



IRS Offshore Voluntary Disclosure Program: *Declines and Withdrawals*

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Articles

Since 2004 I have published or been interviewed in 100+ separate articles published by 15 different US and International magazines.

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Video

In December 2016 I was interviewed by California CEO Magazine and RCBNNNews.org on the subject of Criminal Tax Evasion and IRS Tax Audits: Civil and Criminal Issues. This 4 part series, which has been published by [Lorman Education](#), can be viewed below:

[Criminal Tax Evasion - Part 1](#)

[Criminal Tax Evasion – Part 2](#)

[Criminal Tax Evasion – Part 3](#)

[Criminal Tax Evasion – Part 4](#)

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IRS Offshore Voluntary Disclosure Program: Declines and Withdrawals

Taxpayers with undisclosed offshore holdings who applied for the IRS Offshore Voluntary Disclosure Program (OVDP) through the pre-clearance process but were either denied access to the OVDP, or later withdrew from the program face increased risks.

On February 1, 2017 the IRS Large Business and International Division of the IRS released [a 13-item list](#) for issue-based examinations and concerns for tax compliance, which included IRS/ OVDP Declines/Withdrawals.

Under these new IRS/OVDP rules:

1. Anyone who opts out of the IRS/OVDP is subject to an immediate IRS civil tax audit of his or her tax returns and FBAR filings. Information that the taxpayer submitted in either the pre-clearance process or to the IRS/OVDP (subsequent to the pre-clearance but prior to withdrawal) may be evidence used against them.

The IRS filing was submitted without either transactional or use immunity. Upon submission, the Taxpayer waived constitutional objections including: the 5th amendment right against self-incrimination, 4th amendment right against unreasonable searches and seizures.

2. Increased IRS tax audits are portended for continued tax non-compliance if the IRS receives information (not disclosed by the taxpayer) from 3rd parties including: foreign banks, foreign facilitators, or under treaty requests.

Much of this information is coming to the IRS based on implementation of the provisions of the Foreign Account Tax Compliance Act ("FATCA") by foreign financial institutions, or from listed foreign financial institutions who are either under settlement agreements with the US Department of Justice or are in

settlement discussions (e.g. in Switzerland as of 1/25/17 145 foreign financial institutions have been “listed” by the IRS and if a taxpayer has an account with them their penalty includes a 50% account balance penalty paid up front upon submission of their IRS/OVDP offer along with tax, interest and other penalties).

Please see my [recent newsletter](#) on this topic.

3. Those US taxpayers who applied through for the IRS/OVDP through the pre-clearance process but were either denied access or withdrew from the program face a heightened risk of IRS civil tax audit, criminal tax investigation or IRS referral for US/DOJ criminal prosecution.

The IRS/OVDP for submissions made on or after July 1, 2014 require that all payments due be made up front at the time of the submission of the IRS/OVDP (see IRS Offshore Voluntary Disclosure Program Frequently Asked Questions and Answers 2014 (“IRS FAQ”). See IRS FAQ #1.1

Under the “7/1/14 IRS OVDP” (7/1/14 forward) a 50% offshore penalty applies if either a foreign financial institution at which the taxpayer has or had an account or a facilitator who helped the taxpayer establish or maintain an offshore arrangement has been publicly identified as being under investigation or as cooperating with a government investigation. See IRS FAQ #7.2 for a complete list of all 145 foreign financial institutions/facilitators as of 1/25/17 (published 1/31/17).

Under IRS FAQ #7.2, 23, 24:

For those taxpayers who request preclearance before they submit their offshore voluntary disclosure, under #23, the taxpayer must send detailed information to the IRS Criminal Investigation Lead Development Center (LDC) which includes:

1. Applicant identifying information including complete names, dates of birth, tax identification numbers, addresses and telephone numbers;

2. Identifying information of all financial institutions at which undisclosed OVDP assets (see FAQ # 35) were held including complete names (including DBAs and pseudonyms), addresses and telephone #s;
3. Identifying information of all foreign and domestic entities (e.g. corporations, partnerships, limited liability companies, trusts, foundations) through which the undisclosed IRS/OVDP assets were held by the taxpayer seeking to participate in the OVDP; this does not include any entities traded on a public stock exchange. Information must be provided for both current and dissolved entities. Identifying information for entities includes complete names (including all DBAs and pseudonyms), employer identification numbers, addresses and the jurisdictions in which the entities were organized.
4. In the case of jointly filed tax returns, if each spouse intends to apply for the OVDP, each spouse should request preclearance.
5. Criminal investigation will then notify taxpayers or their representatives via fax whether or not they are eligible to make an offshore voluntary disclosure. It may take up to 30 days for Criminal Investigation to notify taxpayers or their representatives of the decision.

