

PCS Tax Insight

Private Company Services Publication

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IRS reopens offshore OVDI program for indefinite time period

Background

The Internal Revenue Service (IRS) recently announced that it is reopening the Offshore Voluntary Disclosure Initiative (OVDI) for non-filers of U.S. income tax returns and Foreign Bank Account Reports (FBARs). The new OVDI has the same structure as the 2011 initiative (which ended on December 9, 2011), with certain key differences. Though there is no stated deadline to the new OVDI program, the IRS has indicated that the terms of the program may change at any time going forward.

The new OVDI may be helpful for private companies and high-net-worth individuals who are just becoming aware of their U.S. filing obligations and who did not participate in the 2009 or 2011 OVDI programs. In particular, the new OVDI is an additional opportunity for private companies and high-net-worth individuals owning or controlling foreign accounts and/or foreign entities to file returns and come

into compliance with their international information reporting requirements.

FBAR overview

Under the Bank Secrecy Act of 1970 (as amended), a United States person --a U.S. citizen, a U.S. resident, or an entity created under the laws of the United States--is required to file an FBAR if the aggregate value of the person's financial interest in, or signature authority over, a foreign financial account, exceeds \$10,000 at any time during the year. A U.S. person who fails to file the FBAR is generally subject to a \$10,000 penalty per violation, with some exceptions. In addition, a U.S. person who wilfully fails to report an account or account identifying information may be subject to a penalty equal to the greater of \$100,000 or 50 percent of the balance in the account at the time of the violation, with the additional possibilities of criminal penalties.

The IRS recently announced that it is reopening the Offshore Voluntary Disclosure Initiative (OVDI) for nonfilers of both U.S. tax returns and Foreign Bank Account Reports (FBARs). The new OVDI has the same structure as the 2011 initiative, with certain key differences. The announcement provides further guidance to taxpayers who have just become aware of their filing obligations as well as taxpayers who did not participate in the 2009 and 2011 OVDI programs.



OVDI Penalty structure

Taxpayers who enter the new OVDI program must file original or amended tax returns for up to eight years and pay all back taxes plus accuracy and delinquency penalties applicable to the balance due on those returns. Whereas each OVDI has had a set penalty structure on unreported offshore accounts, the penalty has increased with each successive OVDI. The new OVDI retains a similar penalty structure as the 2011 OVDI program, except that the penalty on the highest aggregate balance in the foreign bank accounts (or entities, or value of foreign assets) during the tax years has increased from 25 percent to 27.5 percent.

Certain taxpayers in limited situations may be eligible for a reduced penalty, as previously described in the prior OVDI's Frequently Asked Questions (FAQs), located on the IRS website. For example, U.S. persons whose offshore accounts or assets do not exceed \$75,000 in any calendar year covered under the program will be eligible for a reduced 12.5-percent penalty on the highest aggregate balance. The IRS has announced that it plans to update the FAQs in the next month.

Opt-out option available

The new OVDI program retains the opt-out option that was available in prior programs. The opt-out process was described in the 2011 FAQs; the IRS also released its internal guidance to examiners. The decision to opt out is irrevocable and results in the taxpayer's submission being referred for a full-scope examination.

The advantage of filing an OVDI submission and then opting out is that a full voluntary disclosure has been made to the IRS as opposed to a "quiet"

or "soft" disclosure that does not relieve the taxpayer from potential criminal prosecution. Individuals who choose to participate in, and then opt out of, the new OVDI may be subject to examinations of up to eight years of tax returns within the OVDI period.

Under the 2011 OVDI, the IRS agreed not to impose a penalty for the failure to file delinquent FBARs if there were no underreported tax liabilities and the FBARs were filed by August 31, 2011. It is anticipated that the IRS will follow the same course under the new OVDI. As a result, taxpayers who reported and paid tax on all their taxable income but did not file FBARs may consider not participating in the newly announced OVDI. Instead they may consider filing the delinquent FBARs.

IRS scrutiny increasing

The new OVDI is announced at a time when better use of the exchange of information articles in U.S. tax treaties and other tax information exchange agreements, plus information gathered from the prior two OVDIs, makes it increasingly risky to continue noncompliance with U.S. tax return and FBAR filing requirements. An unprecedented amount of information on U.S. taxpayers' foreign assets soon will become available when the Foreign Account Tax Compliance Act (FATCA) and Foreign Financial Asset Reporting (new Form 8938 under IRC § 6038D) regimes become effective for 2011 individual tax returns (for an overview of these reporting requirements, please see the related PCS insight, [here](#)). With the advent of these new reporting requirements, it is anticipated that the IRS will continue to ramp up its focus on and enforcement of foreign asset reporting.

How PwC can help

Although the new OVDI program may provide relief to some, each taxpayer should consider its specific situation and the options available before making a decision about how best to become compliant regarding previously unreported offshore accounts and income.

PwC's Tax Controversy and Dispute Resolution (TCDR) practice is able to advise and assist private companies and high-net-worth individuals who would like to come into compliance under the new OVDI. The TCDR practice may be able to assess eligibility, prepare a statement explaining the reason for nonfiling, and make sure all the necessary information is completed before the filing.

For more information, please do not hesitate to contact:

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