

PUBLICATION

No News is Not Always Good News: IRS's Offshore Voluntary Disclosure Program is Ending

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The IRS has just announced that its longstanding Offshore Voluntary Disclosure Program (OVDP) will end as of September 28, 2018. While many U.S. citizens and green card holders living abroad and in the United States have successfully resolved their failure to disclose the existence of offshore accounts, there are still countless numbers of Americans living or working abroad that have not yet come forward and declared the existence or the income generated in these foreign bank accounts.

While there has been increased investigation and enforcement in this area, the IRS – and in particular, the Chief of the Criminal Investigation division – has made it clear that "stopping offshore tax noncompliance remains a top priority." For years, many individuals have assumed that silence was their best option or that their account was too small to concern the IRS. However, this approach couldn't be farther from the truth. Recent stepped up efforts by the IRS show that in this area, there is no such thing as a "small fish." Moreover, the IRS has a very active "leaver" program in which they investigate foreign bank accounts that have been closed, and the fact that an account is "old and cold" should not necessarily provide one with the requisite level of comfort as the Statute of Limitations may have been extended through Treaty requests and other procedural efforts undertaken by the U.S. government.

There is a treasure trove of detailed information that countless foreign banks have already turned over to the U.S. government, let alone the data they have secured through the Department of Justice's Swiss Bank Program and various John Doe Summonses. In addition, the government is receiving a significant amount of data from its network of intergovernmental agreements with partner jurisdictions, automatic third-party account reporting, whistleblowers and ongoing civil and criminal investigations.

The IRS has already begun mining and matching this data with its own records and issuing audit notices to unsuspecting individuals and then raising the issue of failure to disclose foreign bank accounts during the course of the audit. These are serious, ongoing matters that, given the IRS's recent statements, will be a targeted focus of their enforcement actions going forward.

After September 28, 2018, there may still be options available for taxpayers with undisclosed accounts to become compliant, but those options will be subject to civil or criminal penalties as determined under existing law, without the penalty cap offered by the current program.

We have handled and successfully resolved a significant number of these cases over the years, and we have found that one can more likely achieve a far better resolution if one approaches the IRS rather than vice-versa.

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