

IRS Extends The Offshore Voluntary Disclosure Deadline Once Again

By Steven Goldburd

As the saying goes, "Never say never." Last year, the IRS said that the 2011 Offshore Voluntary Disclosure Initiative (OVDI) was the "last, best chance" for those with offshore accounts to come forward to report their accounts or face criminal prosecution and penalties of 50% of the value of the foreign account.

However, on January 9, 2012, the IRS announced that from the last two Offshore Voluntary Disclosure Initiatives (2009 and 2011), they collected over \$4.4 billion and more money is still expected as the IRS finalizes their review of the 2011 program. As such, they are "reopening" the Offshore Voluntary Disclosure Initiative as the Offshore Voluntary Disclosure Program (OVDP).

This is actually good news for taxpayers, especially those with bank accounts in Israel. As I wrote in my article last year, many tax practitioners believed that the IRS was going to target banks in the Middle East and Far East. We were right.

On April 7, 2011, the IRS went after taxpayers banking with HSBC serving a "John Doe" summons on HSBC USA "to obtain information about possible tax fraud by people whose identities are unknown."

On August 28, 2011, the Supervisor of Banks at the Bank of Israel and signed a Statement of Cooperation with the United States. This statement established "a mechanism for the transfer of information" of cross-border banking activity between the United States and Israel. In fact, Bank Leumi has been requiring U.S. clients to declare their deposits to the Internal Revenue Service since 2010.

As I've previously stated, as far back as the first Voluntary Disclosure initiative in 2009, the IRS used Holocaust compensation as a prime example for establishing an offshore account. Israel has one of the highest concentrations of Americans in the world, with the U.S. Consulate in Tel Aviv saying it is aware of 137,000 of its citizens living there, although it estimates the actual figure is somewhere between 200,000 and 300,000. It stands to reason that they would be a fitting target for the IRS.

Additionally, starting in 2013, all foreign financial institutions will be required to enter into disclosure compliance agreements with the U.S. Treasury under the Foreign Account Tax Compliance Act (FATCA). With the signing of the cooperative agreement, Israel has agreed to comply with FATCA, and U.S. citizens with Israeli accounts in excess of \$50,000 have only 12-15 months to come forward before the Israeli government does it for them.

While the terms of the new OVDP could change at any moment, as of this announcement, there are some subtle and not-so subtle differences between the OVDIs of the past and OVDP.

First: The OVDP will be open for an indefinite period, until otherwise announced. Second: As of now, there are no set deadlines for people to apply. Third: So as not to reward those who did not come forward in 2009 or 2011, the penalties for coming forward will increase to 27.5% of the foreign account's assets, compared with the 25% penalty of the 2011 OVDI and the 20% penalty of 2009. Once again, the IRS reserved the right to change the penalty structure at any time.

The lower penalties of 12.5% and 5% will remain as they did for the 2011 OVDI. The 12.5% penalty will apply to those people whose offshore accounts or assets did not surpass \$75,000 in any calendar year. The 5% penalty will apply to taxpayers who either: did not open the foreign account themselves and have not accessed the account during the 6 year look-back period; were foreign residents who did not know that they were US citizens or were foreign residents who can make a good faith showing that he or she has timely complied with all tax re-

porting and payment requirements in the country of residency and has \$10,000 or less of U.S. source income each year.

Once again, as they did in 2011, the IRS is allowing any taxpayer who came forward during 2011 or 2009 and can demonstrate that they would receive a better deal under the new program to do so.

As in the past, the program requires that participants must file all original and amended tax returns, Foreign Bank Account Reports (FBARs) and include payment for back-taxes and interest for up to *eight* years as well as paying accuracy-related and/or delinquency penalties.

For a taxpayer to have been required to file an FBAR, that taxpayer must have had a financial interest in any financial account in a foreign country, if the aggregate value of such accounts exceeds \$10,000 at any time during the calendar year, even if the accounts were closed during that year.

Despite the fact that this program will be open indefinitely, with FATCA looming, those holding foreign accounts should still move quickly. As IRS Commissioner Shulman put it, "If we catch people before they come in voluntarily, it's going to be a lot worse outcome for the taxpayer." Worse most likely means the penalties will revert back

to their original level of 50% of the value of the foreign account.

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