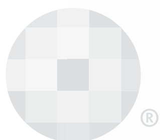
Practice

By Charles P. Rettig

IRS Provides Updated Guidance Regarding Offshore Voluntary Disclosure Program

For years, the IRS has been relentless in pursuing—with mixed success—the disclosure of information regarding undeclared interests of U.S. taxpayers (or those who ought to be U.S. taxpayers) in foreign financial accounts. On June 26, 2012 the IRS released IR-2012-64 and IR-2012-65 providing guidance regarding the currently pending offshore voluntary disclosure program (OVDP) and updated the Frequently Asked Questions (FAQs) applicable to the OVDP. The initial terms of the 2012 OVDP were set forth in IR-2012-5 released on January 9, 2012.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Voluntary disclosure initiatives typically offer reduced penalties in exchange for taxpayers voluntarily coming into compliance before the IRS is aware of their prior tax indiscretions. In part, the success of such initiatives often depends on the perception that they will be followed by strong government tax enforcement efforts. In announcing the updated guidance, IRS Commissioner Doug Shulman stated "We continue to make strong progress in our international compliance efforts that help ensure honest taxpayers are not footing the bill for those hiding assets offshore ... People are finding it tougher and tougher to keep their assets hidden in offshore accounts."

Participants in the earlier offshore disclosure programs were required to provide relevant information related to the creation and maintenance of their foreign financial accounts. Specifically, participants were required to provide information identifying any and all foreign financial institutions where they maintained accounts; list the dates the accounts were opened and/or closed together with the taxpayer's point of contact at each financial institution; explain all face-to-face meetings, and any other communications they had regarding the

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accounts or assets with the financial institution(s); explain all face-to-face meetings or communications regarding the accounts or assets with independent advisors/investment managers not from the financial institution(s) where the funds were held including the names, locations and dates of these meetings and/or communications.

Many offshore program participants have been subjected to interviews by representatives from the IRS and the Department of Justice inquiring about the knowledge and possible assistance of others in creating the foreign financial account. These interviews have significantly focused on specific foreign financial institutions located in Europe (beyond Switzerland), Asia (Hong Kong, China, Singapore, India and China) and the Middle East (Israel, the United Arab Emirates—Dubai, Iran and Egypt).

The FBAR

Under the Bank Secrecy Act, U.S. residents or a person in and doing business in the United States must file a report with the government if they have a financial account in a foreign country with a value exceeding $10,000 at any time during the calendar year. Taxpayers comply with this law by noting the account on their income tax return and by filing Form 90-22.1, the FBAR. Willfully failing to file an FBAR can be subject to both criminal sanctions (*i.e.,* imprisonment) and civil penalties equivalent to the greater of $100,000 or 50 percent of the balance in an unreported foreign account—for each year since 2004 for which an FBAR wasn't filed. If asserted for one or more years, the penalty is not limited to the amount of funds in the account, etc. FBARs for each calendar year are due on June 30 of the next calendar year, without extension. Extensions of time to file federal income tax returns do not extend the time for filing FBARs—there is presently no statutory or regulatory provision granting an extension beyond June 30 to file an FBAR.

Schedule B and the instructions provide the government with what may be an important "willfulness" link between an income tax return and the FBAR filing requirements. "Willfulness" is generally determined by "a voluntary, intentional violation of a known legal duty."[1] The Internal Revenue Manual (IRM) provides that willfulness is demonstrated by the person's knowledge of the FBAR reporting requirements coupled with the person's conscious choice not to comply with the requirements.[2] Under the concept of "willful blindness," willfulness may be attributed to a person who has made a conscious effort to avoid learning about the FBAR reporting and record keeping requirements.[3] The IRM provides an example involving willful blindness in which a person admits knowledge of but fails to answer the question concerning signature authority at foreign banks on Schedule B of his income tax return.[4] To impose a willful FBAR penalty, the government has the burden of proving that the taxpayer was "willful" in that they somehow made a "voluntary, intentional violation of a known legal duty."[5]

> For years, the IRS has been relentless in pursuing–with mixed success–the disclosure of information regarding undeclared interests of U.S. taxpayers (or those who ought to be U.S. taxpayers) in foreign financial accounts.

