

White Collar Criminal Defense

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IRS Announces the End of Its Offshore Voluntary Disclosure Program

By **Robert J. Kipnees**

Yesterday, the Internal Revenue Service (IRS) announced that the Offshore Voluntary Disclosure Program (OVDP) will be ending on September 28, 2018. The program, which has been in effect in various iterations since 2009, provided a mechanism by which individuals with unreported offshore accounts could come forward before any formal IRS investigation had commenced. If taxpayers are admitted into the program, the IRS will recommend against criminal prosecution of the taxpayers. In addition, taxpayers admitted into the OVDP are required to pay outstanding additional taxes and interest, up to an eight-year period of noncompliance, plus a 20 percent accuracy penalty. Further, taxpayers admitted into the OVDP have to pay a miscellaneous penalty of 27.5 percent (up to 50 percent, depending on whether their accounts were with a bank already cooperating with the United States Department of Justice and the IRS) of the highest account balance during the years of noncompliance in filing the Report of Foreign Bank and Financial Accounts (FBAR), which is required to be filed annually with the Treasury Department. These figures, while sometimes steep, pale in comparison to potential penalties if the taxpayers do not enter into the OVDP and are instead audited by the IRS.

In the latter case, in addition to potential criminal sanctions, taxpayers could pay up to a 75 percent fraud penalty and up to the greater of \$100,000 or 50 percent of the account balance, up to the entire account balance, for each year of willful noncompliance with FBAR requirements.

The OVDP has been responsible for bringing in over \$11.1 billion in back taxes from more than 56,000 taxpayers. However, the IRS, in announcing a third iteration of the OVDP in 2012, warned that the IRS could end the program at any time. That time now is September 28, 2018. Once the OVDP ends, there will still be limited opportunities available for certain taxpayers to avoid criminal prosecution or, in very limited circumstances, to avoid payment of the 27.5 percent penalty, but the OVDP's fines and penalty structure no longer will be available. The IRS has also made it clear that it intends to make a priority of criminally prosecuting individuals who have failed to report their overseas accounts and those individuals and entities that assisted the taxpayers in avoiding reporting or detection of the taxpayers' overseas accounts. Therefore, it is important for anyone with unreported foreign assets to consult with counsel promptly to ascertain the best course of action.

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