



GMS Flash Alert

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United States – While OVDP Closes, Options Remain for Those with Undisclosed Offshore Assets

As previously reported in GMS [Flash Alert 2018-051](#),¹ the U.S. Internal Revenue Service (“IRS”) recently announced² that it will be ending the 2014 Offshore Voluntary Disclosure Program (“OVDP”) on September 28, 2018. The OVDP is designed for taxpayers with exposure to potential criminal liability and substantial civil penalties due to a willful failure to report foreign financial assets and pay all tax due in respect of those assets.

It is just one option available to individuals seeking to come into compliance with U.S. tax and information return obligations with respect to their foreign financial accounts and assets.

WHY THIS MATTERS

The OVDP’s closing does not affect the Streamlined Filing Compliance Procedures, the Delinquent FBAR submission procedures, or the Delinquent international information return submission procedures. Taxpayers who previously failed to report certain foreign financial assets and/or pay all tax due related to those assets may be eligible to come into compliance with their U.S. tax and information return obligations through these remaining programs.³

Streamlined Filing Compliance Procedures

The streamlined filing compliance procedures are designed for individual taxpayers who can certify that their failure to report foreign financial assets and pay all tax due in respect of those assets did not result from willful conduct on their part. There are streamlined procedures for both non-U.S. residents (Streamlined Foreign Offshore Procedures) and U.S. residents (Streamlined Domestic Offshore Procedures).

The streamlined filing compliance procedures set forth a process for filing amended or delinquent returns as well as the terms for resolving potential penalties (and for eligible taxpayers, no penalties). A taxpayer will not be eligible to use the streamlined procedures if the IRS has initiated a civil or criminal examination of a taxpayer’s return for any taxable year.

A taxpayer must have a valid U.S. social security number ("SSN") or individual taxpayer identification number ("ITIN") to participate in the streamlined filing compliance procedures. For taxpayers ineligible for an SSN but who do not have an ITIN, a submission may be made if accompanied by a complete ITIN application.

Delinquent FBAR Submission Procedures

Taxpayers who do not need to use either the OVDP or the Streamlined Filing Compliance Procedures to file delinquent or amended tax returns to report and pay additional tax, but have not filed a required Report of Foreign Bank and Financial Accounts (FBAR) (FinCEN Form 114, previously Form TD F 90-22.1) may follow the delinquent FBAR submission procedures in order to avoid penalties for failure to file delinquent FBARs. In order to be eligible for the delinquent FBAR submission procedures, a taxpayer may not be under a civil examination or criminal investigation by the IRS and must not have already been contacted by the IRS about the delinquent FBARs.

Delinquent International Information Return Submission Procedures

Taxpayers who do not need to use the OVDP or the Streamlined Filing Compliance Procedures to file delinquent or amended tax returns to report and pay additional tax, but who have not filed one or more required international information returns and have reasonable cause for not timely filing the information returns, may be able to avoid penalties for such reporting failures through the delinquent international information return submission procedures. To be eligible for these procedures, a taxpayer must not be under a civil examination or criminal investigation by the IRS and must not have already been contacted by the IRS about the delinquent international information returns.

FOOTNOTES:

- 1 See GMS [Flash Alert 2018-051](#) (March 16, 2018).
- 2 See [IR-2018-52](#): "IRS to end offshore voluntary disclosure program; Taxpayers with undisclosed foreign assets urged to come forward now."
- 3 For more details, see "[Options Available For U.S. Taxpayers with Undisclosed Foreign Financial Assets](#)" on the IRS website.

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