

GGI ITPG MEETING

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OFFSHORE VOLUNTARY DISCLOSURE – UPDATE & CLARIFICATION

- I. New Offshore Voluntary Disclosure Program (“OVDP”) announced on June 18, 2014.
 - A. Made significant changes to Streamlined Procedure and the 2012 OVDP.
 - B. Effective for all submissions made on or after July 1, 2014.

- II. Four voluntary disclosure options are now available.
 - A. Delinquent international information return submission procedures.
 1. Available for taxpayers who:
 - a) Reported all income from foreign accounts on income tax returns;
 - b) Failed to file one or more foreign information reports;
 - c) Not under examination or contacted by IRS about delinquent information returns; and
 - d) Provide reasonable cause explanation for late filing (must certify that the entity being reported was not engaged in tax evasion).
 2. No penalties will be assessed, but may be selected for audit:
 - a) If taxpayer does not attach a reasonable cause statement to each delinquent return, penalties may be assessed;
 3. File delinquent information returns attached to Form 1040X;
 4. File delinquent forms for foreign trusts, 3520 and 3520-A, according to form instructions; and

5. Six years of delinquent returns should be filed.

B. Delinquent FBAR submissions procedures.

1. Available for taxpayers who:

a) Reported all income from unreported accounts on income tax returns;

b) Failed to file FBARS;

c) Not under examination and have not been contacted by IRS about delinquent FBARS; and

d) Include statement explaining why FBARS are late;

1) Reasonable cause statement not required.

2. No penalties will be assessed, but may be selected for audit;

3. FBARs must be filed electronically through FINCEN Website;

a) Select reason for filing late on electronic cover page;

4. File up to six years of delinquent FBARs.

C. Streamlined filing compliance procedures:

1. Intended to apply to those who certify that failure to report foreign assets and pay all income taxes due in respect of those assets was not due to willful conduct:

a) Must prove your were not willful; and

b) High hurdle.

2. Expanded original streamline procedure:

a) Now available to taxpayers living in US;

b) Eliminated \$1,500 tax liability cap; and

c) Eliminated risk questionnaire.

3. General Requirements:

a) Only available to individual taxpayers and estates;

- b) Certify that failure to report all income, pay all taxes and submit all required information returns, including FBARs, was due to non-willful conduct;
 - c) Not available if under civil or criminal examination by the IRS; and
 - d) Returns must have a valid TIN or ITIN.
- 4. Returns will be processed by service centers like any other returns submitted;
- 5. Receipt of returns will not be acknowledged;
- 6. No closing agreement with the IRS;
- 7. Returns may be subject to IRS examination;
- 8. No protection against criminal prosecution or penalties;
- 9. Once submission is made under Streamlined procedures, may not participate in OVDP;
- 10. Non-willful conduct is due to:
 - a) Negligence;
 - b) Inadvertence; and
 - c) Mistake or conduct that is the result of a good faith misunderstanding of the requirements of the law.
- 11. Foreign offshore procedure:
 - a) Satisfy general streamline procedure requirements;
 - b) Satisfy non-resident
 - c) requirement
 - 1) US citizens or green card holders:
 - Within the past three years for which the tax return due date has passed, in any one or more of those years, the individual did not have a US abode and was physically outside the US for at least 330 days;
 - 2) Individuals who are not US citizens or green card holders within the past three years for which the tax return due date has passed; in any

one or more of those years the individual did not satisfy the substantial pressure test.

- d) For the most recent three years for which the due date of return has passed:
- 1) File delinquent or amended tax returns;
 - 2) Attach all information returns to the tax return, even if information returns would normally be filed separately from the tax returns.
 - 3) Pay full amount of tax and interest due;
 - 4) Write in red – “Streamline Foreign Offshore” on first page of each delinquent/amended return;
 - 5) File FBARs for the six most recent years for which due date has passed;
 - 6) File “Certification by US Person Residing Outside of the US” certifying that:
 - Individual is eligible for Streamlined Foreign Offshore Procedure;
 - All required FBARs have been filed; and
 - Failure to file returns and FBARs was due to non-willful conduct.
 - 7) Submit original with copy of non-willful statement attached to each return submitted;
 - 8) Efile FBARs;
 - 9) Submit payment of all tax and interest;
 - 10) Foreign taxpayers who satisfy all requirements are not subject to:
 - a) Failure to file penalty;
 - b) Failure to pay penalty;
 - c) Accuracy related penalty;
 - d) Information return penalty; and

- e) FBAR penalty.
- 11) Domestic Offshore Procedure:
- a) Satisfy general streamline procedure requirements;
 - b) Fail to meet the non-resident requirement for streamlined foreign offshore procedure;
 - c) Must have previously filed a US tax return for each of the three most recent years for which due date has passed;
 - d) Subject to miscellaneous offshore penalty;
 - e) For most recent three years for which due date of tax return has passed:
 - i. File amended tax returns;
 - ii. All information returns are attached to tax return;
 - iii. Pay full amount of tax and interest; and
 - iv. Write in “red” on first page of each amended return “Streamlined Domestic Offshore”.
 - f) File FBARs for the six most recent years for which due date has passed;
 - g) Complete “Certification by US Person Residing in the US”; certifies that:
 - i. Individual is eligible for Streamlined Domestic Offshore Procedure;
 - ii. All required FBARs have been filed;
 - iii. Failure to file FBARs and pay tax was due to non-willful conduct;
 - iv. Miscellaneous offshore penalty is accurate.
 - h) Submit original and attach non-willful conduct statement to each return submitted. Efile FBARs.

- i) Miscellaneous and offshore penalty is 5% of the highest aggregate balance/value of the following:
 - i. Foreign financial accounts that should have been reported on FBAR for the six-year period;
 - ii. Foreign financial asset that should have been reported on Form 8938 for the three-year period; and
 - iii. Foreign financial assets that were properly reported during three-year period tax return period, but gross income related to that income was not reported.
- j) Pay all taxes, interest and 5% penalty;
- k) Domestic taxpayers who satisfy all requirements are only subject to miscellaneous offshore penalty and not subject to accuracy related penalty, information return penalty, or FBAR penalty.

D. Offshore Voluntary Disclosure Program:

- 1. Why use OVDP Option?
 - a) Protection against criminal exposure;
 - b) Reduced civil penalties; and
 - c) Closing agreement.
- 2. File tax and information returns for eight years, subject to:
 - a) Accuracy and deficiency penalties;
 - b) Interest;
 - c) Tax; and
 - d) Offshore penalty.
- 3. Offshore penalty is 50% for taxpayers who, at the time of submitting their pre-clearance letter, have undisclosed foreign financial accounts with a foreign financial institution identified by the IRS as being under investigation:
 - a) If 50% penalty applies to at least one account, it applies to all accounts; and
 - b) If 50% does not apply, the penalty is 27.5%.

4. Preclearance letter must include more information that was needed previously.
5. Must make payment when making submission. Change from prior programs.
6. Transaction Relief to Streamlined Procedure:
 - a) Must have entered OVDP prior to July 1, 2014;
 - b) Submit written request certifying non-willful conduct;
 - c) Relief is not automatic. Examiner will make initial determination. May be reviewed by committee. Determination is final; no appeal.
 - d) If transition relief is denied, taxpayer remains subject to OVDP, but can opt out.

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