

I.R.S. ANNOUNCES MAJOR CHANGES TO O.V.D.P. AND STREAMLINED PROCEDURES

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Tags

O.V.D.P.
Streamlined Procedures

After more than two weeks of speculations,¹ the Internal Revenue Service (“I.R.S.”) announced major changes to its current offshore voluntary disclosure programs earlier today. The programs affected are the 2012 Streamlined Filing Compliance Procedures for Non-Resident, Non-Filer U.S. Taxpayers (the “Streamlined Procedures”) and the 2012 Offshore Voluntary Disclosure Program (“O.V.D.P.”).

In general, as will be discussed in more detail below, the changes to the programs relax the rules for non-willful filers and at the same time potentially increase penalties for willful non-compliance.

The changes to the O.V.D.P., as announced today, include the following:

- Additional information will be required from taxpayers applying to the program;
- The existing reduced penalty percentage for non-willful taxpayers will be eliminated;
- All account statements, as well as payment of the offshore penalty, must be submitted at the time of the O.V.D.P. application;
- Taxpayers will be able to submit important amounts of records electronically; and
- The offshore penalty will be increased from 27.5% to 50% if, prior to the taxpayer’s pre-clearance submission, it becomes public that a financial institution where the taxpayer holds an account or another party facilitating the taxpayer’s offshore arrangement is under investigation by the I.R.S. or the Department of Justice.

¹ See “Prepared Remarks if John A. Koskinen-Commissioner of Internal Revenue Service, Before the U.S. Council for International Business – OECD International Tax Conference, Washington D.C.”, June 3, 2014

The changes to the Streamlined Procedures include the following:

- The availability of the program is extended to certain U.S. taxpayers residing in the U.S.;
- The requirement that the taxpayer have \$1,500 or less of unpaid tax per year is eliminated;
- The Streamlined risk questionnaire is eliminated; and
- The taxpayer is now required to certify that previous failures to comply were due to non-willful conduct.

All penalties will be waived for eligible U.S. taxpayers living outside the U.S. Eligible taxpayers living in the U.S. will only incur a 5% miscellaneous offshore penalty on the foreign financial assets that gave rise to the tax compliance issue.

It should be noted that taxpayers who, prior to July 1, 2014, submitted their intake letter and attachments, can benefit from the new reduced penalty structure if they are eligible for the new program.

At first glance, the changes appear to officialize the prior avenue of silent disclosures that were made by many U.S. persons residing in the U.S. and abroad who believed the O.V.D.P. penalties were too harsh by providing an official path forward to come into compliance on a penalty free or penalty limited basis.

The open question is how the I.R.S. will treat silent disclosure filers currently under audit as a result of being discovered.

We will follow up shortly on the specifics, but you may review the details of the changes at www.irs.gov.

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Statement of IRS Commissioner John Koskinen

June 18, 2014

Today we're announcing a number of important changes to our offshore account compliance program that we believe will lead to a significant increase in the number of U.S. taxpayers coming forward to report on undisclosed foreign accounts.

The steps we're outlining today include an expanded streamlined filing compliance process and important modifications to our Offshore Voluntary Disclosure Program, or OVDP. The combined effect of these revisions will be to allow more taxpayers to participate. This reflects a carefully balanced approach. We are providing additional flexibility in key parts of our compliance effort while maintaining central components of the offshore program.

Our goal is to build on the success the IRS has already had in reducing offshore tax evasion through the OVDP, which allows individuals to avoid criminal prosecution if they disclose their foreign accounts and pay a substantial penalty. The current OVDP is the successor to prior initiatives in 2011 and 2009. Taken together, these programs have resulted in more than 45,000 disclosures and the collection of about \$6.5 billion in taxes, interest and penalties. To supplement the OVDP, in 2012 we added what we call the streamlined filing compliance procedures. This has provided a way for a limited group of U.S. taxpayers living abroad who didn't know they were out of compliance to catch up on their U.S. filing requirements without paying steep penalties.

