

Resources

IRS Offers Voluntary Disclosure With Possible Zero Penalty for Certain “Non-Willful” Taxpayers

June 23, 2014

For certain United States taxpayers who have undisclosed foreign accounts, or unpaid income taxes on earnings from such accounts, there may be an opportunity to become compliant without paying a penalty if they can establish that their failures were not willful. For several years, we have reported voluntary disclosure opportunities for taxpayers with undisclosed foreign accounts and unreported foreign income. This update is a continuation of those efforts to supply important information about voluntary disclosure opportunities.

Two Revised Alternative Disclosure Opportunities

On June 18, 2014, the Internal Revenue Service (the "Service") announced significant developments with respect to its policy for dealing with offshore accounts. These developments included a general continuation of the 2012 policy and an expansion of the prior "streamlined" disclosure process.

2014 Offshore Voluntary Disclosure Program (OVDP)

The 2012 OVDP was modified and re-named the 2014 OVDP. This program is an extension of the 2012 and prior voluntary disclosure programs that brought in more than 45,000 taxpayers with unreported foreign accounts. The 2014 OVDP allows taxpayers to become compliant with a relatively certain process and limited exposure, but in exchange for a penalty equal to 27.5 percent of the total balance in the unreported foreign accounts. The 2014 OVDP is similar to prior programs, but there are differences that need to be considered.

Revised Streamlined Disclosure Process

In 2012, the Internal Revenue Service created a Streamlined Disclosure process to allow United States taxpayers living outside of the United States to become compliant with reporting and tax payment obligations without paying the standard 27.5 percent OVDP penalty. This Streamlined Disclosure Process existed previously, but was originally available only to United States Taxpayers who lived outside of the United States. Wednesday's announcement by the Service expands the streamlined filing procedures, with modifications, to taxpayers in the United States who made mistakes, but did not intentionally (i.e., willfully) fail to pay those taxes.

The Service indicated that the new process used “a carefully balanced approach” to ensure that all taxes are paid. Taxpayers who live outside the United States - and acted in a non-willful manner - may qualify for a full penalty waiver. "Non-willful" taxpayers living in the United States will be subject to a miscellaneous penalty equal to 5 percent of the balance of the unreported foreign financial accounts. IR-2014-73 (June 18, 2014). In addition, however, there is no protection from criminal investigation under the Streamlined Disclosure Process; therefore, any taxpayer pursuing this option should exercise caution to ensure that criminal exposure is not a problem and that any failures were in fact non-willful.

Disclosure Timing Is Critical

Foreign account issues are dynamic and serious. With recent developments in foreign enforcement activities, timing is critical for any United States taxpayer with unreported foreign accounts or unreported income. Importantly, no voluntary disclosure options are available for a taxpayer who is audited by the Service because his or her identity was disclosed by a foreign bank. Any taxpayer with an undisclosed foreign account, or with unreported income should contact an experienced tax professional to review the alternatives because each alternative has benefits and risks associated with it.

IRS Offers Voluntary Disclosure With Possible Zero Penalty for Certain “Non-Willful” Taxpayers (Cont.)

To learn more about this, or any other tax-related matters, please contact the author of this alert, Wayne D. Roberts, at 616-776-7514, or **James S. Brady**, at 616-776-7550.

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