

The Pursuit of International Tax Compliance; IRS Reopens Offshore Voluntary Disclosure Program

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On January 9, 2012, the IRS announced [IR-2012-5](#) that it has "reopened" the Offshore Voluntary Disclosure Program ("OVDP"). The IRS opened a new OVDP due to the continued and vast interest by U.S. citizens, other persons, residents and their representatives to have a vehicle in place to disclose the inadvertent or intentional concealment of offshore financial accounts or assets.

The new OVDP is substantially similar to the 2011 Program whose deadline recently passed but for the following key differences:

- The new OVDP is open-ended with no current submission deadline announced;
- The terms of the OVDP including penalties could be changed at any time by the IRS;
- The base line penalty under the OVDP is now 27.5% of the highest aggregate balance of the undisclosed foreign financial accounts and/or assets during the eight (8) full tax years prior to the submission. Under the 2011 Program, the penalty was 25% of the highest aggregate balance of the undisclosed foreign financial accounts and/or assets during tax years 2003 through 2010.
- The new OVDP still provides for a reduced penalty of 12.5% if the value of the foreign financial accounts and/or assets is under \$75,000 for every tax year or 5% under certain exceptions including that of a U.S. citizen residing outside the U.S.

As with the 2011 Program, IRS Commissioner Douglas Shulman continues to urge compliance by stating, "as we've said all along, people need to come in and get right with us before we find you." Commissioner Shulman goes on to state that, "we are following more leads and the risk for people who do not come in continues to increase."

The OVDP comes at a crucial time in IRS offshore scrutiny and compliance. With the recent finalization of the Form 8938, Statement of Specified Foreign Financial Assets, and the issuance of the corresponding temporary and proposed regulations (see our update on the Form 8938 [here](#) and on the regulations [here](#)), along with the fact that the U.S. Government is attempting to settle with eleven (11) foreign banks in Switzerland, Liechtenstein and Israel to obtain information on U.S. citizen and resident account holders (see our update of the attempted settlement [here](#)), now is a key time for U.S. citizens and residents to determine the best avenue to become compliant prior to an IRS examination.

Additionally, and perhaps most importantly, with the implementation of the Foreign Account Tax Compliance Act ("FATCA") rapidly approaching along with the expectation of the release of the guidance on FATCA any day now (see our updates on the implementation of FATCA and the release of FATCA guidance [here](#) and [here](#)), the reopening of the OVDP is essential. The OVDP provides a soft landing spot for U.S. citizens and resident account holders of foreign financial institutions moving towards FATCA compliance. Under FATCA, foreign financial institutions will need to provide information regarding any accounts held by U.S. citizens and residents. Accordingly, if any of those financial accounts have not been disclosed, the OVDP provides a more economical and more convenient resolution than an actual

IRS examination.

The IRS will be providing additional details and Frequently Asked Questions in the near future with respect to the OVDP along with specific program details.

In addition to the announcement of the reopening of the OVDP, Commissioner Shulman also confirmed that under the 2009 and 2011 amnesty programs, over 33,000 U.S. citizens and residents have participated. This has resulted in approximately \$3.4 billion collected by the IRS to date.

Finally, the IRS has resolved the open-ended question regarding the individuals who have submitted voluntary disclosures since the closure of the 2011 Program. Such individuals will be included in the new OVDP.

The advantages and disadvantages of the OVDP and how it applies to each U.S. citizen and resident should be carefully analyzed based upon each person's facts and circumstances. Akerman's International Taxation Practice has a continued history of dealing with the amnesty programs and handled over thirty (30) disclosures in accordance with the 2011 Program. If you or anyone you know has an undisclosed foreign asset or you are concerned about the recent IRS offshore scrutiny, we strongly suggest you acquire immediate assistance.

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