

### Client Alert

March 2018

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### End of Offshore Voluntary Disclosure Program

On March 13, 2018, the US Internal Revenue Service (IRS) announced that it will end the 2014 Offshore Voluntary Disclosure Program (OVDP) on September 28, 2018. US taxpayers with undisclosed foreign (non-US) financial assets should speak with their US tax advisor before the close of the program.

#### Highlights

1. OVDP will close on September 28, 2018.
2. IRS will continue the following programs:
  - (a) Streamlined Filing Compliance Procedures;
  - (b) Delinquent FBAR Submission Procedures; and
  - (c) Delinquent International Information Return Submission Procedures.
3. US taxpayers with undeclared foreign financial assets should consider their compliance options and, if advisable, apply for entrance in the OVDP by September 28, 2018.

#### Background

US citizens and residents (which include “green card” holders) are required to report and pay tax on their worldwide income and declare their ownership of certain foreign financial assets and accounts. These requirements apply regardless of where the particular individual physically resides or lives. Failure to file the required tax returns or information reports, failure to properly declare foreign financial assets, or failure to pay any US tax required can subject the taxpayer to significant penalties.

The current OVDP began in 2014 and is a modified version of the program first offered in 2009, which provided US taxpayers with the opportunity to disclose noncompliance associated with foreign accounts.

Key requirements of the OVDP include:

- submission of information regarding the undeclared foreign financial assets and the foreign financial institutions and intermediaries associated with such assets;
- submission of amended (or complete original) tax returns and Reports of Foreign Bank and Financial Accounts (FBARs) for the eight most recently ended tax years;
- payment of all tax, interest, and applicable penalties due on the submitted returns; and



- payment of an Offshore Miscellaneous Penalty equal to either 27.5% or 50% of the highest aggregate value of the taxpayer's previously undeclared foreign financial assets during the relevant period.

The penalty rate applicable to the Offshore Miscellaneous Penalty is determined based on whether any of the taxpayer's previously undeclared foreign financial assets were held by, or established with the assistance of, a foreign financial institution or facilitator under public investigation by the IRS or US Department of Justice. The IRS maintains a list of such institutions and facilitators on their website.<sup>1</sup>

According to the IRS, 56,000 taxpayers used one of the OVDPs and have paid a total of \$11.1 billion in back taxes, interest, and penalties. The number of OVDPs peaked in 2011, when 18,000 people came forward but has steadily declined falling to 600 OVDPs in 2017.

As announced on March 13, 2018, the IRS will close the OVDP on September 28, 2018. After which, the IRS intends to provide additional information on future disclosures of offshore noncompliance.

### **Streamlined Success**

The current Streamlined Filing Compliance Procedures were also introduced in 2014 and are intended to ease the compliance burdens and help more taxpayers come into compliance.

To complete a Streamlined filing, taxpayers must:

- submit amended (or complete original) tax returns for the three most recently ended tax years;
- submit amended (or complete original) FBARs for the six most recently ended tax years;
- certify that previous failures to comply were due to non-willful conduct; and
- pay all tax and interest due on the submitted returns.

Non-willful conduct is defined as conduct that is due to negligence, inadvertence, or mistake or conduct that is the result of a good faith misunderstanding of the requirements of the law.

For non-US resident taxpayers eligible for a Streamlined filing, all penalties will be waived. For US resident taxpayers eligible for a Streamlined filing, the IRS will apply an Offshore Miscellaneous Penalty equal to 5% of the highest aggregate value of the previously undeclared foreign financial assets during the six most recently ended tax years.

Streamlined filings continue to be used and have helped about 65,000 additional taxpayers come into compliance. While the Streamlined filing procedures

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<sup>1</sup> "Foreign Financial Institutions or Facilitators," Internal Revenue Service, available at <https://www.irs.gov/businesses/international-businesses/foreign-financial-institutions-or-facilitators> (last accessed March 14, 2018).



continue to be popular, the IRS has said that it may end the program at some future point.

In addition to the Streamlined filing procedures, the IRS will also continue to offer procedures for filing delinquent FBARs or international information returns (which are used to declare ownership of foreign financial assets) without penalty if the taxpayer already reported and paid tax on any associated income.

### **Key Difference Between the OVDP and Streamlined**

The OVDP is designed for taxpayers with exposure to potential criminal liability due to willful failure to report foreign financial assets. On the other hand, the Streamlined procedures are designed for taxpayers that certify their failure to report foreign financial assets did not result from willful conduct on their part.

### **Time to Act**

Given that the OVDP will soon end, we encourage US citizens and residents with undisclosed foreign financial assets to speak to their tax advisor as soon as possible, especially taxpayers whose failure to comply may be the result of willful conduct. To participate in the current OVDP, taxpayers must submit a standard form disclosure letter and attachments related to each undeclared foreign financial asset, all of which must be received by the IRS, or post-marked by the US postal service, on or before September 28, 2018.

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