

## O.V.D.P. UPDATE

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### I.R.S. ANNOUNCES MAJOR CHANGES TO O.V.D.P. AND STREAMLINED PROCEDURES

After more than two weeks of speculation,<sup>49</sup> on June 18, 2014, the I.R.S. announced major changes to its current offshore voluntary disclosure programs earlier today. The programs affected are the 2012 Streamlined Filing Compliance Procedures for Non-Resident, Non-Filer U.S. Taxpayers (the “Streamlined Procedures”) and the 2012 O.V.D.P.

In general, as will be discussed in more detail below, the changes to the programs relax the rules for non-willful filers and at the same time potentially increase penalties for willful non-compliance.

The changes to the O.V.D.P., as announced today, include the following:

- Additional information will be required from taxpayers applying to the program;
- The existing reduced penalty percentage for non-willful taxpayers will be eliminated;
- All account statements, as well as payment of the offshore penalty, must be submitted at the time of the O.V.D.P. application;
- Taxpayers will be able to submit important amounts of records electronically; and
- The offshore penalty will be increased from 27.5% to 50% if, prior to the taxpayer’s pre-clearance submission, it becomes public that a financial institution where the taxpayer holds an account or another party facilitating the taxpayer’s offshore arrangement is under investigation by the I.R.S. or the Department of Justice.

The changes to the Streamlined Procedures include the following:

- The availability of the program is extended to certain U.S. taxpayers residing in the U.S.;

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<sup>49</sup> See “Prepared Remarks if John A. Koskinen-Commissioner of Internal Revenue Service, Before the U.S. Council for International Business – OECD International Tax Conference, Washington D.C.”, June 3, 2014.

- The requirement that the taxpayer have \$1,500 or less of unpaid tax per year is eliminated;
- The Streamlined risk questionnaire is eliminated; and
- The taxpayer is now required to certify that previous failures to comply were due to non-willful conduct.

All penalties will be waived for eligible U.S. taxpayers living outside the United States. Eligible taxpayers living in the U.S. will only incur a 5% miscellaneous offshore penalty on the foreign financial assets that gave rise to the tax compliance issue.

It should be noted that taxpayers who, prior to July 1, 2014, submitted their intake letter and attachments, can benefit from the expanded Streamlined Filing Compliance Procedures if they are eligible for this program.

At first glance, the changes appear to officialize the prior avenue of silent disclosures that were made by many U.S. persons residing in the U.S. and abroad who believed the O.V.D.P. penalties were too harsh by providing an official path forward to come into compliance on a penalty free or penalty limited basis.

The open question is how the I.R.S. will treat silent disclosure filers currently under audit as a result of being discovered.

We will follow up shortly on the specifics, but you may review the details of the changes at [www.irs.gov](http://www.irs.gov).

## **CREDIT SUISSE PLEADS GUILTY TO ASSISTING IN TAX EVASION BY U.S. TAXPAYERS**

Credit Suisse AG pleaded guilty to conspiracy to aid and assist U.S. taxpayers with the filing of false income tax returns and other documents. Credit Suisse admitted to operating an illegal cross-border banking business that knowingly and willfully aided and assisted thousands of U.S. clients in opening and maintaining undeclared financial accounts and concealing their offshore assets and income from the I.R.S., thus evading U.S. taxes. The bank has agreed to pay \$2.6 billion to the U.S. government, which will be divided among several agencies.

Although the agreement does not require that Credit Suisse provide names of its U.S. clients who had undisclosed accounts with the bank, which was required under the plea agreement made by UBS in 2009, Credit Suisse agreed to:

- Promptly disclose all evidence and information described in Section II.D.1. and II.D.2 of the U.S-Swiss bank voluntary disclosure program, which includes making a complete disclosure of its cross-border activities and providing all information (including the debits and credits on a monthly basis) with respect to its U.S. accounts other than the name of the individual;
- Provide testimony or information for admission into evidence of documents or physical evidence of any criminal or other proceeding as requested;

- Provide all necessary information for the U.S. to draft treaty requests to seek account records and other account information;
- Close accounts of account holders who fail to come into compliance with U.S. reporting obligations;
- Implement procedures to ensure compliance with U.S. laws including those under F.A.T.C.A. and relevant tax treaties in all its current and future dealing with U.S. customers.

As such, those with undeclared Credit Suisse accounts should promptly seek the advise of a competent professional.

## **ISRAEL'S BANK LEUMI AIMS TO AVOID GUILTY PLEA IN SETTLING U.S. TAX PROBE**

Bank Leumi Le-Israel Ltd. recently said it is in advanced talks to settle a U.S. investigation into whether it helped Americans evade taxes in a deal that may not include a guilty plea. Israel's second-largest bank said it has set aside 950 million shekels (\$275 million) to resolve the problem. Leumi would be the first Israeli bank to settle a tax probe with the Department of Justice. U.S. persons who have deposited funds with the bank may find that their income from those deposits may be disclosed to the U.S. once a final agreement is reached.

Thus, Leumi joins the list of banks which the U.S. Department of Justice has been pursuing with respect to offshore tax evasion. In 2009, UBS AG, the largest Swiss bank, avoided prosecution by paying \$780 million and handing over the names of 4,700 U.S. account holders. As noted above, a guilty plea was just secured from Credit Suisse Group AG's main bank subsidiary, along with a \$2.6 billion penalty. The Department of Justice has expanded its enforcement actions to banks outside of Switzerland in recognition of the fact that non-Swiss banks and other financial institutions have also played an active role in aiding U.S. persons in avoiding U.S. taxes. The Leumi case is evidence of one such situation, but it will not be the last with efforts expanding in Israel, India, and elsewhere around the world.

