

IRS Modifies Offshore Voluntary Disclosure Program and Streamlined Filing Compliance Procedures

June 23, 2014

On June 18, 2014, the IRS unveiled significant changes to both Offshore Voluntary Disclosure Program (OVDP) and Streamlined Filing Compliance Procedures (SFCP). The changes both relax the penalty structure for non-willful behavior but increase it soon for account holders at certain banks. The expansion and modification of the programs are effective as of July 1, 2014 (with some exceptions).

Expansion of the Streamlined Filing Compliance Procedures

The IRS has expanded, albeit with important conditions, the SFCP to cover all U.S. taxpayers who are currently not under audit or criminal investigation by the IRS. The highlighted changes to SFCP are:

- The original SFCP applied to non-filers only; amended returns will now be accepted. Eligibility will no longer be denied based on the amount of U.S. tax involved, the country in which an account is held, or the presence of more complicated business and personal structures.
- Eligible taxpayers will be required to certify under penalty of perjury that prior noncompliance with U.S. tax and reporting requirements were non-willful. The IRS will review all such certifications.
- For eligible nonresident U.S. taxpayers all penalties will be waived. For U.S. residents, a 5% penalty on certain unreported foreign financial assets will apply. The penalty base under the SFCP terms is narrower than in OVDP.
- Eligible taxpayers who filed a preclearance request to participate in OVDP or received preclearance, may abandon the OVDP process and file under SFCP. The terms of SFCP are also available to taxpayers who previously made the so-called “quiet disclosure.”
- There is no protection against criminal prosecution and no cap on the offshore penalties if the IRS decides to assess willfulness-based penalties.

Modifications to the Offshore Voluntary Disclosure Program

The IRS also made significant changes to OVDP:

- Participating taxpayers must now provide more detailed information earlier in the process, including descriptions of the means for accessing offshore funds and the money trail. Nearly all of the documents associated with the OVDP submission process are different, effective July 1, 2014.
- Reduced penalty options previously in OVDP are eliminated in light of the expanded SFCP.

- Payment of the offshore penalty is due at the time of the OVDP submission.
- Effective August 4, 2014, the offshore penalty will rise for certain taxpayers from 27.5% to 50%. This will impact account holders whose financial institutions are named in any Justice Department initiated public disclosure reflecting that the bank is under investigation by, or is cooperating with, DOJ, or as to which a “John Doe Summons” was issued by the IRS. Once triggered, the 50% penalty will be imposed on all of the taxpayers’ undisclosed assets, including assets otherwise not subject to this provision.
- The failure to report gross income from a foreign asset will move that asset into the offshore penalty base, and the penalty will apply to any included asset without regard to valuation discounts, such as lack of marketability, minority interest, and tenants in common discount.

Transitional Rules for OVDP Participants Qualifying for Expanded SFCP

Taxpayers participating in OVDP may be eligible for the expanded SFCP and its favorable penalty regime. This relief is only available to eligible taxpayers “currently participating” in OVDP, i.e., those who have submitted their “intake letter” and “attachment” before July 1, 2014, but who do not yet have a fully executed closing agreement. To gain transitional relief, eligible taxpayers must i) make the full OVDP submission and provide a written statement signed under penalty of perjury certifying that the taxpayers’ failure to report foreign assets was not due to willful conduct and explaining why the assets were not reported and ii) pay the tax, interest, and accuracy-related or other penalties otherwise due under OVDP. The IRS will review the case and make a final (and non-appealable) decision as to the taxpayer’s eligibility for the reduced streamlined penalty.

Caplin & Drysdale has a full team of lawyers well-versed in all aspects of foreign asset reporting for clients worldwide. We can help you find the right lawyer to answer your questions. If you would like to review your offshore accounts in light of these changes, please contact [Scott D. Michel](mailto:smichel@capdale.com) at smichel@capdale.com / 202.862.5030 or [Zhanna A. Ziering](mailto:zziering@capdale.com) at zziering@capdale.com / 212.379.6075.



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