

Larry's Tax Law

The IRS Announces that its Offshore Voluntary Disclosure Program Will Remain Available to Taxpayers Indefinitely—Is This Good News?

By Larry Brant on 2.24.15 | Posted in Foreign Financial Accounts, Individual Income Tax, Internal Revenue Service, Tax Laws

In 2009, the Service introduced its first Offshore Voluntary Disclosure Program (“OVDP”). As a result of this program, more than 50,000 taxpayers have come forward and disclosed offshore financial accounts. In a news release issued by the IRS on January 28, 2015 (IR-2015-09), it reported that the government has collected over \$7 billion from this initiative. In addition, as we know from the **Zwerner** case ([reported in my blog on June 16, 2014](#)), the Service has conducted thousands of civil audits relating to offshore financial accounts, resulting in the collection of taxes and penalties in the “tens of millions of dollars.” Last, the IRS has not been shy about pursuing criminal charges against taxpayers who fail to disclose their offshore financial accounts. In fact, the IRS reports that it has collected “billions of dollars in criminal fines and restitutions” since the introduction of the OVDP.

One may wonder whether the government’s offshore compliance enforcement activity will slow down as a result of the recent slashing of the Service’s budget. Reading the statements made by the IRS in the January 28, 2015 news release, the answer appears to be no. In fact, the announcement proclaims: The IRS remains committed to our priority efforts to stop offshore tax evasion wherever it occurs. Even though the IRS has faced several years of budget reductions, the IRS continues to pursue cases in all parts of the world, regardless of whether the person hiding money overseas chooses a bank with no offices on U.S. soil.

IRS Commissioner John Koskinen recently stated that: “Taxpayers are best served by coming in voluntarily and getting their taxes and filing requirements in order.” Consequently, the Service announced that the OVDP “will be open for an indefinite period until **otherwise announced** (emphasis added).” While the OVDP may be a good means for taxpayers to get their houses in order, tax practitioners need to fully inform their clients about the program and its impact on their situation before placing them into the program, including:

- **The reporting rules and the cost of compliance.** Even under the OVDP, taxpayers routinely feel they are being overcharged/penalized by the government for doing nothing

The IRS Announces that its Offshore Voluntary Disclosure Program Will Remain Available to Taxpayers Indefinitely—Is This Good News?

wrong. Clients need to be fully informed of the rules relating to foreign financial accounts and the costs of noncompliance.

- **OVDP flaws.** The OVDP is not without flaws. Its rules are not perfect. In fact, in many instances, the rules are unclear and/or incomplete, and application is blemished with subjectivity, potentially leading to unexpected results. Caution is advised!
- **Penalties.** If a taxpayer's disclosure is incomplete or inaccurate, the taxpayer may be faced with hefty civil and/or criminal penalties.
- **Closure Time.** The OVDP, especially given continued IRS budget cuts, can be a lengthy process. From the time a complete submission is filed with the IRS, it can take months to close the matter. This can be unnerving to taxpayers, especially in light of the huge civil and/or criminal penalties that can result from noncompliance.

There are at least four (4) takeaways from IR-2015-09:

- The IRS, despite huge budget cuts, intends to remain focused on offshore financial accounts.
- The OVDP appears to be here to stay (or at least until the Service announces otherwise).
- The OVDP does not generate prompt results. Patience is required.
- While the OVDP may be a good mechanism to resolve offshore financial account noncompliance, it is not without flaws. Tax practitioners need to adequately advise clients about the program and the applicable law so that they are fully informed before submitting an OVDP application.

Continuation of the OVDP is generally good news for taxpayers. As stated, however, it is not the most taxpayer friendly voluntary tax compliance program. Consequently, tax practitioners need to: have a good understanding of the OVDP and the applicable law; they need to fully advise clients of their compliance obligations, including the costs and risks of noncompliance; and they need to fully inform clients about the OVDP, including the timing, risks, and liability,

The IRS Announces that its Offshore Voluntary Disclosure Program Will Remain Available to Taxpayers Indefinitely—Is This Good News?

before making a submission to the program.

Tags: IRS budget, John Koskinen, Offshore Voluntary Disclosure Program (OVDP), Zwerner