVDP provides closure to taxpayers for whom the statute of limitations—the period during which the IRS can assess tax, interest and penalties—would otherwise never run. Typically, the IRS has three years to assess additional tax or penalties on filed returns, or six years in cases where there is a "substantial understatement." If foreign assets and income are not properly reported, however, the IRS can assess tax and penalties at any time. In many situations, the IRS is not limited to reviewing the foreign reporting requirements, but can also adjust other items on a taxpayer's return for that year. Under the OVDP, the IRS agrees to accept the taxpayer's returns for the last eight years and not to examine prior years to adjust tax liabilities and assert penalties.

Other Available Relief for Taxpayers With Undisclosed Foreign Assets

Although the OVDP is ending, taxpayers with undisclosed foreign assets and income may have other avenues to report to the IRS. These include the streamlined filing compliance procedures, which may be used by taxpayers whose failure to file returns or pay taxes was non-willful (i.e., due to negligence, inadvertence, mistake or a good faith misunderstanding of the requirements of the law). For those who qualify, the streamlined filing compliance procedures may be a less expensive and time-intensive way to comply with tax obligations. The IRS will also continue its Criminal Investigation Voluntary Disclosure Program, which enables taxpayers who comply with the program to resolve their tax liabilities and minimize their chances of criminal prosecution.

If you believe you may have failed to properly report foreign assets, accounts or income, consult with an experienced tax advisor immediately regarding your options. Submissions to the OVDP must be completed by September 28, 2018, and can require significant time to prepare.

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