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Don't Miss the US Tax Compliance Boat – OVDP Ends Sept 2018

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If you are an American citizen or green card holder living abroad who has unreported assets and income, time is running out to take advantage of a critical Internal Revenue Service ("IRS") tax compliance program.

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Written exclusively for Expat Network by Kevin Sweeney, Senior Counsel, Chamberlain Hrdlicka (<https://www.chamberlainlaw.com/>)

Here's why. Effective September 28, 2018, the IRS will end its Offshore Voluntary Disclosure Program (OVDP) which has for years enabled taxpayers with unreported foreign financial assets and income to come into compliance with the IRS and pay the taxes, interest and penalties due. To qualify for the program, you must submit your application by this date, with a submission that details all undeclared foreign assets and income as well as the intent to come into compliance with the IRS and pay the taxes, interest and penalties due. However, since these applications must be signed by you, and the penalties of perjury, it is imperative that you and your representatives have sufficient time to identify any and all unreported income and assets, and to assess whether any noncompliance is likely to be considered wilful. Consequently, anyone with undeclared foreign assets and income should seek advice from an expert as soon as possible.

Are there other options? You may ask, "wouldn't I pay even less in penalties if I resolve my past issues by using the IRS's Streamlined Program or simply file amended tax returns?" The answer is: it depends.

While the Streamlined Program (<https://www.irs.gov/individuals/international-taxpayers/streamlined-filing-compliance-procedures>) offers comparatively small penalties, it is intended for people who truly did not realize they had reporting requirements in the first place. Crucially, filing under the Streamlined Program will not protect anyone from criminal prosecution exposure – because, by definition, someone doing so isn't supposed to have any. Moreover, since it requires a certification of non-wilfulness under oath, an inadvertent submission under the Streamlined Program by a wilful taxpayer could have dire consequences.

Similarly, the filing of amended tax returns offers no criminal protections. While it is possible that one could avoid penalties by simply filing amended returns and winning the audit lottery, the consequences of losing are severe. This could include the assessment of FBAR fines up to 50 percent of the highest aggregate balance of undeclared accounts and the assessment of fraud penalties up to 75 percent of the underpayment of tax due.

Will I Get Away With It? In recent years, federal governments have been increasingly sharing information pursuant to tax treaties and Foreign Account Tax Compliance Act ("FATCA"). Moreover, based on the potential pay outs, many more whistleblowers are coming forward now than before. Additionally, numerous international banks have struck



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agreements with the U.S. Department of Justice that require them to share information about U.S. accountholders. All of this information makes it more likely that U.S. taxing authorities will find the types of unreported income that used to elude them.

Seek advice from an expert. To be clear, there are some for whom filing under the OVDP would be the wrong move. The same goes for the Streamlined Program. However, either one could make sense for you, depending on your individual circumstances. To really know what's best, you should consult with a tax attorney who is qualified to assess your situation and determine the best way to handle it. Some may view themselves as non-willful and, thus, may not be motivated by the imminent end of the OVDP. However, this may prove to be a big mistake. To the extent they are wrong, it is likely that they will not realize they need the protection of the OVDP until it is no longer available to them.

There's more than enough time to kick back and soak up the sun before winter. By proactively seeking the assistance of a tax attorney experienced in civil and criminal tax matters now, American citizens and green card holders living abroad can save themselves from getting badly burned both now and in the future.

Kevin F. Sweeney is a Senior Counsel in the Philadelphia Office of Chamberlain Hrdlicka, where he focuses on IRS audits, civil and criminal tax litigation, and corporate investigations. Before private practice, he was a Trial Attorney for the U.S. Department of Justice, Tax Division. Kevin may be reached at (610) 772-2327 or by email at ksweeney@chamberlainlaw.com (mailto:ksweeney@chamberlainlaw.com).

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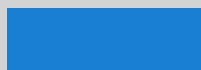
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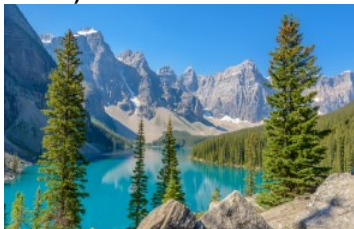


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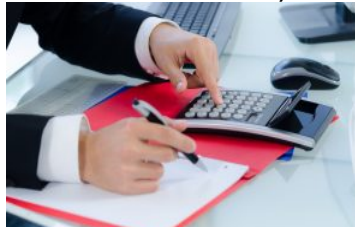
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