



News

*For Clients & Friends of GSRP, LLP*

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## **IRS ANNOUNCES CHANGES TO OFFSHORE VOLUNTARY DISCLOSURE PROGRAM**

United States citizens and residents must pay U.S. income tax on their worldwide income. In addition, U.S. taxpayers who own foreign accounts or other foreign assets must file information returns, such as the Report of Foreign Bank and Financial Accounts ("FBAR"), or face significant penalties for failing to file.

On June 18, 2014, the IRS announced changes to its Offshore Voluntary Disclosure Program ("OVDP"), a program offered in various forms since 2009. Prior to the changes (which went into effect on July 1, 2014), a taxpayer with foreign accounts or assets who had failed to report the associated income and had not filed the required information returns could enter the program and file information returns and amended income tax returns for the past 8 years. The taxpayer would pay the overdue income taxes, along with related interest and penalties, including a 20% accuracy-related penalty on the overdue taxes. In lieu of all other penalties for failure to report the foreign assets, the taxpayer also would pay a single OVDP penalty of 27.5% of the highest value of the unreported assets during the 8-year period. While this could obviously be a substantial payment, it usually turned out to be far less than the total penalties that the IRS could have assessed against a taxpayer whose violations were assumed to be willful. The taxpayer would also be required to provide the IRS with copies of foreign account statements for the entire 8-year period. Even in this age of electronic banking, these statements could sometimes be difficult to obtain.

Effective July 1st, the 2014 OVDP makes significant changes for two groups of taxpayers: (1) those whose accounts are or were held at financial institutions that the IRS or U.S. Department of Justice has identified as being under investigation; and (2) taxpayers who are able to certify that their failures to comply were not the result of willful conduct on their part. The changes are very good news for the latter group of taxpayers, but very bad news for the former.

### **THE BAD NEWS FIRST**

Instead of the 27.5% OVDP penalty described above, a 50% penalty will apply if the taxpayer has or had an account at a foreign financial institution (or a facilitator who helped the taxpayer establish or maintain an offshore arrangement) that the U.S. has identified as being under investigation or as cooperating with a government investigation. Further, once the 50% OVDP penalty applies to any of the taxpayer's unreported accounts, this higher penalty will apply to all of the taxpayer's assets subject to the penalty, even if only one of the accounts was held with a targeted institution. Thus far, the IRS has identified 10

foreign financial institutions or facilitators. This increased penalty applies to taxpayers entering the program on or after August 4, 2014.<sup>1</sup>

### **GOOD NEWS FOR NON-WILLFUL OMISSIONS: STREAMLINED FILING**

The IRS now offers a "Streamlined Filing" program for individual taxpayers (and estates of individuals) who are able to certify that the underreporting of income did not result from willful conduct on their part. An eligible taxpayer will pay a 5% miscellaneous offshore penalty (rather than 27.5%), file amended income tax returns for only 3 years, file FBARs for 6 years, and is not required to provide copies of account statements unless requested by the IRS. Income tax penalties are also reduced.

The taxpayer will also submit a "Certification by U.S. Person Residing in the United States for Streamlined Domestic Offshore Procedures," a 6-page form designed by the IRS that identifies the offshore accounts.

In order to be eligible to participate, the taxpayer (1) must have previously filed a U.S. tax return for each of the most recent 3 years, (2) must have failed to report gross income from foreign financial assets on the U.S. tax return, (3) may have failed to file an FBAR and one or more required informational returns, and (4) must be able to certify that such failures were non-willful. Non-willful conduct is described 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."

Although this streamlined procedure is available as of July 1, 2014, transition rules permit a taxpayer who is currently participating in the (formal) OVDP, but has not entered into a closing agreement with the IRS, to take advantage of the streamlined program.

A separate, and even more generous, streamlined program is offered to U.S. taxpayers who reside outside the U.S. Eligible non-residents may become compliant without paying even the 5% miscellaneous penalty provided that income is properly reported and taxes and interest are paid for the preceding 3 years and that the non-resident also signs a non-willful certification. No longer applicable are the risk assessment, or the limitation that the non-resident not owe more than \$1,500 in U.S. tax in any of the 3 years.

### **DEADLINES LOOMING: OPPORTUNITIES FOR NON-WILLFUL OMISSIONS**

Those taxpayers who have (or had) accounts with the 10 institutions identified by the U.S. as being under investigation face an August 4th deadline to enter the OVDP or face a greatly increased penalty.

Taxpayers who have unreported foreign accounts with institutions not being investigated should also take this opportunity to come forward before their institutions are investigated or before the IRS identifies them as a result of the significant information being obtained from foreign banks through various channels. Some taxpayers may have avoided participation due to the 27.5% penalty and the onerous reporting requirements. However, under the new streamlined filing, eligible taxpayers who have not been compliant may be able to resolve their reporting issues with the IRS under a much more favorable penalty structure and reduced reporting obligations.

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<sup>1</sup> Procedurally, the increased penalty applies to taxpayers who submit a preclearance letter to the IRS on or after this date. The preclearance letter is generally the taxpayer's first communication to the IRS regarding participation in the OVDP.

**GSRP IS EXPERIENCED IN OVDP**

GSRP attorneys and professionals have been representing clients in the OVDP since it was first introduced by the IRS in 2009. We are able to evaluate your situation, represent you before the IRS in the most favorable light, and prepare, in many cases, the amended income tax returns and information returns.

For more information or to schedule a meeting to discuss your situation, please contact the following:

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