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Offshore Voluntary Disclosure Program to End September 28, 2018

Legal Update

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By Masha M. Yevzelman

Individuals or companies with undisclosed foreign financial assets or income have until September 28, 2018, to enter the IRS's Offshore Voluntary Disclosure Program (OVDP). Since 2009, the IRS has offered various iterations of OVDP that have brought into compliance over 55,000 taxpayers and resulted in collections of over \$10 billion dollars in tax, penalties and interest. The last version of the program had remained open for several years, but will no longer be available after September 28, 2018.

The end of OVDP does not mean that taxpayers will be left with no options for coming into compliance. The IRS's Streamlined Procedures (which require a certification that the failure to disclose foreign assets and/or report foreign income was nonwillful) and Delinquent Filing Procedures (which require submission of delinquent international reports with a reasonable cause statement) remain viable options for those who can meet certain requirements.

But OVDP, in exchange for a hefty up-front penalty, was the only program that offered taxpayers closure via a "closing agreement" with the IRS. And it was the only program that promised protection from criminal investigation. It required no explanation of why the foreign assets or foreign income were not disclosed.

With only a few weeks left to enter OVDP, those with undisclosed foreign assets or income should consult with a tax attorney as soon as possible to determine whether OVDP is the best option based on the reasons that nondisclosure had occurred. Taxpayers who do not come forward, either through OVDP or through one of the other options described above, should be mindful that upon an audit they may be assessed substantial penalties for the failure to disclose foreign assets or income (e. g. up to 50 percent of the balance of undisclosed foreign financial accounts).

Please contact Fredrikson & Byron's Masha Yevzelman with any questions.