Taxpayers are required to acknowledge their interest in the foreign financial account and identify the foreign country where the account is maintained on Schedule B, Line 7 of their income tax return. Line 7a of Schedule B of Form 1040 generally asks the taxpayer for a somewhat unsophisticated "yes" or "no" answer to the question: "At any time during [tax year], did you have an interest in or a signature or other authority over a financial account in a foreign country, such as a bank account, securities account, or other financial account? See instructions on back for exceptions and filing requirements for Form TD F 90-22.1." The instructions to Schedule B provide a general description of the FBAR and how to obtain a copy of the FBAR.

Other Potentially Applicable Offshore-Related Civil Penalties

Anyone considering an offshore voluntary disclosure submission must carefully examine all potential civil penalties and evaluate the risk of criminal prosecution. In addition to the FBAR related penalties, there are numerous other potentially applicable penalties that might be associated with varying interests in foreign

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financial accounts and structures designed to hold title to such accounts. Various potentially applicable civil penalties include:

1. *Form 3520, Annual Return to Report Transactions With Foreign Trusts and Receipt of Certain Foreign Gifts—Code Secs. 6048 and 6039F.* Taxpayers must also report various transactions involving foreign trusts, including creation of a foreign trust by a U.S. person, transfers of property from a U.S. person to a foreign trust and receipt of distributions from foreign trusts under Code Sec. 6048. This return also reports the receipt of gifts from foreign entities under Code Sec. 6039F. The penalty for failing to file each one of these information returns, or for filing an incomplete return, is 35 percent of the gross reportable amount, except for returns reporting gifts, where the penalty is five percent of the gift per month, up to a maximum penalty of 25 percent of the gift.
2. *Form 3520-A, Information Return of Foreign Trust With a U.S. Owner.* Taxpayers must also report ownership interests in foreign trusts, by U. S. persons with various interests in and powers over those trusts under Code Sec. 6048(b). The penalty for failing to file each one of these information returns or for filing an incomplete return is five percent of the gross value of trust assets determined to be owned by the U. S. person.
3. *Form 5471, Information Return of U.S. Persons with Respect to Certain Foreign Corporations.* Certain U.S. persons who are officers, directors or shareholders in certain foreign corporations (including International Business Corporations) are required to report information under Code Secs. 6035, 6038 and 6046. The penalty for failing to file each one of these information returns is $10,000, with an additional $10,000 added for each month the failure continues beginning 90 days after the taxpayer is notified of the delinquency, up to a maximum of $50,000 per return.
4. *Form 5472, Information Return of a 25% Foreign-Owned U.S. Corporation or a Foreign Corporation Engaged in a U.S. Trade or Business—Code Secs. 6038A and 6038C.* Taxpayers may be required to report transactions between a 25 percent foreign-owned domestic corporation or a foreign corporation engaged in a trade or business in the United States and a related party as required by Code Secs. 6038A and 6038C. The penalty for failing to file each one of these information returns, or to keep certain records regarding reportable transactions, is $10,000, with an additional $10,000 added for each month the failure continues beginning 90 days after the taxpayer is notified of the delinquency.
5. *Form 926, Return by a U.S. Transferor of Property to a Foreign Corporation—Code Sec. 6038B.* Taxpayers are required to report transfers of property to foreign corporations and other information under Code Sec. 6038B. The penalty for failing to file each one of these information returns is 10 percent of the value of the property transferred, up to a maximum of $100,000 per return, with no limit if the failure to report the transfer was intentional.
6. *Form 8865, Return of U.S. Persons With Respect to Certain Foreign Partnerships—Code Secs. 6038, 6038B, and 6046A.* U.S. persons with certain interests in foreign partnerships use this form to report interests in and transactions of the foreign partnerships, transfers of property to the foreign partnerships, and acquisitions, dispositions and changes in foreign partnership interests under Code Secs. 6038, 6038B and 6046A. Penalties include $10,000 for failure to file each return, with an additional $10,000 added for each month the failure continues beginning 90 days after the taxpayer is notified of the delinquency, up to a maximum of $50,000 per return, and 10 percent of the value of any transferred property that is not reported, subject to a $100,000 limit.
7. *Fraud penalties—Code Secs. 6651(f) or 6663.* Where an underpayment of tax, or a failure to file a tax return, is due to fraud, the taxpayer is liable for penalties that, although calculated differently, essentially amount to 75 percent of the unpaid tax.
8. *Failure-to-file a tax return—Code Sec. 6651(a)(1).* Generally, taxpayers are required to file income tax returns. If a taxpayer fails to do so, a penalty of five percent of the balance due, plus an additional five percent for each month or fraction thereof during which the failure continues may be imposed. The penalty shall not exceed 25 percent.
9. *Failure-to-pay the tax shown on the return—Code Sec. 6651(a)(2).* If a taxpayer fails to pay

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the amount of tax shown on the return, he or she may be liable for a penalty of 0.5 percent of the amount of tax shown on the return, plus an additional 0.5 percent for each additional month or fraction thereof that the amount remains unpaid, not exceeding 25 percent.

