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Offshore Accounts: Voluntary Disclosure Programs Offer Significantly Reduced Penalties

by David J. Karasko and Christopher C. Scarpa

On June 18, the IRS announced modifications to the 2012 Offshore Voluntary Disclosure Program (OVDP) and an expansion of the Streamlined Filing Compliance Procedures (Streamlined Program) to U.S. taxpayers residing in the United States whose failure to disclose their offshore assets was not willful (eligibility for the Streamlined Program previously was limited to nonresident taxpayers). As in the 2012 OVDP, an individual will not qualify for the 2014 OVDP (or the Streamlined Program) if the IRS already has information regarding his or her noncompliance, such as an existing or prior audit during one of the disclosure years.

The OVDP is an IRS program that limits certain U.S. taxpayers' potential criminal exposure and civil penalties associated with the failure to disclose foreign accounts and assets and/or to report the income generated from them. Under the OVDP, a noncompliant U.S. taxpayer typically must file eight years of amended (or delinquent) tax returns and foreign bank account reports (FBARs) and pay all tax liabilities due thereon; pay accuracy-related, failure-to-file and/or failure-to-pay penalties, if applicable; and pay an additional miscellaneous offshore penalty of 27.5 percent of the highest aggregate value of the taxpayer's OVDP assets during the past eight years. One of the most significant changes from the 2012 OVDP to the 2014 OVDP is an increase in the miscellaneous offshore penalty from 27.5 percent to 50 percent if either a foreign financial institution at which the taxpayer has or had an account or a facilitator who helped the taxpayer establish or maintain an offshore arrangement has been publicly identified as being under investigation or as cooperating with a government investigation.

Additionally, as mentioned above, the Streamlined Program now applies to certain U.S. individuals whose failure to report all income, pay all taxes and submit all required information returns, including FBARs, was not willful. The Streamlined Program requires the taxpayer to file three years of income tax returns and six years of FBARs, pay three years of back taxes and interest, and pay a miscellaneous offshore penalty of 5 percent (rather than the 27.5 percent or 50 percent penalty applicable in the 2014 OVDP) of the highest aggregate balance/value of the taxpayer's foreign financial assets that are subject to the miscellaneous offshore penalty during the years in the tax return period and the FBAR period.

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As a result of these modifications, U.S. taxpayers with undisclosed foreign accounts now will have to choose either the 2014 OVDP or the Streamlined Program and will not be able to alter their decision once the taxpayer makes a submission under either program. Consequently, taxpayers considering the new Streamlined Program need to think carefully about whether their actions were truly non-willful before entering the program. The chart below highlights some of the major differences between the 2014 OVDP and the Streamlined Program.

In connection with these changes, the IRS provided updated frequently asked questions regarding the OVDP on its website. For more information, see <http://www.irs.gov/Individuals/International-Taxpayers/Offshore-Voluntary-Disclosure-Program-Frequently-Asked-Questions-and-Answers-2012-Revised>.

If you have any questions about the OVDP, contact David J. Karasko at 215.564.8542 or dkarasko@stradley.com, or Christopher C. Scarpa at 215.564.8106 or cscarpa@stradley.com.

	2014 OVDP	Streamlined Program
Accuracy-related penalty	20 percent	None
Failure-to-file penalties and failure to pay penalties, if applicable	Yes	None
Miscellaneous offshore penalty	27.5 percent or 50 percent	5 percent
Back taxes	8 years	3 years

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