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IRS Amnesty Can Cover Broader Tax Evasion Too

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Traditionally, if you voluntarily go to the IRS, refiling your taxes to correct your tax evasion before the IRS discovers it, you won't be prosecuted. That general practice has been in place for decades. In contrast, if the IRS finds you first—in an audit for example—you won't be protected. Most criminal tax cases still come from plain old civil audits, so the timing can be important. Admitting your mistakes isn't easy, but paying taxes, interest and penalties is better than the alternative.

How this relates to offshore accounts isn't obvious. Over a decade on, the IRS witch hunt for offshore accounts is still going. Most people have fixed their compliance problems, but the hunt continues, fueled by extensive data swapping deals between the IRS, foreign governments, and foreign banks. It is no exaggeration to say that nothing is secret today, and the stakes for getting caught are higher than ever. It is becoming harder and harder to say, 'Gee, I didn't know....'



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At this point, the [IRS offshore account collections haul has topped \\$10 billion](#). Not everyone is in the same boat, of course. Some people had secret Swiss or other tax haven accounts, and were actively hiding money from the IRS, from spouses, business partners, etc. Depending on how intentional their tax reporting violations may have been, they usually came in via the main IRS amnesty program known as the Offshore Voluntary Disclosure Program (OVDP). In one form or another, that program has been around since 2009. Over eight years, the penalties have gradually gone up.

Still, it is a good deal compared to potentially much bigger civil penalties and the threat of criminal prosecution. Civil FBAR penalties alone can entirely wipe out foreign accounts. Even so, many people find the OVDP too harsh and too expensive. If you lived or had family overseas and needed foreign accounts, it seems unfair to lump them together with intentionally hidden accounts. Many people with foreign accounts didn't report on FBARs and didn't report interest on their U.S. tax returns out of ignorance, or at worse, out of negligence.

Most taxpayers have an easier time deciding to file Streamlined rather than OVDP. The biggest difference is the overall asset-based penalty. Participants in the OVDP are required to pay taxes and interest on any monies (such as interest income on foreign accounts) they previously failed to report. On top of the taxes, they must pay a 20% penalty on the taxes, plus interest. Last, the 27.5% penalty is paid once for the whole eight years, in lieu of the FBAR (Report of Foreign Bank and Financial Accounts) penalties that would otherwise apply year by year.

Streamlined filers residing outside the United States pay no penalty, while Streamlined filers in the U.S. pay 5% of the foreign accounts/assets. The OVDP precludes criminal prosecution and ends in a closing agreement. In contrast, Streamlined filers can face a civil audit or conceivably even prosecution. Prosecution may be highly unlikely, provided that the taxpayer cooperates if the IRS audits, but that audit may not be easy. A key for any Streamlined filer is to be non-willful. One must certify that. Negligence, inadvertence, or mistake are all OK, but intent to conceal or to evade taxes is not. And the IRS has criteria for objective indicators. It is hard to say you were non-willful if you behaved secretively, did partial reporting of accounts or income, etc.

The OVDP is a clean wash-your-hands kind of way to correct past tax filings and come clean in an area the IRS views as very important. How about other transgressions? As long as you are filing amended tax returns, other corrections *unrelated* to your foreign accounts may be necessary. Before you sign amended tax returns under penalties of perjury, you should make sure they are accurate. If you failed to report any other income, you should include it on your amended returns. But exactly how that fits into the OVDP is a little fuzzy.

By its terms, the OVDP applies to foreign account matters. Other corrections are technically not part of the OVDP, so technically, the IRS *could* pursue these items outside the OVDP. In reality, though, the IRS seems to be doing what makes sense: if you have other unrelated corrections to your returns, by all means make them. If there's a problem, the IRS will presumably tell you. As the IRS puts it, the offshore penalty structure only resolves liabilities and penalties related to offshore noncompliance. Domestic portions of a voluntary disclosure are subject to IRS examination. IRS FAQ 7.1. Taxpayers who are making both an offshore voluntary disclosure and a domestic voluntary disclosure should follow the process for offshore voluntary disclosures, but indicate on the Offshore Voluntary Disclosure Letter that they are also making a domestic voluntary disclosure. See IRS FAQ 24.

Cleaning up domestic tax problems is a feature of many OVDP cases, but some of it may be a question of degree. The IRS appears to be accustomed to the usual full disclosure including some domestic tax problems. However, the IRS might react differently if a \$20,000 offshore account was the catalyst for reporting millions in previously unreported *domestic* income. The OVDP deal would still get the IRS the taxes on that amount, interest, plus a 20% penalty on the unreported income. That might be enough. After all, a key IRS tradition is that tax evaders who voluntarily step forward before they are found are usually not prosecuted.

The bottom line is that some—perhaps many—OVDP tax return packages fix domestic tax problems *unrelated* to foreign accounts. All usually seems to go fine, and there may be no real alternative. The

amended tax returns must be accurate. In the case of a \$20,000 account vs. millions in unreported income, the handling is considerably trickier, and careful thought is needed. But the odds of it going well are probably high. Perhaps that could cause some people with serious latent tax issues to think about the OVDP in a new way.

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