10. *Accuracy-related penalty on underpayments of tax—Code Sec. 6662.* Depending upon which component of the accuracy-related penalty is applicable, a taxpayer may be liable for a 20-percent or 40-percent penalty.

The OVDP

Generally, taxpayers who have undisclosed offshore accounts or assets and meet the requirements of IRM 9.5.11.9 are eligible to apply for IRS Criminal Investigation's Voluntary Disclosure Practice and the 2012 OVDP penalty regime. The OVDP is available to taxpayers who have both offshore and domestic issues to disclose. The Voluntary Disclosure Practice requires an accurate and complete voluntary disclosure. Consequently, if there are undisclosed income tax liabilities from domestic sources in addition to those related to offshore accounts and assets, they must also be disclosed in the OVDP. The 2012 OVDP is patterned after the 2011 OVDI but increases the maximum "FBAR-related" penalty from 25 percent to 27.5 percent of the highest account value at any time during the most recent eight tax years. The terms of the OVDP are subject to change at any time.

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For calendar year taxpayers the voluntary disclosure period is the most recent eight tax years for which the due date has already passed. The eight-year period does not include current years for which there has not yet been non-compliance. Thus, for taxpayers who submit a voluntary disclosure prior to April 15, 2012 (or other 2011 due date under extension), the disclosure must include each of the years 2003 through 2010 in which they have undisclosed foreign accounts and/or undisclosed foreign entities. Fiscal year taxpayers must include fiscal years ending in calendar years 2003 through 2010. For taxpayers who disclose after the due date (or extended due date) for 2011, the disclosure must include 2004 through 2011. For disclosures made in successive years, any additional years for which the due date has passed must be included, but a corresponding number of years at the beginning of the period will be excluded, so that each disclosure includes an eight-year period.

For taxpayers who establish that they began filing timely, original, compliant returns that fully reported previously undisclosed offshore accounts or assets before making the voluntary disclosure, the voluntary disclosure period will begin with the eighth year preceding the most recent year for which the return filing due date has not yet passed, but will not include the compliant years. For example, a taxpayer who had historically filed income tax returns omitting the income from a securities account in Country A, who began reporting that income on his timely, original tax and information reporting returns for 2009 and 2010 without making a voluntary disclosure, and who files a voluntary disclosure in January 2012, the voluntary disclosure period will be 2003 through 2008.

The 2012 OVDI does not have a stated expiration date but can be terminated by the IRS at any time as to specific classes of taxpayers or as to all taxpayers. FAQ #21 provides that taxpayers will become ineligible to participate in the OVDP when: (1) the IRS or the Department of Justice obtain information under a John Doe summons, treaty request or similar action that provides evidence of a specific taxpayer's noncompliance with the tax laws or Title 31 reporting requirements, (2) if a taxpayer appeals a foreign tax administrator's decision authorizing the providing of account information to the IRS and fails to serve the notice as required under existing law, see 18 USC §3506, of any such appeal and/or other documents relating to the appeal on the Attorney General of the United States at the time such notice of appeal or other document is submitted, or (3) the IRS may announce that certain taxpayer groups that have or had accounts at specific financial institutions will be ineligible due to U.S. government actions in connection with the specific financial institution—in such announcements, the IRS will provide notice of the prospective date upon which eligibility for the specific taxpayer group terminates making the taxpayer ineligible to participate in the OVDI.

Taxpayers under IRS criminal investigation are not eligible to participate in the OVDP. Also, if the IRS has initiated a civil examination, regardless of whether it relates to undisclosed foreign accounts or undisclosed foreign entities, the taxpayer will not be eligible to participate in the 2012 OVDP.

