

## Let's Make a Deal

### Exploring the IRS's tax settlement programs

OCTOBER 25, 2015

BY ROGER RUSSELL

In case you're thinking that the Internal Revenue Service's various tax settlement programs aren't a big deal, consider this: Last month the service announced that it has collected more than \$8 billion from its Offshore Voluntary Disclosure Programs, as more than 54,000 taxpayers have come forward to own up to previously hidden foreign assets.

What's more, a related set of streamlined procedures, initiated in 2012 to accommodate a wider group of U.S. taxpayers who have unreported foreign financial accounts but for whom the OVDP was inappropriate, have been used by more than 30,000 taxpayers to come back into compliance with U.S. tax laws. And two-thirds of them have used the procedures since the IRS expanded the eligibility criteria in June 2014.

That means that the OVDP and the streamlined procedures, along with the other common tax settlement programs that practitioners will encounter — offers in compromise and installment agreements — are well worth knowing about for your clients who may be facing tax debts they can't afford.

Register now for **FREE** site access and more



## Slideshows

SEE ALL >



### Audit Risks to Look Out For



7 Interview Tips to Win the Accounting Talent War



The 2015 MP Elite



#### PARTNER INSIGHTS

WHAT'S THIS?

#### FORGET CABLE PROMISES

The offer in compromise is an agreement that allows taxpayers to settle their tax debt for less than the full amount. While many are familiar with advertisements targeted at taxpayers to settle their debts with the IRS "for pennies on the dollar" that have been a mainstay on late-night cable, the actual process is a bit more complicated than that.

"It can be a long process and there are no predictable outcomes," said CBIZ lead managing director Sarah Knight. "It's not a quick fix, it's a negotiated settlement. Unless the taxpayer is 80 years old and living on Social Security, it's not a slam dunk — good preparation upfront is the key in both setting expectations and getting an offer through the IRS."

The Fresh Start Program, initiated several years ago, did make for some flexibility in both OICs and installment agreements, according to Knight. The program expanded and streamlined the OIC program, giving the IRS more flexibility when analyzing a taxpayer's ability to pay. Generally, the IRS will accept an offer if it represents the most the agency can expect to collect within a reasonable period of time, but will not accept the offer if it believes that the taxpayer can pay the amount owed in full as a lump sum or through a payment agreement.

"In all IRS dealings, the first agents working the case are junior staff," Knight noted. "When you have a complex case, you really can't settle on that level. You have to take it to appeals. It's like going to the senior partner in a firm."

Another difficulty in the procedure is the length of time between when the process is started and when a final agreement is negotiated, Knight observed. "The taxpayer might have a very good case today. For example they owe \$80,000 in taxes, they have no job, their home is in foreclosure and their wife has cancer. It's a great story.

#### MOST READ

#### MOST EMAILED

- [Tax Fraud Blotter: Completely Guilty](#)
- [Tax Strategies Scan: Avoiding Taxes on Home Sale](#)
- [Let's Make a Deal](#)
- [IRS Warns Tax Preparers to Protect Against Identity Theft](#)
- [David Copperfield Sues Accountant for Not Filing His Taxes](#)

But eight months later when it's assigned to an agent, the taxpayer has a job, the wife's cancer is in remission, and the banks altered the debt on the home. For most people the situation can change dramatically and be very different."

## HOW MUCH CAN YOU PAY?

An offer in compromise is similar to a tax bankruptcy, observed Ann Fleming, a senior manager at the Atlanta office of Warren Averett. "In an installment agreement, the IRS will still collect 100 percent of the assessment. But with an OIC, they will collect less than the assessment."

"They weigh a taxpayer's ability to pay with effective tax administration. It would be a waste of their resources to chase nothing. It costs a lot to chase down those who are not voluntary, so a lot has to do with the limited resources at their disposal," she said. "So they're encouraging OICs, installment agreements and the OVDP."

"First, you have to make sure that an assessment is correct," she advised. "Once you get into Collections, they don't care what the origin of the tax was, they're just concerned with collecting the money. There are involuntary ways to end up in Collections, such as cancellation of debt which triggers a tax liability which the taxpayer is unable to pay. Often those who end up there involuntarily feel they should be treated more leniently than someone who just chose not to pay their tax and used the money for something else. But the revenue officer doesn't care."

