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Tax Compliance

Offshore Voluntary Disclosure Program Shutdown Fuels Speculation (Corrected)

The IRS's decision to end its Offshore Voluntary Disclosure Program later this year will result in an influx of taxpayers seeking to come into compliance, tax practitioners told Bloomberg Tax.

The Internal Revenue Service announced March 13 that it will begin rolling back the program, which allows taxpayers to voluntarily inform the agency about untaxed money overseas and pay a set penalty to avoid prosecution. The agency plans to end the program on Sept. 28.

The OVDP has experienced “a significant decline in the number of taxpayers participating as well as an increase in awareness of offshore tax and reporting obligations,” the agency said in [frequently asked questions](#) on its website.

“Taxpayers have had several years to come into compliance with U.S. tax laws under this program,” IRS Acting Commissioner David Kautter said in a March 13 news release. “All along, we have been clear that we would close the program at the appropriate time, and we have reached that point. Those who still wish to come forward have time to do so.”

Meanwhile, the streamlined filing compliance procedures—a streamlined version of the OVDP for taxpayers who didn't willfully avoid paying their taxes—will remain available to eligible taxpayers.

The rollback of the “not perfect, but largely fair” OVDP is “very unfortunate,” Shannon Retzke Smith, a partner at Withers Bergman LLP in New York, told Bloomberg Tax on March 14.

Smith said the absence of the OVDP could create uncertainty for practitioners who want to help clients come into compliance with the IRS but don't think the streamlined program is a good fit.

“You always need a place to put a client. When you're making a determination—and you think there's a risk they're going to be deemed willful by the IRS—you have the OVDP program for that. When they take the program away, what happens to that person?” Smith said. “This person wants to get right with the IRS, perform a self-audit, and pay a huge penalty. There was a very low cost to this program for the agency, so why get rid of that?”

Short-Term Impact Kevin Sweeney, senior counsel at Chamberlain, Hrdlicka, White, Williams & Aughtry in Philadelphia, said March 14 that one element of the OVDP he likes is its predictable structure, because “people generally will make a decision towards certainty over uncertainty.

“It was successful because it gave certainty to taxpayers,” Sweeney told Bloomberg Tax.

The end of the OVDP was “a long time coming” and indicates that the program was experiencing declining taxpayer demand or was generating insufficient revenue, Sweeney said.

Practitioners who spoke to Bloomberg Tax largely agreed that the OVDP's end date in September will result in an uptick of OVDP participants over the next six months.

“I would anticipate a flurry of activity until midnight of the day the program terminates,” James Mastracchio, a partner at Eversheds Sutherland (US) LLP in Washington, said March 14.

“The IRS probably wants one last push for people who have been holding out for a while and give them a reason to come back into compliance. Those that are sitting on the sidelines and on the fence have to consider whether they need to come in now, or whether they want to wait for unknown options in the future,” Sweeney said. “That deadline in and of itself could encourage compliance in the short term.”

The IRS declined to comment.

Long-Term Fallout? Practitioners differed in their assessment of potential long-term consequences of the IRS's rollback of the OVDP.

Taxpayers have paid a total of \$11.1 billion in back taxes, interest, and penalties since the program was launched in 2009, according to the IRS.

The shutdown not only could challenge the agency in replacing lost revenue, but could result in a greater administrative burden on other parts of the agency's Criminal Investigation Division, Smith said. Prosecuting offshore taxpayer fraud is much harder and costlier than taxpayer self-audits, she said, adding that the end of the OVDP also could create the “same disparities in penalties the program was put in place to eliminate.”

The decision to end the program likely indicates that, in recent months, the revenue it raised was “not that sufficient,” Sweeney said, and the shutdown could “potentially allow the IRS to really hammer taxpayers that aren't in compliance” due to the removal of standardized penalties.

Although the program's closing "does actually encourage people to come into compliance, because now people don't get to push this decision down the road," it could discourage taxpayers from being more proactive in compliance, Sweeney said.

The agency will also lose "the information stream" within voluntary disclosures it uses to build cases against promoters and facilitators of offshore tax compliance. With the IRS stretched thin for resources, Sweeney said, loss of the OVDP could eliminate an "easy way for the IRS to develop these snippets of information."

On the other hand, Mastracchio said, the closing could relieve administrative burdens on a number of agency staffers assigned to oversee the OVDP.

"I think the resources needed to administer the program were large and the work was time-consuming. From my view, though, it is burdensome to perform an audit—this is releasing a lot of folks from the OVDP process that was administratively burdensome," he said.

Mastracchio said he doesn't think the end of the OVDP will dissuade taxpayers from compliance in the long run, even with the potential uncertainty of penalties.

"Taxpayers are still going to have the opportunity to come forward if they aren't in compliance, even with

this program ending. There is still going to be the possibility if you are noncompliant that you will be audited and your opportunity to come forward will not exist."

Streamlined Program's Future The OVDP's closure signals that the Streamlined Filing Compliance Procedures program may not be open indefinitely either, David McKeegan, an enrolled agent and co-founder of Greenback Expat Tax Services, told Bloomberg Tax in a March 14 email.

It would be best for taxpayers "to seriously consider becoming compliant now if you want to avoid a much more difficult time with the IRS in the future," he said.

"The government has undergone a lot of change since the original OVDP/I was launched in 2009 and the Streamlined Program in 2012. With both being revised in 2014 and now with OVDP officially ending in September 2018, this could indicate a shift by the IRS moving away from a more lenient amnesty phase," McKeegan said. "It's more important than ever to consider becoming compliant and take advantage of the amnesty programs."

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