Previous Offshore Disclosure Programs

The OVDP follows on the success of the 2009 Offshore Voluntary Disclosure Program (the 2009 OVDP) and the 2011 Offshore Voluntary Disclosure Initiative (the

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2011 OVDI), which were announced many years after the 2003 Offshore Voluntary Compliance Initiative (OVCI) and the 2003 Offshore Credit Card Program (OCCP). In 2003, following significant publicity regarding the use of foreign accounts and credit card arrangements by U.S taxpayers, the IRS offered significant penalty relief for taxpayers participating in the OVCI which coincided with strong tax enforcement efforts under the OCCP. Eligible OVCI taxpayers were required to file amended or delinquent returns for three tax years (1999-2001) but could choose to bring tax years 1996-1998 into the OVCI (and would not be examined for any earlier years). Approximately 1,321 taxpayers from 48 countries participated in the OVCI, identifying approximately 400 offshore promoters. The IRS agreed to not assert any 75-percent civil fraud penalties, and the Financial Crimes Enforcement Network (FinCEN) agreed to not assert any civil penalties for the failure to timely file a Report of Foreign Bank and Financial Accounts (FBAR).

> Anyone considering an offshore voluntary disclosure submission must carefully examine all potential civil penalties and evaluate the risk of criminal prosecution.

The 2009 OVDP brought in at least 14,700 U.S. taxpayers (disclosing accounts in more than 60 countries) through the front door of IRS Criminal Investigation and untold thousands through a process of quietly amending returns and filing delinquent FBARs with the government. For eligible taxpayers who ventured through the front door, the OVDP provided the certainty of no criminal prosecution and civil penalty relief—they were required to pay back-taxes from 2003 to 2008, interest and a 20-25-percent penalty on the delinquent taxes. The IRS also imposed a 20-percent "FBAR-related" penalty equal to the highest aggregate value of the financial account between 2003 and 2008. In limited situations, the FBAR-related penalty could be reduced to five percent of the account value or $10,000 per tax year.

The 2011 OVDI brought in an additional 12,000 eligible taxpayers who filed original and amended tax returns and agreed to make payments (or good faith arrangements to pay) for taxes, interest and accuracy-related penalties. The 2011 OVDI FBAR-related penalty framework required a 25-percent "FBAR-related" penalty equal to the highest value of the financial account between 2003 and 2010. Only one 25 percent offshore penalty is to be applied with respect to voluntary disclosures relating to the same financial account. The penalty may be allocated among the taxpayers with beneficial ownership making the voluntary disclosures in any way they choose. Potentially applicable penalties are identified in a series of Frequently Asked Questions available at irs.gov. Participants in the 2011 OVDI also had to pay back-taxes and interest for up to eight years as well as pay accuracy-related and/or delinquency penalties. Subject to certain limitations, financial transactions occurring before 2003 were generally irrelevant for those participating in the OVDI. So far, the OVDP has brought in an additional 1,500 disclosures and, in the aggregate, these voluntary disclosure programs have brought in approximately $5 billion in delinquent taxes, interest and penalties.

Reduced OVDP Penalties

Under the 2012 OVDP, taxpayers who are foreign residents and who were unaware they were U.S. citizens may qualify for a reduced five-percent FBAR-related penalty (FAQ 52). Others qualify for the five-percent penalty if they (1) did not open or cause the account to be opened (unless the bank required that a new account be opened, rather than allowing a change in ownership of an existing account, upon the death of the owner of the account); (2) have exercised minimal, infrequent contact with the account, for example, to request the account balance, or update account-holder information such as a change in address, contact person or email address; (3) have, except for a withdrawal closing the account and transferring the funds to an account in the United States not withdrawn more than $1,000 from the account in any year covered by the voluntary disclosure; and (4) can establish that all applicable U.S. taxes have been paid on funds deposited to the account (only account earnings have escaped U.S. taxation). For funds deposited before January 1, 1991, if no information is available to establish whether such funds were appropriately taxed, it is presumed that they were.

Taxpayers whose highest aggregate account balance (including the fair market value of assets in undisclosed offshore entities and the fair market value

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of any foreign assets that were either acquired with improperly untaxed funds or produced improperly untaxed income) in each of the years covered by the 2012 OVDP is less than $75,000 qualified for a 12.5-percent FBAR-related penalty (FAQ 53). IRS examiners have no authority to negotiate a different FBAR-related penalty.

