

IRS's Offshore Voluntary Disclosure Program Ending: Impact on U.S. Taxpayers

March 14, 2018

On March 13, 2018, the Internal Revenue Service (IRS) announced that it will end the Offshore Voluntary Disclosure Program (OVDP) on September 28, 2018. The program, initially introduced in 2009, is designed to allow taxpayers with unreported offshore assets to voluntarily resolve past tax and reporting non-compliance in exchange for a promise of no criminal prosecution, and a cap on civil penalty exposure. While OVDP had been extended in 2011, 2012, and most recently in 2014, the IRS had always intended it to be a temporary program and reserved the right to modify it or cancel it at any time. ***The IRS's announcement of the termination of the program provides taxpayers with outstanding offshore asset delinquencies the last opportunity to take advantage of the OVDP under its current terms.***

Taxpayers who wish to resolve their delinquencies under the terms of OVDP must submit completed OVDP intake forms by the September 28th deadline. Given potential delays in the IRS processing of preclearance requests (the step typically undertaken prior to the submission of the OVDP intake forms), as well as the time needed to obtain records relating to offshore assets and prepare the intake forms, taxpayers with unreported offshore assets should seek counsel immediately to explore compliance options.

The IRS was explicit that taxpayers should not view the elimination of OVDP as a signal of the IRS's decreased enforcement activity in the offshore area. Rather, eradicating offshore non-compliance and evasion will remain the IRS's top priority. The IRS noted that the implementation of the Foreign Account Tax Compliance Act (FATCA) in conjunction with data gathered from other reporting and enforcement initiatives has created a data rich environment for it to continue identifying non-compliance. Moreover, various non-U.S. banks under investigation themselves continue to provide the Department of Justice and the IRS with data concerning accounts belonging to Americans, and this information is leading to the opening of civil audits and criminal investigations.

Although the IRS is ending OVDP, it will continue to offer other approved disclosure options for taxpayers with offshore non-compliance, including:

- Streamlined Filing Compliance Procedures;
- Delinquent FBAR submission procedures;
- Delinquent international information return submission procedures; and
- The Traditional IRS Voluntary Disclosure Practice.

The IRS's traditional voluntary disclosure practice will continue after the cessation of OVDP and will provide similar criminal protections. However, taxpayers will be subject to a draconian statutory penalty regime without a general penalty cap. The IRS also reiterated that it will review so-called "quiet disclosures," which involve filing amended returns reporting previously undisclosed offshore income, and impose statutory criminal and/or civil penalties.

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For taxpayers who find the OVDP or traditional voluntary disclosure practice penalty regimes to be unpalatable, and who were non-willful in their non-compliance, one of the other approved programs may be a better fit. Navigating the various compliance options and the requirements inherent in each program can be complex; thus, taxpayers are encouraged to seek legal advice as to which program will best fit their circumstances.

Attorneys in [Caplin & Drysdale's Tax Controversies Group](#) have handled thousands of voluntary disclosures, tax investigations, and examinations (both civil and criminal). Further, we have decades of expertise in unwinding complex structures and advising U.S. persons of their proper tax and reporting obligations. For more information, please contact any of the attorneys below:

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