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United States – Revised Procedures for Late Reporting of Foreign Accounts

by KPMG LLP's Washington National Tax practice, Washington, D.C. (KPMG LLP in the United States is a KPMG International member firm)

flash International Executive Alert

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The U.S. Internal Revenue Service (IRS) has announced changes that will expand the streamlined procedures regarding the reporting of foreign financial accounts.¹ According to the IRS, a wider population of U.S. taxpayers living outside the country and, for the first time, certain U.S. taxpayers residing in the United States will be able to benefit from the expanded streamlined procedures.

Previously, only nonresident non-filers could avail themselves of the original streamlined procedures announced in 2012.

Why This Matters

The purpose of these new procedures is to make it easier for taxpayers to disclose foreign financial accounts in cases where prior failure to do so did not involve a willful attempt to evade U.S. tax. In many cases it will be possible for individuals to come into compliance with the disclosure rules with reduced penalties or no penalties.

In a publicly released June 18, 2014 statement, IRS Commissioner John Koskinen said, "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." The change, he said, "...opens a new pathway for people with offshore assets to come into tax compliance."²

Background

The U.S. has stepped up scrutiny of individuals with foreign financial accounts and enforcement of the rules requiring disclosure to the U.S. government of such accounts on FinCEN Form 114, *Report of Foreign Bank and Financial Accounts* (the FBAR). Certain other information returns, including Form 8938, *Statement of Specified Foreign Financial Assets*, can also be required in relation to such accounts.

Changes Announced by the IRS

The changes announced by the IRS make important modifications to the Offshore Voluntary Disclosure Program (OVDP).³ The OVDP is an IRS program that allows taxpayers who did not report taxable income in the past to avoid criminal prosecution if they come forward voluntarily and resolve their tax matters, including voluntary disclosure of foreign accounts and foreign assets and payment of any tax due plus substantial civil penalties. To supplement the OVDP, in 2012 the IRS added what is generally referred to as the streamlined filing compliance procedures. The IRS announcement (1) expands the streamlined procedures to include a broader group of U.S. taxpayers (including certain U.S. residents); (2) eliminates a cap on the amount of tax owed to qualify for the program; and (3) eliminates a questionnaire that applicants were required to complete.

For taxpayers that have reported their foreign related income and paid required taxes but failed to file required international information returns, including FBARs, the IRS has revised its list of frequently asked questions (FAQs) under the OVDP, specifically FAQ nos. 17 and 18 (which relate to penalty relief on information returns and FBARs). These FAQs were replaced with new alternative submission process guidance effective for submissions made on or after July 1, 2014.⁴

FAQ No. 17 has been withdrawn and replaced with Option 3, *Delinquent FBAR Submission Procedures*, for obtaining automatic penalty relief for delinquent FBARs.

Option 3 possesses essentially the same criteria as the FAQ No. 17 that it replaces. Under Option 3, taxpayers will not incur penalties if taxpayers:

- have not filed a required FBAR;
- are not under a civil examination or a criminal investigation by the IRS for the years for which the delinquent FBARs are submitted;
- have not already been contacted by the IRS about the delinquent FBARs; and
- properly reported and paid all U.S. tax on the income from the foreign financial accounts reported on the delinquent FBARs.

Taxpayers meeting the criteria of Option 3 are directed to file the delinquent FBARs according to the FBAR instructions and include a statement explaining why the FBARs are late. All FBARs are required to be filed electronically using the BSA E-Filing System.⁵

FAQ No. 18 has also been withdrawn and replaced with Option 4, *Delinquent International Information Return Submission Procedures*, for obtaining penalty relief for delinquent international information returns (e.g., Forms 926, 3520, 5471, 5472, 8865).

Under Option 4, taxpayers will not incur penalties if the taxpayers:

- have not filed one or more required international information returns;
- have reasonable cause for not timely filing the information returns;
- are not under a civil examination or a criminal investigation by the IRS; and
- have not already been contacted by the IRS about the delinquent information returns.

KPMG Note

Probably the most important change is that FAQ No. 18 penalty relief was automatic if the criteria of FAQ No. 18 were met. FAQ No. 18 did not require a taxpayer to establish that he or she had reasonable cause for the delinquent filing, but only attach a statement explaining why the information return was filed late. Option 4 now requires the taxpayer to submit a reasonable cause statement.

Taxpayers meeting the criteria of Option 4 are directed to file the delinquent information returns with an amended return (if required) for the period in accordance with applicable instructions, along with a statement of all facts establishing reasonable cause for the failure to file. As part of the reasonable cause statement, taxpayers must also certify that any entity for which the information returns are being filed was not engaged in tax evasion.

Footnotes:

- 1 IR-2014-73, June 18, 2014.
- 2 See “Statement of IRS Commissioner John Koskinen” (June 18, 2014) at: <http://www.irs.gov/uac/Newsroom/Statement-of-IRS-Commissioner-John-Koskinen> .
- 3 For previous coverage of the OVDI in *Flash International Executive Alert*, see issue [2011-136](#) (September 1, 2011).
- 4 For the FAQs, see: <http://www.irs.gov/Individuals/International-Taxpayers/Offshore-Voluntary-Disclosure-Program-Frequently-Asked-Questions-and-Answers-2012-Revised> . For a related story see “[IRS Revises Offshore Voluntary Disclosure FAQs, and Provides Alternative Submission Processes](#),” in KPMG LLP’s *TaxNewsFlash* (June 19, 2014).
- 5 See: <https://bsaefiling1.fincen.treas.gov/PublicAccess> .

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Available for Viewing: Two Recently-Released IES Videos!

(1) Data analytics, or data mining, is an area of growing interest in the world of human resources (HR). More and more organizations want to learn how to unlock the potential of the information they already have and what resources, tools, and skills they need to obtain valuable data and statistics that, with the assistance of suitable technology and the help of people experienced in this area, can be effectively “mined.”

Please see: [Data Analytics and Global Mobility: Using Global Mobility Information to Make Better Decisions](#) (app. 7 minutes)

(2) The deadline for filing FBARs was June 30. In advance of that deadline, KPMG’s IES practice had released the following video on the requirement to annually report foreign financial accounts on FinCEN Form 114, *Report of Foreign Bank and Financial Accounts* (the “FBAR”). A new twist was added this year: FBARs are now required to be electronically filed. The video highlights this requirement and some of the other new and important aspects of FBAR compliance and reminds viewers of who’s covered by the rules.

Please see: [2014 FBAR Filing Update](#) (app. 7 minutes)

The information contained in this newsletter was submitted by KPMG LLP’s Washington National Tax practice. The information contained herein is of a general nature and based on authorities that are subject to change. Applicability of the information to specific situations should be determined through consultation with your tax adviser.

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