

## September 6, 2018: Offshore Voluntary Disclosure Program to end September 28, 2018

On March 13, 2018, the Internal Revenue Service (IRS) announced that it will phase out the 2014 Offshore Voluntary Disclosure Program and close the program on **September 28, 2018** (IR-2018-52).

The Offshore Voluntary Disclosure Program (OVDP) is a voluntary disclosure program created by the IRS for U.S. taxpayers with unreported foreign financial assets who face potential criminal liability and/or substantial civil penalties due to a willful failure to report such assets and pay taxes in respect of those assets. Under the OVDP, U.S. taxpayers with such exposure are able to voluntarily disclose unreported foreign financial assets in return for protection from criminal liability and terms for resolving their civil tax and penalty obligations.

The OVDP was first introduced by the IRS in 2009, and was closed after 7 months. A second OVDP phase followed in 2011. The current open-ended OVDP program began in 2012, was modified in 2014, and is now referred to as the 2014 OVDP. The 2014 OVDP allows U.S. taxpayers with undisclosed foreign accounts or entities to become compliant, avoid substantial civil penalties and generally eliminate the risk of criminal prosecution. It also provides some certainty regarding the total cost of resolving the offshore tax issues.

U.S. taxpayers who do not submit a voluntary disclosure run the risk of detection by the IRS and the imposition of substantial penalties, including fraud and foreign information return penalties, and the risk of criminal prosecution.

Since the implementation of the Foreign Account Tax Compliance Act (FATCA), the Treasury Department has stepped up its efforts to combat tax evasion by U.S. persons holding accounts and other financial assets offshore. The mandatory reporting requirements imposed by FATCA on foreign financial institutions and entities, have significantly increased the exchange of information between the IRS and its foreign counterparts. This is of particular importance for the OVDP program, as the eligibility to participate in the program requires voluntary disclosure of information, prior to detection by, or third-party disclosure to, the IRS.

According to the IRS, over 56,000 U.S. taxpayers have used the various terms of the OVDP to voluntarily comply with U.S. tax laws, resulting in \$11.1 billion in back taxes, interest and penalties paid to the Department of Treasury (IR-2018-176). However, the participation in the program has steadily declined over the years, falling to only 600 disclosures in 2017. The IRS cites advances in third-party reporting and increased awareness of U.S. taxpayers of their offshore tax and reporting obligations as main reasons for the reduction in the number of program participants.

### *What should you do if you still want to participate in the OVDP?*

Please contact the tax professionals of our Global Advisory Services Team immediately to see if you are eligible for participation in the OVDP. The IRS will close the 2014 OVDP effective September 28, 2018 and will only accept complete offshore voluntary disclosures conforming to the requirements of the 2014 OVDP received or postmarked by September 28, 2018. Partial, incomplete, or placeholder submissions will not be sufficient.

Despite the closing of the 2014 OVDP, the IRS emphasized that stopping offshore tax noncompliance and evasion remain top priorities, and it will continue to use whistleblower leads, civil examination and criminal prosecution to combat such tax avoidance. However, the IRS also acknowledges that because the circumstances of taxpayers with foreign financial assets vary widely, it will continue offering the following options for addressing previous failures to comply with U.S. tax and information return obligations with respect to those assets:

- Streamlined Filing Compliance Procedures;
- Delinquent FBAR submission procedures; and
- Delinquent international information return submission procedures.

U.S. Taxpayers will continue to have these existing avenues to disclose offshore noncompliance even after September 28, 2018.

We will continue to provide updates and additional information on how to make disclosures after September 28, 2018.

If you have any questions about any of the above information, or wish to discuss a particular matter, please feel free to speak with any member of our Global Advisory Services Team by calling us at 412-297-4900 or visiting <https://www.cohenlaw.com/practices/global-advisory-services-team/>.

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