If a taxpayer has failed to file an FBAR to report an account over which the taxpayer has signature authority but no beneficial interest (*e.g.,* an account owned by his employer), the IRS will not impose the offshore penalty (FAQ 38). The taxpayer may cure the FBAR delinquency for the account the taxpayer does not own by filing the FBAR with an explanatory statement before being contacted regarding an income tax examination or a request for delinquent returns. The answer might be different if (1) the account over which the taxpayer has signature authority is held in the name of a related person, such as a family member or a corporation controlled by the taxpayer; (2) the account is held in the name of a foreign corporation or trust for which the taxpayer had a Title 26 reporting obligation; or (3) the account was related in some other way to the taxpayer's tax noncompliance. In these cases, if the taxpayer is determined to have a direct or indirect beneficial interest in the account(s), the taxpayer will be liable for the 27.5-percent offshore penalty if there is unreported income on the account. On the other hand, if there is no unreported income with respect to the account, no penalty will be imposed.

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Multiple Account Owners

In the case of co-owners of an account, each taxpayer who participates in the OVDP will be liable for the penalty on their respective percentage of the highest aggregate balance in the account. The burden will be on the disclosing taxpayer claiming ownership of less than 100 percent of the account to establish the extent of their ownership. Their voluntary disclosure is effective as to their personal liability only; it does not protect the other co-owners. The IRS may examine any co-owner who does not make a voluntary disclosure. Co-owners examined by the IRS remain subject to all potential penalties.

If there are multiple individuals with signature authority over a trust account, each person involved must file delinquent the FBARs. However, only one 27.5-percent offshore penalty will be applied with respect to voluntary disclosures relating to the same financial account. The penalty may be allocated among the taxpayers with beneficial ownership making the voluntary disclosures in any way they choose.

FBAR Only Delinquency

Taxpayers who reported and paid tax on all their taxable income but did not file FBARs should not participate in the 2012 OVDP but should merely file the delinquent FBARs with the Department of Treasury, Post Office Box 32621, Detroit, MI 48232-0621 (and attach a statement explaining why the reports are filed late). Under the 2012 OVDP, the IRS will not impose a penalty for the failure to file the delinquent FBARs if there were no underreported tax liabilities and the taxpayer has not previously been contacted regarding an income tax examination or a request for delinquent returns (FAQ 17).

Non-Resident Participants

Non-resident taxpayers should review the New Filing Compliance Procedures for Non-Resident U.S. Taxpayers set forth in IR-2012-65 released on June 26, 2012. Effective September 1, 2012, current non-residents including, but not limited to, dual citizens who have not filed U.S. income tax and information returns will be required to file (1) delinquent tax returns, with appropriate related information returns, for the past three years, (2) delinquent FBARs for the past six years, and (3) any additional information regarding compliance risk factors required by future instructions. Payment of any federal tax and interest due must accompany the submission. More information about the application process including where submissions should be sent will be provided prior to September 1, 2012.

Retroactive relief for failure to timely elect income deferral on certain foreign retirement and education savings plans where deferral is permitted by a relevant treaty will be available for these nonresident taxpayers. The proper deferral elections with respect to such arrangements must be made with the OVDP submission. Any taxpayer seeking relief for failure to timely elect deferral of income from certain retirement or savings plans where deferral is permitted by relevant treaty will be required to submit (1) a statement requesting an extension of time to make an election to defer income tax and identifying the pertinent treaty position; (2) for relevant Canadian plans, a Form 8891 for each tax year and description

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of the type of plan covered by the submission; and (3) a statement describing (a) the events that led to the failure to make the election, (b) the events that led to the discovery of the failure, and (c) if the taxpayer relied on a professional advisor, the nature of the advisor's engagement and responsibilities.

No Discretion for IRS Examiners

IRS OVDP examiners do not have discretion to settle cases for amounts less than what is properly due and owing. However, because the 27.5-percent offshore penalty is a proxy for the FBAR penalty, other penalties imposed under the Internal Revenue Code, and potential liabilities for years prior to the voluntary disclosure period, there may be cases where a taxpayer making a voluntary disclosure would owe less if the special offshore initiative did not exist.

The IRS has stated that under no circumstances will taxpayers be required to pay a penalty greater than what they would otherwise be liable for under the maximum penalties imposed under existing statutes (see FAQ 50). For example, if a taxpayer had $100,000 in an offshore bank account in only one year and foreign income-producing real estate with a fair market value of $1,000,000, only the bank account would be subject to the FBAR penalty. Consequently, the maximum FBAR penalty would only be $100,000 (that is, the greater of $100,000 or 50 percent of the amount in the foreign account), which is substantially less than the offshore penalty of $302,500 (27.5 percent of $1,100,000). If this FBAR penalty, plus tax, interest and all other applicable penalties are less than what is due under this offshore initiative, the taxpayer will only pay the lesser amount. The understanding of potentially applicable penalties may differ greatly in the eyes of a taxpayer as compared to an examiner. Anyone considering an offshore voluntary disclosure submission must carefully examine all potential civil penalties and evaluate the risk of criminal prosecution.