It should be noted that IRS pre-clearance does not guarantee a taxpayer acceptance into the IRS/OVDP. Taxpayers pre-cleared for OVDP must follow the steps outlined in IRS/FAQ #24 within 45 days from receipt of the tax notification to make an offshore voluntary disclosure. Taxpayers must truthfully, timely and completely comply with all provisions of the OVDP.

Under IRS FAQ #24, Taxpayers who make an offshore, voluntary disclosure must submit their Offshore Voluntary Disclosure Letter (and attachment) to the IRS (address as designated in Philadelphia, PA). IRS Criminal Investigation will review the Offshore Voluntary Disclosure Letter and notify taxpayers or their Representatives whether the offshore voluntary disclosures have been preliminary accepted as timely or declined

(usually within 45 days of receipt of a complete Offshore Voluntary Disclosure Letter).

Once a taxpayer's disclosure has been preliminarily accepted by IRS Criminal Investigation as timely, the taxpayer must complete the submission and cooperate with the civil examiner in the resolution of the civil liability before the disclosure is considered complete.

Under IRS FAQ #24.1, where spouses both desire to participate in the OVDP, they may do so jointly or separately. If spouses make a joint submission, they must include all required information and documents for each spouse and clearly indicate the intention to disclose jointly. If spouses make separate submissions each spouse must complete and submit all required information and documents.

Under IRS/FAQ #25, if the Voluntary Disclosure is accepted, the IRS Criminal Investigation Division will instruct the taxpayer or his representative to submit the full voluntary disclosure to the IRS Austin campus within 90 days of the date of the timeliness determination. The Voluntary Disclosure submission must be sent in two separate parts:

1. Payment;
2. All documents as required under IRS/FAQ #25.

Under IRS/FAQ #7, the terms of the Offshore Voluntary Disclosure Program require that the taxpayers must:

1. Provide payment, documents
2. Co-operate in the voluntary disclosure process, including providing information on foreign accounts and assets, institutions and facilitators, and signing agreements to extend the period of time for addressing Title 26 liabilities and FBAR penalties.

Regarding payment it is now due with the submission of the disclosure. Under IRS FAQ #25, the payment to the Dept. of Treasury is in the total amount of tax, interest, offshore penalty, accuracy-related penalty, and if applicable, the failure-to-file and failure-to-pay penalties, for the voluntary disclosure period. These payments are advance payments; consequently any credit or refund of the payments is subject to the limitations of IRC Sec. 6511 (see IRS/FAQ #25). These total tax, interest and penalty payments are due up front with the application submission.

Under IRS/FAQ #7, the up front payment includes the following penalties which may in the aggregate with tax and interest “wipe out” the account:

1. Pay 20 percent accuracy-related penalties under IRC Sec. 6662(a) on the full amount of the offshore-related underpayments of tax for all years;
2. Pay failure to file penalties under IRC 6651 (a) (1), if applicable;
3. Pay failure to pay penalties under IRC 6651 (a) (2), if applicable;

The big penalty is the Title 26 Misc. penalty. The payment, in lieu of all other penalties that may apply to the undisclosed foreign accounts assets and entities, including FBARS and offshore-related information return penalties and tax liabilities for the years prior to the voluntary disclosure period, a Misc. Title 26 offshore penalty equal to 27.5%, or 50% for those listed in FAQ #7.2, of the highest aggregate value of OVDP assets as defined in IRS/FAQ # 35 during the period covered by the Voluntary Disclosure.

The suspension of interest provisions of IRC Sec. 6404(g) do not apply to interest due under the OVDP.

