



Internal Revenue Service Updates OVDP – Offshore Voluntary Disclosure Procedures

The Internal Revenue Service updated their voluntary disclosure procedures which expired on September 28, 2018. The *updated* Offshore Voluntary Disclosure Program (OVDP) will apply to all disclosures filing made after September 28, 2018.

Previously, the OVDP instituted a fixed civil penalty framework and protection from criminal prosecution for failing to file correct and complete U.S. Federal tax returns and Foreign Bank Account Reports (FBAR) for non-compliant taxpayers. The updated procedures will continue to provide non-compliant taxpayers with protection from criminal prosecution, however, the civil penalty structure will not be fixed and the cost of filing under OVDP will likely be considerably higher.

The updated procedures have not been finalized yet, but a number of significant changes have been initiated. These changes include: 1) the taxpayer must submit a descriptive narrative stipulating the facts and circumstances correlated to the taxpayer's noncompliance; 2) the disclosure period is now generally six years, instead of the previous eight years rule; and 3) the civil penalty basis is now based on the Internal Revenue Code's existing fraud penalties and *willful* FBAR penalties. These penalties can reach as high as 75% of the tax underpayment. As far as the FBAR, it can be 50% of the highest balance of undisclosed non-U.S. financial accounts.

Taxpayers who have any concerns about their U.S. Federal tax payment or reporting obligations should contact a U.S. international tax professional to discuss potential disclosure options.

