



## IRS Offshore Voluntary Compliance Program to End September 28

### Closing the distance

On September 9, 2018, the IRS released a reminder that taxpayers have until September 28, 2018 to apply to participate in the 'Offshore Voluntary Disclosure Program' ('OVDP'). After September 28, 2018, US taxpayers with undisclosed offshore accounts will no longer be able to disclose them under the OVDP. The IRS has said that the IRS will still hold taxpayers with undisclosed offshore accounts accountable once the program closes and has promised to provide a revised pathway for taxpayers who may have committed criminal acts to voluntarily disclose their past actions and come into compliance with the tax system. The specifics of this 'revised pathway' have not been disclosed.

#### **What Is the OVDP and How Does It Work?**

The OVDP is a voluntary disclosure program specifically designed for taxpayers with exposure to potential criminal liability and/or substantial civil penalties due to a willful failure to report foreign financial assets and pay all tax due with respect of those assets. OVDP was designed to provide to taxpayers with such exposure:

- (1) protection from criminal liability; and,
- (2) terms for resolving their civil tax and penalty obligations.

The IRS launched the OVDP in 2009 and made substantial revisions to the program in 2011, 2012, and 2014. Essentially, the program formalizes a longstanding IRS practice that enables noncompliant taxpayers to voluntarily disclose and resolve their tax liabilities in exchange for the IRS reducing the taxpayer's risk of being subject to criminal prosecution for failing to disclose assets held offshore. Under the OVDP, when a taxpayer truthfully, timely, and completely complies with all provisions of the voluntary disclosure practice, the IRS will not recommend criminal prosecution to the Department of Justice for any issue relating to tax noncompliance or failure to file a Report of Foreign Bank and Financial Accounts ('FBAR'). This does not mean that the OVDP is without complexity. Under its terms, taxpayers must incur civil penalties in exchange for the IRS declining to pursue criminal prosecution. These include:

- i) A 20-percent accuracy-related penalties under Internal Revenue Code ("IRC") §6662(a) on the full amount of the taxpayer's offshore-related underpayments of tax for all years;
- ii) Failure-to-file penalties under IRC §6651(a)(1), if applicable;
- iii) Failure-to-pay penalties under IRC §6651(a)(2);

- iv) Pay, in lieu of all other penalties that may apply to the undisclosed foreign accounts, assets, and entities, including FBAR and offshore-related information return penalties and tax liabilities for years prior to the voluntary disclosure period, a miscellaneous Title 26 offshore penalty equal to 27.5% (50% in certain circumstances) of the highest aggregate value of OVDP assets during the period covered by the voluntary disclosure; and
- v) Submit full payment of any Title 26 tax liabilities for years included in the offshore disclosure period, applicable interest, an offshore penalty, accuracy related penalties for offshore-related underpayments, and, if applicable, the failure-to-file and failure-to-pay penalties, or, if the taxpayer is unable to make full payment, to make good faith arrangements with the IRS to pay in full.

Beyond the above mentioned requisite penalty payments, taxpayers seeking relief under the program will need to submit certain documents specified in OVDP [FAQ 25](#) and execute a 'Closing Agreement on Final Determination' (i.e. [Form 906](#)). Taxpayers are expected to be cooperative with the IRS during the investigative process and the IRS may request additional information from taxpayer beyond what is discussed above. Taxpayers should be aware that participation in the OVDP reduces, but does not wholly eliminate, the possibility of substantial civil penalty or criminal sanction.

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