OVDP examiners will compare the amount due under the OVDP to the tax, interest and applicable penalties (at their maximum levels and without regard to issues relating to reasonable cause, willfulness, mitigation factors or other circumstances that may reduce liability) for all open years that a taxpayer would owe in the absence of the OVDP penalty regime. The taxpayer should only be obligated to pay the lesser amount. If the taxpayer disagrees with the result, the taxpayer may "opt-out" of the OVDP and the case will be referred for an examination of all relevant years and issues.

Who Should Participate in the OVDP?

There are many considerations before a taxpayer should determine whether to pursue a voluntary disclosure of prior tax indiscretions. When reviewing the 2009 OVDP and the 2011 OVDI, many made decisions based on whether they could be considered a realistic candidate for a criminal prosecution referral by the IRS or prosecution by the Department of Justice. (If so, the determination to participate was relatively quick and easy). Was there a possibility of reducing that prospect by filing amended or delinquent returns and FBARs in lieu of a direct participation in the OVDP/OVDI? What would be the potentially applicable penalties upon an examination of such returns and FBARs? Could the government actually carry their burden of demonstrating that the taxpayer "willfully" violated the FBAR filing requirements? Since the OVDP asserts an offshore penalty based on foreign financial accounts *and* asset valuations, for many with smaller financial account values the aggregate offshore penalty determination, even for multiple years, is actually less outside the OVDP.

The ability of a U.S. taxpayer to maintain an undisclosed, "secret" foreign financial account is fast becoming nonexistent. Foreign account information is flowing into the IRS under tax treaties with other countries, through submissions by whistleblowers, from others who participated in the 2009 OVDP, the 2011 OVDI or the 2012 OVDP who have been required to identify their bankers and advisors. Additional information will become available as the Foreign Account Tax Compliance Act (FATCA) and Foreign Financial Asset Reporting (Form 8938 and new Code Sec. 6038D) become effective.

There are ongoing rumors regarding "John Doe" summons activity seeking to force foreign financial institutions to deliver account-holder information to the U.S. government as well as possible indictments of foreign financial institutions. Recently, several foreign institutions in Europe, Israel and Asia have advised their account holders to consult U.S. tax advisors regarding the IRS voluntary disclosure program and their U.S. tax reporting relating to their foreign financial accounts. It is reasonable to assume that such institutions will take whatever action is necessary to avoid being indicted,

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beginning with the delivery of information regarding account holders to the U.S. government.

It is likely that the United States will require foreign financial institutions doing business in the United States to disclose account holders having relatively small accounts and earnings. There have been rumors of discussions regarding accounts having a high balance of the equivalent of $50,000 at any time between 2002 and 2011. U.S. persons having interests in foreign financial accounts should not find comfort in a belief that their foreign financial institution will somehow refrain from disclosing very small accounts in the current enforcement environment. Those who think too long may be sorely surprised at the high level of ultimate cooperation of their institution with the U.S. government.

Taxpayers having undisclosed interests in foreign financial accounts must consult competent tax professionals before deciding to participate in the 2012 OVDP. Others may decide to risk detection by the IRS and the imposition of substantial penalties, including the civil fraud penalty, numerous foreign information return penalties and the potential risk of criminal prosecution. Although the 2012 OVDP penalty regime may seem overly harsh for many, the decision to participate should include an economic analysis of the taxpayers projected future earning power that could be generated from the funds held offshore. Participating taxpayers receive the ability to use the previously undisclosed funds in any manner they desire. Many have benefitted by repatriating foreign funds with limited earning potential into a depressed U.S. economy with a suffering real estate market and numerous business opportunities.

The IRS has provided yet another opportunity for formerly non-compliant taxpayers to come into compliance. If discovered before any voluntary disclosure submission, the results can be devastating. Waiting is simply not a viable option.

Endnotes

1 IRM 4.26.16.5.3 (July 1, 2008).
2 *Id.*
3 *Id.*
4 *Id.*
5 *See* CCA 200603026 (Sept. 1, 2005); IRM 4.26.16.4.5.3 (July 1, 2008); see also *J.B. Williams,* DC-VA, 2010-2 USTC 50,623.

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