We are announcing two sets of actions. These involve some very technical issues, but they carry great importance for thousands of taxpayers and our continuing efforts in the offshore arena.

First, we're expanding the streamlined procedures to cover a much broader group of U.S. taxpayers we believe are out there who have failed to disclose their foreign accounts but who aren't willfully evading their tax obligations. To encourage these taxpayers to come forward, we're expanding the eligibility criteria, eliminating a cap on the amount of tax owed to qualify for the program, and doing away with a questionnaire that applicants were required to complete.

Second, we will be reshaping the terms for taxpayers to participate in the OVDP. This is designed to cover those whose failure to comply with reporting requirements is considered willful in nature, and who therefore don't qualify for the streamlined procedures. These changes will help focus this program on people seeking certainty and relief from criminal prosecution. From now on, people who want to participate in this program will have to provide more information than in the past, submit all account statements at the time they apply for the program, and in some cases pay more in penalties than they would have done had they entered this program earlier.

These changes reflect the helpful feedback of tax practitioners and the National Taxpayer Advocate, along with what we learned in our experience operating the OVDP. Over time, we discovered that there were people, including many here in the U.S., for whom the existing program penalties were too harsh or restrictive. These people had small enough issues that they didn't really need the protection from criminal prosecution offered by the OVDP. But they also didn't fit into the narrow criteria of the streamlined procedures, either.

It's important to keep in mind that the IRS is seeking a balanced approach with this program, particularly in light of our other work on offshore issues. Our aim is to get people to disclose their accounts, pay the tax they owe and get right with the government. At the same time, for important

categories of these non-willful people with offshore issues, a compliance regime that is too harsh won't net the desired result.

In addition, we want to send a message to anyone who continues to willfully and aggressively evade our tax laws by hiding money overseas that they will pay a higher price for that noncompliance. Even though we're tightening components of the OVDP, we still believe it's a better deal than the alternative, because if we find you, you will face higher penalties and, as the record shows, could face criminal prosecution and jail time.

We want everyone to know that we are continuing our efforts to track down people still out there who are hiding assets overseas. More information on these accounts is coming in every day. For example, Swiss banks are cooperating through a program put in place last year by the Department of Justice. I would note that Justice recently reached an historic agreement with Credit Suisse. Also, more banks around the world will be coming forward with information on their U.S. customers beginning July 1. That's when reporting requirements under the Foreign Account Tax Compliance Act, or FATCA, go into effect. It's clear that the days of hiding assets in accounts overseas are coming to an end. There is no reason not to come into compliance.

We encourage taxpayers who are concerned about their undisclosed offshore accounts to come in voluntarily before learning that the U.S. is investigating the bank or banks where they hold accounts. By then, it will be too late to avoid the new higher penalties under the OVDP of 50 percent – nearly double the regular 27.5 percent.

For anyone who wants to come into compliance but isn't sure what to do, I recommend talking to a tax professional or going to our website, IRS.gov. This has a wealth of information about what disclosures are required and how to make them; we plan to add to this area.

For me as a tax administrator, the bottom line on what we're announcing today is about fairness. For our system of voluntary tax compliance to work right, the average taxpayer who abides by the law has to be confident that everyone is being held to a similar standard. As part of that, people can no longer expect to hide their money in foreign countries and avoid paying their fair share.

Page Last Reviewed or Updated: 18-Jun-2014



IRS Makes Changes to Offshore Programs; Revisions Ease Burden and Help More Taxpayers Come into Compliance

IR-2014-73, June 18, 2014

WASHINGTON — The Internal Revenue Service announced today major changes in its offshore voluntary compliance programs, providing new options to help both taxpayers residing overseas and those residing in the United States. The changes are anticipated to provide thousands of people a new avenue to come into compliance with their U.S. tax obligations.

The changes include an expansion of the streamlined filing compliance procedures announced in 2012 and important modifications to the 2012 Offshore Voluntary Disclosure Program (OVDP). The expanded streamlined procedures are intended for U.S. taxpayers whose failure to disclose their offshore assets was non-willful.