"Of course," she noted, "if your offer is accepted, you have to stay compliant for five years. If you file a return a year or two down the road and get a refund, they'll keep it. And if you win the lottery two years from now, expect them to come to you and say, 'Remember me?'"

In 2009, about 21 percent of OICs were accepted, while in 2013, 40 percent were accepted, she pointed out.

In 2012, the IRS announced major revisions to its OIC Program. "There were two big things," said Marty Davidoff, of Dayton, N.J.-based E. Martin Davidoff & Associates. "First, they took the multiplier down for budgets. It used to be that if you paid all cash they wanted 48 times your monthly budget. For example, if you have \$1,000 net monthly disposable income and \$5,000 in assets, under the old rules an acceptable offer would be \$48,000 plus \$5,000, or \$53,000. Under the new rules it's a multiple of 12, so it would be \$12,000 plus \$5,000, or \$17,000. Of course, if you make \$1,000 a month and can still pay in full, they will deny the offer."

"The second thing they did was also a game-changer," he continued. "Under the old rules they would count the value of an asset used in the taxpayer's business. Under the new rules they don't count the value of the asset generating the income. That's a huge deal because the taxpayer's practice, say of a doctor or veterinarian, can be worth several hundreds of thousands of dollars."

## NOT THE OIC

The Offshore Voluntary Disclosure Program has the most exposure among settlement programs because there's a lot of money involved and it's a relatively new area, according to James Grimaldi, a tax partner at Citrin Cooperman. "The comparisons to offers in compromise are like night and day," he said. "Most of the OIC applications I make are for people that are down and out and have a large tax liability. They may have made a lot of money in the past and not spent wisely, or they're not making what they made years ago but their tax liability still stays with them. Of course, if someone doesn't have the funds to pay the IRS and not enough to pay to meet their other obligations, they're less likely to come to an accounting firm."

The offshore programs involve overseas assets that haven't been reported yet. Both the OVDP and the streamlined procedures enable taxpayers to correct prior omissions and meet their federal tax obligations while mitigating the potential penalties of continued non-compliance.

The effort around automatic reporting of foreign accounts has given the IRS a much stronger hand in fighting tax evasion, according to Commissioner John Koskinen. "People with undisclosed foreign accounts should carefully consider their options and use available avenues, including the offshore program and streamlined procedures, to come back into full compliance with their tax obligations."

Under the Foreign Account Tax Compliance Act and the network of intergovernmental agreements between the U.S. and partner jurisdictions, automatic third-party account reporting began this year, making it far less likely that offshore financial accounts will go unnoticed by the IRS. In addition to FATCA and reporting through intergovernmental agreements, the Department of Justice's Swiss Bank Program continues to reach non-prosecution agreements with Swiss financial institutions that facilitated past non-compliance. As part of these

## Videos

SEE ALL »



### The New CPA Exam: An Overview



When You're Not Your Client's Financial Planner



From Financial Planning to Wealth Management



agreements, banks are providing information on potential non-compliance by U.S. taxpayers.

The OVDP offers taxpayers with undisclosed income from offshore accounts an opportunity to get current with their tax returns and information reporting obligations. For those who don't come forward, the penalties can be severe. For willful violations, the penalty for failure to file an FBAR (Foreign Bank and Financial Accounts Report) was the greater of 50 percent of the balance in the account or \$100,000, according to Dennis Brager, head of the Los Angeles-based Brager Tax Law Group. "That could be imposed for each year that the person failed to file FBAR." Now, under the OVDP, the penalty is 27.5 percent of the balance in the overseas account, with the elimination of criminal prosecution.

The streamlined procedures, originally tailored very narrowly only to non-resident non-filers, are now available to a wider population of U.S. taxpayers living outside the country, and to certain U.S. taxpayers residing in the U.S. Since many non-filers are non-willful, under the streamlined procedures they sign an attestation that they are non-willful, and file three years of returns and six years of FBARs.

## LITTLE BY LITTLE

Installment agreements are negotiated with the IRS if the taxpayer cannot pay the full amount shown on a tax return or on a notice the IRS sends, said Grimaldi. "It's a matter of negotiation, and it depends who you negotiate with. Revenue officers are collectors. Some are sympathetic and some are not. I usually come in later in the process where the taxpayers tried themselves, or someone else dealt with it and it hadn't gone well."

