



IRS Announces New Streamlined Procedures For Offshore Voluntary Disclosure Program

Client Advisories

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On June 18, 2014, the IRS announced changes to the Offshore Voluntary Disclosure Program (OVDP) that will lower the penalties for many more applicants seeking to correct their prior underreporting of foreign income. Qualifying taxpayers who enroll in the program and pay tax on their unreported income may qualify for a penalty amount of 5% for U.S.- based taxpayers and no penalty for those residing abroad.

U.S. TAXPAYERS RESIDING IN THE UNITED STATES

U.S. taxpayers residing in the United States are eligible for the streamlined procedures if they (1) have not met the applicable non-residency requirements which generally apply to U.S. taxpayers who live outside the United States; (2) have previously filed U.S. tax returns (if required) for each of the most recent three years for which U.S. tax return due dates have passed; (3) have failed to report gross income from a foreign financial asset and pay taxes required by U.S. law, and may have failed to file an FBAR (Report of Foreign Bank and Financial Accounts) and/or one or more international information returns; and (4) have filed a statement affirming that such failures resulted from non-willful conduct. Non-willful conduct is conduct that is due to negligence, inadvertence, or a mistake, or conduct that is a result of a good faith misunderstanding of the requirements of the law.

Such taxpayers can limit their exposure to IRS prosecutions and penalties by utilizing the new streamlined procedures announced by the IRS. Applicants can utilize this program by (1) filing amended income tax returns for the most recent three years to report unreported foreign income; (2) filing missing or corrected reports of foreign assets such as the Report of Foreign Bank and Financial Accounts (FINCEN Form 114); (3) and paying any tax and interest due on the amended income tax returns plus a special miscellaneous offshore penalty equal to 5% of the highest values of offshore accounts over the most recent six years of FBAR filings. Applicants must sign a statement that the failure to report all income, pay all tax, and submit all required information returns including FBARs resulted from non-willful conduct.

U.S. TAXPAYERS RESIDING OUTSIDE OF THE UNITED STATES

U.S. taxpayers residing abroad are eligible for the streamlined foreign offshore procedures if they meet the applicable non-residency requirements. That determination depends in part on whether they are U.S. citizens or lawful permanent residents (i.e., Green Card holders) or are not. U.S. citizens and Green Card holders can qualify for the streamlined provisions if in any of the most recent three years for which the U.S. tax return due date has passed, the individual did not have a U.S. abode and the individual was physically outside of the U.S. for at least 330 full days. Non-U.S. citizens without Green Cards qualify for non-residency status if they do not meet the “substantial presence test” for any one or more of the three years for which U.S. tax return due dates have passed. This test looks at the number of days the individuals spent in the United States over the previous calendar year and earlier two-year period. Information on the substantial presence test is available in IRS publication 519. The substantial presence test does not apply to a person who spent less than a third of his or her time in the United States in each of the prior six years.

Applicants for the streamlined offshore procedures who reside abroad must file 1040 returns or amended 1040 returns for the most recent three years, identifying the returns as qualifying for “streamlined foreign offshore” provisions. They must also file FBARs and other required information returns for the most recent three years. Any tax and interest due with regard to the income tax returns must be submitted when the returns are filed. A signed statement must be submitted with each return and an information statement filed stating that the individual is eligible for the streamlined foreign offshore procedures, that all required FBARs have now been filed, and that the failure to file tax returns, report all income, pay all tax, and submit all required information returns, including FBARs, resulted from non-willful conduct.

These procedures for non-resident filers will result in no penalties being asserted (apart from the payment of income tax and interest).

This is a significant relaxation in penalty provisions that currently apply and is designed to get non-reporting taxpayers back into compliance with U.S. law, which requires all U.S. citizens and Green Card holders, and persons physically present in the U.S., to report and pay tax on their worldwide income.

The expansion of the streamlined provisions to more taxpayers who are not willfully failing to comply with U.S. reporting requirements is clearly a step in the right direction. An overwhelmingly large number of U.S. taxpayers are not aware of the U.S. tax reporting rules requiring U.S. citizens, Green Card holders and persons residing in the U.S. to report and pay tax on their worldwide income. Getting people into compliance without fear of retribution is a goal of the new streamlined rules and that indeed appears to be a significant advance in the IRS approach to dealing with the unreported foreign income issue.

Should you have any questions about foreign income issues or other tax matters, please contact a member of **Archer's Tax Law Practice Group** in Haddonfield, N.J., at (856) 795-2121, or in Wilmington, Del., at (302) 777-4350. For more information on the voluntary disclosure penalties, click [HERE](#).

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