

**Alert | Audits, Litigation & Criminal Tax Defense**



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## **IRS Announces it Will End the Offshore Voluntary Disclosure Program Effective September 28, 2018**

The IRS announced that it will end the Offshore Voluntary Disclosure Program (OVDP), effective September 28, 2018. The IRS is pressing taxpayers with undisclosed foreign accounts, entities and income to come forward before the September 28, 2018 deadline and become compliant. Therefore, US taxpayers who have unreported foreign assets and income have a limited amount of time to participate in the OVDP before the program ends. If they do not, they may face dire penalties, and, in some circumstances, criminal prosecution.

### **Background**

Since the OVDP was first announced in 2009, more than 56,000 taxpayers have participated in one of the four offshore programs. In all offshore programs, taxpayers have paid a total of \$11.1 billion in back taxes, interest and penalties. Each of the IRS's offshore voluntary disclosure programs saw increases to the one-time "offshore penalty" taxpayers were required to pay, with each program requiring an ever-higher offshore penalty. The current OVDP requires taxpayers to report 8 years' worth of offshore income and file all income tax and information returns, including Foreign Bank Account Reports (FBARs), and agree to a 27.5% or 50% offshore penalty on the highest value of taxpayers' offshore assets during the 8-year reporting period depending on whether the taxpayer used a bank or facilitator that the IRS has identified as aiding US tax evasion. A 20% penalty (and delinquency penalties for non-filers) applies to the income tax due for each of the 8 years.

The number of taxpayer disclosures under the OVDP peaked in 2011, when approximately 18,000 taxpayers participated. The number of taxpayer participants in the OVDPs has steadily declined through the years, falling to only 600 disclosures in 2017. Thus, the IRS's end to the current OVDP is, in part, due to the decrease in current taxpayer participation. The IRS stated that the planned end of the current

OVDP also reflects advances in third-party reporting, such as the Foreign Account Taxpayer Compliance Act (FATCA), where foreign financial institutions must disclose annually to the IRS their US clients' income. The IRS also is in possession of substantial information about non-compliant taxpayers with offshore assets from bank disclosures, other taxpayers' voluntary disclosures, whistleblowers, and cooperating defendants in criminal cases.

Thus, after the current OVDP ends, taxpayers can expect maximum penalties or criminal prosecution for failing to participate in one of the four previous offshore programs. However, the IRS announcement states that existing avenues to disclose offshore noncompliance after September 28, 2018, will continue, such as the traditional voluntary disclosure practice outside the offshore voluntary disclosure program. The IRS also said that it will post additional information on how to make disclosures after September 28 on its website.

### **IRS Enforcement**

Taxpayers who have not become compliant in their offshore reporting have seen increased IRS enforcement since the first OVDP was instituted in 2009. Many taxpayers have faced aggressive and lengthy IRS audits, some of which resulted in the IRS's assertion of civil fraud penalties and willful FBAR penalties, or worse, criminal prosecution. The civil fraud penalty is 75% of the unreported income from the offshore assets and the statute of limitations to assert this penalty is unlimited. The willful FBAR penalty is a maximum of 50% of the value of the taxpayer's offshore accounts over a 6 year period, but not to exceed more than 100% of the taxpayer's offshore accounts. The IRS has not been lenient on taxpayers who have failed to participate in its offshore programs. With the success the IRS has seen in its prior and current OVDPs, taxpayers can expect offshore audits to continue in the same manner. The IRS has many tools to combat offshore tax avoidance from all of its information sources, such as previous OVDP participants, FATCA reporting and criminal and civil investigations of foreign banks and US taxpayers. With the success the IRS has seen in the four OVDP's, taxpayers can expect audits of offshore accounts to continue unabated, especially since the IRS has included this area as a priority and in its compliance campaigns.

### **Options After The OVDP Ends**

While the current OVDP is ending on September 28, 2018, some of the IRS's current compliance programs will remain, for now. The Streamlined Filing Compliance Procedures will remain for taxpayers whose failure to report offshore income and assets was "non-willful." Although the IRS has reserved the right to terminate the Streamlined and other programs, it does not appear that it intends to do so soon. Presumably, the IRS will continue to allow taxpayers with previously undisclosed foreign accounts, income and assets to participate in the following programs:

1. Streamlined Filing Compliance Procedures;
2. Delinquent FBAR Submission Procedures;
3. The IRS Criminal Investigation's Voluntary Disclosure Program; and
4. Delinquent International Information Return Submission Procedures.

Before time runs out on making a voluntary disclosure in the current program, non-compliant US taxpayers should consult with experienced counsel to evaluate their options and determine whether participation in OVDP before September 28, 2018, is appropriate.

## Greenberg Traurig's Audits, Litigation & Criminal Tax Defense Group

Greenberg Traurig's Audits, Litigation, & Criminal Tax Defense Group has advised a multitude of clients with previously undisclosed foreign accounts, income and assets either in audit, litigation or in connection with one of the IRS's offshore voluntary disclosure programs. The issues for US taxpayers with previously undisclosed foreign income and assets are complex and every taxpayer's facts and situation is unique. Our group is skilled in providing expert legal advice in all phases of an offshore case, from non-compliance (pre-audit), audit, Appeals, and in civil or criminal litigation.

For advice in connection with the IRS's OVDP, Streamlined program or in an offshore audit, litigation or investigation, contact one of the attorneys listed at the bottom of this Alert.

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