

Silver Advantage **Tax Alert**

IRS Changes to Offshore Voluntary Compliance Programs

By John Hsiao, CPA - Tax Manager

August 2014 -- U.S. taxpayers are required to pay U.S. income tax on their worldwide income, regardless of where the income is earned. This includes income generated from foreign assets and financial accounts held with foreign financial institutions. Besides reporting foreign income on Form 1040, taxpayers must also file FinCEN Form 114 (formerly Form TD F 90-22.1) Report of Foreign Bank and Financial Accounts (commonly referred to as FBAR) annually by June 30 to report financial interests. This form is required even if the account does not generate any taxable income and the value of the account exceeded \$10,000 at any time during the calendar year. Over the years, taxpayers that have not complied with this disclosure requirement could be subjected to substantial penalties, should the IRS discover the existence of an unreported foreign account. Since 2009, the IRS has had a voluntary compliance program that allows taxpayers to come into compliance with current foreign disclosure procedures.

On June 18, 2014, the IRS announced major changes in its offshore voluntary disclosure programs (OVDP) and its streamlined filing compliance procedures, providing additional options to help both taxpayers residing overseas and those residing in the U.S. to come into compliance with their U.S. tax obligations, with respect to their foreign held financial assets. Beginning in 2009, the IRS developed the first OVDP program to allow taxpayers to pay a preset penalty on offshore financial accounts and assets previously not reported on the Report of Foreign Bank and Financial Accounts, in order to avoid criminal prosecution. Since then, the IRS has changed the program on several occasions, upping the penalty and setting various deadlines for compliance.

The taxpayer-friendly changes to the streamlined filing compliance procedures in June 2014 significantly reduce the potential penalties for the non-willful non-disclosure of foreign financial assets. The streamlined filing compliance procedures that were first offered in 2012 have been expanded and modified to accommodate a broader group of U.S. taxpayers, i.e., to include those residing in the U.S. For eligible U.S. taxpayers residing outside the U.S., all penalties will be waived. For eligible U.S. taxpayers residing in the U.S., the only penalty will be a miscellaneous offshore penalty equal to 5% of the foreign financial assets. The other changes to the streamlined filing procedures include:

- Eliminating a requirement that the taxpayer have \$1,500 or less of unpaid tax per year;
- Eliminating the required risk questionnaire;

- Requiring the taxpayer to certify that previous failures to comply were due to non-willful conduct.

However, not all the modifications of the 2014 OVDP as a continuation of the 2012 OVDP program are simple or taxpayer-friendly. The new program requires taxpayers to submit all account statements and pay the offshore penalty at the time of the OVDP application. If the foreign financial institution holding the assets comes under investigation before the taxpayer's OVDP request is submitted, the offshore penalty will be 50% (up from 27.5%). A bit of good news is that the IRS will now allow taxpayers to submit voluminous records electronically rather than on paper. Unlike previous programs in 2009 and 2011, the 2014 OVDP has no set deadline for the taxpayer. However, the terms of this program could change at any time.

Over the years, the IRS has become more aggressive in pursuing foreign banks and other financial institutions to obtain taxpayer records of foreign-held accounts. While you can still participate in this voluntary compliance program if the IRS has discovered your account(s), the penalties will be significantly higher. **We recommend that if you have an undisclosed account, you should seriously consider participating in this program before the IRS notifies you that they have discovered the account.**

If you would like more information about the 2014 OVDP and changes to the streamlined filing compliance procedures, Michael Silver & Company CPAs' tax team can help you determine the best course of action for your specific situation.

John has over eighteen years of experience in public accounting. He works closely with his clients on federal and state tax compliance, planning and projection issues, and retirement planning. He also provides business advice tailored to the specific needs of each client. John's industry and service expertise includes high net worth individuals, private wealth management offices, law firms, private investment partnerships, real estate, LLCs, and U.S. expatriates in foreign countries. John is also experienced in working and negotiating with the IRS and state revenue agencies on tax audits, tax compliance issues, and tax installment payments.

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