Most installment agreements meet the streamlined installment agreement criteria, according to the IRS. The maximum term for a streamlined agreement is 72 months. Under certain circumstances, a longer time to pay may be approved, or it may be approved for an amount that is less than the amount of tax owed.

"For a streamlined installment agreement, an individual can owe up to \$50,000 and a business can owe up to \$25,000," said Fleming. "It's pretty much automatic. For an individual who owes more than \$50,000, it gets assigned to a revenue officer and then it gets really complicated. You have to provide detailed financial information on assets and income. Everything that you provide the IRS can be verified with third parties, so you have to be complete and accurate."

States have similar settlement programs, noted Peter Stathopoulos, a partner and leader in Bennett Thrasher's state and local tax practice. "Voluntary disclosure agreements and offers in compromise have been in place for a long time. They started out in the 1980s and 1990s as informal programs designed to encourage voluntary compliance by noncomplying taxpayers. Before that there were periodic 'amnesty programs,' where they would announce tax amnesties for a limited time if the delinquent taxpayer came in from the cold. We still see these but not as much. They've been replaced by more structured voluntary disclosure programs in most states."

"The head of the Collections Division of the Georgia Department of Revenue has said that he's not in the collections business but in the voluntary compliance business," Stathopoulos continued. "His point is that states really rely on taxpayers to voluntarily comply with state laws. They prefer not to force people to do things, so these programs are designed to gently nudge people back in to voluntarily complying."

Stathopoulos noted that offers in compromise programs can be highly political at the state level. "It depends on who the governor and the commissioner are," he explained. "Several revenue commissioners ago, Georgia's offers in compromise program was effectively dead. They never granted an OIC because of 'doubt as to ability to pay.' Now it's regularly granted so it is somewhat dependent on who is currently in charge as to how the program is administered."

## 1 Comment

Your statement about the IRS coming after a taxpayer who wins the lottery two years after an Offer in Compromise is accepted and I am assuming full payment has made per the terms of the Offer in Compromise, is simply not correct. I have been in private practice for 12 years representing dozens of taxpayers in submitting Offers in Compromise to the IRS. Regardless of the amount of income received by the taxpayer subsequent to the Offer in Compromise being accepted and full payment made under the terms of the Offer by the taxpayer; it has no effect on the earlier IRS decision to accept the Offer. The IRS is not going to negate the Offer they already accepted because the taxpayer 2 years later wins the lottery.

Posted by: Payyour taxes31 | October 26, 2015 11:31 AM

[Report this Comment](#)

## Add Your Comments...

### Already Registered?

If you have already registered to Accounting Today, please use the form below to login. When completed you will immediately be directed to post a comment.

Username:

Password:

[Login](#) [Forgot My Password](#)

### Not Registered?

You must be registered to post a comment.

[REGISTER](#)

#### ACCOUNTING TODAY

[About Us](#)  
[Contact Us](#)  
[Advertise with Us](#)  
[Subscribe](#)  
[Reprints](#)  
[Customer Service](#)  
[Feedback](#)  
[My Account](#)  
[Site Map](#)  
[Privacy Policy](#)  
[Subscription Agreement](#)

#### SOURCEMEDIA CORPORATE SITE

##### BANKING

[American Banker](#)  
[Bank Technology News](#)  
[Credit Union Journal](#)

##### MORTGAGES

[National Mortgage News](#)  
[Mortgage Servicing News](#)  
[Origination News](#)

##### PAYMENTS

[PaymentsSource](#)  
[Collections & Credit Risk](#)  
[ISO & Agent](#)

##### MUNICIPAL FINANCE

[The Bond Buyer](#)

##### CAPITAL MARKETS

[Mergers & Acquisitions](#)  
[Asset Securitization Report](#)  
[Leveraged Finance News](#)  
[Traders Magazine](#)

##### ACCOUNTING

[Accounting Today](#)  
[Tax Pro Today](#)

##### HEALTHCARE TECHNOLOGY

[Health Data Management](#)  
[Insurance Networking News](#)  
[Information Management](#)

##### EMPLOYEE BENEFITS

[Employee Benefit News](#)  
[Employee Benefit Adviser](#)

##### INVESTMENT ADVISORY

[Financial Planning](#)  
[On Wall Street](#)  
[Bank Investment Consultant](#)  
[Money Management Executive](#)