“This opens a new pathway for people with offshore assets to come into tax compliance,” said IRS Commissioner John Koskinen. “The new versions of our offshore programs reflect a carefully balanced approach to ensure everyone pays their fair share of taxes owed. Through the changes we are announcing today, we provide additional flexibility in key respects while maintaining the central components of our voluntary programs.”

Balanced against the modified programs is the government’s ongoing effort to combat the misuse of offshore assets. The IRS, working closely with the U.S. Department of Justice, continues to investigate foreign financial institutions that may have assisted U.S. taxpayers in avoiding their tax filing and payment obligations. In addition, on July 1, the new information reporting regime resulting from the Foreign Account Tax Compliance Act (FATCA) will go into effect. Thousands of foreign financial institutions will begin to report to the IRS the foreign accounts held by U.S. persons.

The current Offshore Voluntary Disclosure Program was launched in 2012 and is the successor to prior voluntary programs offered in 2011 and 2009. Since the launch of the first program, more than 45,000 taxpayers have come into compliance voluntarily, paying about \$6.5 billion in taxes, interest and penalties.

The expansion of the streamlined procedures and modifications to OVDP reflect the thoughtful input of the tax community given the growing awareness among U.S. taxpayers of their offshore tax obligations.

“Through our enforcement efforts and implementation of FATCA, taxpayers are more aware of their obligations, and we believe want to come into compliance,” Koskinen said. “In this rapidly changing environment, we listened to feedback from the tax community as well as the National Taxpayer Advocate about our voluntary programs. We have made important adjustments to provide opportunities for all U.S. taxpayers to come in, including those who are not willfully hiding assets.”

Streamlined Procedures Expanded

The changes announced today make key expansions in the streamlined procedures to accommodate a wider group of U.S. taxpayers who have unreported foreign financial accounts.

The original streamlined procedures announced in 2012 were available only to non-resident, non-filers. Taxpayer submissions were subject to different degrees of review based on the amount of the tax due and the taxpayer's response to a "risk" questionnaire.

The expanded streamlined procedures are available to a wider population of U.S. taxpayers living outside the country and, for the first time, to certain U.S. taxpayers residing in the United States. The changes include:

- Eliminating a requirement that the taxpayer have \$1,500 or less of unpaid tax per year;
- Eliminating the required risk questionnaire;
- Requiring the taxpayer to certify that previous failures to comply were due to non-willful conduct.

For eligible U.S. taxpayers residing outside the United States, all penalties will be waived. For eligible U.S. taxpayers residing in the United States, the only penalty will be a miscellaneous offshore penalty equal to 5 percent of the foreign financial assets that gave rise to the tax compliance issue.

Offshore Voluntary Disclosure Program (OVDP) Modified

The changes announced today also make important modifications to the OVDP. The changes include:

- Requiring additional information from taxpayers applying to the program;
- Eliminating the existing reduced penalty percentage for certain non-willful taxpayers in light of the expansion of the streamlined procedures;
- Requiring taxpayers to submit all account statements and pay the offshore penalty at the time of the OVDP application;
- Enabling taxpayers to submit voluminous records electronically rather than on paper;
- Increasing the offshore penalty percentage (from 27.5% to 50%) if, before the taxpayer's OVDP pre-clearance request is submitted, it becomes public that a financial institution where the taxpayer holds an account or another party facilitating the taxpayer's offshore arrangement is under investigation by the IRS or Department of Justice.

Full details of the changes to both the [streamlined procedures and OVDP](#) can be found on IRS.gov.

Related Items:

- [Offshore Voluntary Disclosure Program](#)
- [Statement of IRS Commissioner John Koskinen](#)
- [FS-2014-6](#), IRS Offshore Voluntary Disclosure Efforts Produce \$6.5 Billion; 45,000 Taxpayers Participate
- [FS-2014-7](#), Offshore Income and Filing Information for Taxpayers with Offshore Accounts

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