



Do you know why and how to make an Offshore Voluntary Disclosure?

Through its Offshore Voluntary Disclosure Program (OVDP), IRS permits noncompliant taxpayers to disclose **Willfully** unreported offshore accounts and related income. The “key” word for OVDP is **Willful**. Unlike the Streamlined Filing Compliance Procedures, program which is intended for Taxpayers that have acted **Non-Willfully**, OVDP encourages Taxpayers who have acted Willfully to immediately disclose through OVDP to eliminate risk of IRS detection and the possibility of criminal prosecution.

The purpose of OVDP is to bring Willfully non-compliant Taxpayers that have used undisclosed foreign accounts and assets (including those held through undisclosed foreign entities) into compliance. It enables non-compliant Taxpayers to resolve tax liabilities and minimize chances of criminal prosecution. If a Taxpayer Truthfully, Timely, and Completely complies with all provisions of the OVDP, IRS will not recommend criminal prosecution to the DOJ for any involved issue relating to tax non-compliance or failure to file FBARs for the required disclosure period.

Taxpayers that should, based on their filing compliance history, enter into OVDP and fail to do so, run the risk of IRS detection, imposition of substantial penalties, including the 75% fraud penalty, foreign information return penalties, and an increased risk of criminal prosecution. IRS remains focused toward identifying non-compliant Taxpayers with undisclosed foreign financial accounts and assets. It has multiple information sources, including tax treaties, whistleblowers, and FATCA. Consequently, for IRS, the process of identifying non-compliant Taxpayers has become easier.

A Taxpayer who has facilitated the tax noncompliance of others, or if IRS has initiated a civil examination for any year or if he has made a submission under the Streamlined Filing Compliance Procedures is not eligible to enter the OVDP.

OVDP requires Taxpayers to cooperate with IRS and Department of Justice offshore enforcement efforts, through providing information about financial institutions and other facilitators who helped the Taxpayer establish or maintain an offshore arrangement.

Here is what a Taxpayer making an Offshore Voluntary Disclosure is minimally required to do:

Step 1 is Pre-clearance: The Pre-Clearance-Process is optional to the Taxpayer. If the Taxpayer chooses Pre-Clearance, then the Taxpayer or Taxpayer’s representative may fax a letter containing certain information to IRS Criminal Investigation.

Step 2 is the Voluntary Disclosure Letter: If the Taxpayer chooses the Pre-Clearance process, and receives a Pre-Clearance Notification, then the Taxpayer has 45 days from the date of the Notification to submit the Offshore Voluntary Disclosure Letter and required Attachment. Note that the Taxpayer may by-pass the Pre-Clearance process, and mail the Offshore Voluntary Disclosure Letter and Attachment directly to IRS Criminal Investigation.

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Upon receipt, IRS reviews the Letter and the Attachment and proceeds to notify the Taxpayer (and the representative) by fax whether the voluntary disclosure has been preliminarily accepted or declined.

Step 3 is to complete the Voluntary Disclosure Package: If the voluntary disclosure is preliminarily accepted, then the Taxpayer has to mail in the full voluntary disclosure package to the IRS.

It is important to note that IRS may increase penalties or limit eligibility for participating in the program for all or some taxpayers or defined classes of taxpayers. IRS can also decide to end the program entirely at any time. This is why it is so important to take action now. The era of tax transparency is here to stay.

Taxpayers should not be victims of their own making, and ought to consult their tax specialists to ensure that the complicated process of voluntary disclosure is conducted efficiently and effectively.