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To Disclose Or Not - Foreign Asset Issues

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The [IRS](#) recently extended the Offshore Voluntary Disclosure Initiative (OVDI) only this time without a deadline. The miscellaneous civil penalty was increase to 27.5% from 25% of the highest single year foreign financial account balance. That cost may have a chilling effect on participation, but it should not for some taxpayers.

One of the benefits of entering the OVDI program is that a taxpayer with unreported foreign gifts or bequests, unreported controlled foreign corporations or partnerships, or offshore trusts can file curative returns (late returns for those activities) and avoid the penalties for failing to file the forms timely.

Why is this a big deal? Example:

The penalties for not reporting receipt of a foreign gift or bequest range from 25% -35% of the value of the assets if the value exceeded \$100,000 in a calendar year. The other returns have penalties that can run \$10,000 per year per return. So, if these returns were not filed yet, how will the [IRS](#) discover you?

There is an immediate issue with respect to assets, including interests in closely held businesses and partnerships and foreign trusts.

Beginning this year, a new disclosure form must be included with Form 1040. The new form, Form 8938, requires disclosure of "specified foreign financial assets" which exceed a threshold of \$50,000. Return preparers are likely going to ask about these assets and will be required to either include the assets on the Form 8938 or be subject to sanction by the [IRS](#) if they do not include the form in the return. Conversations with the return preparer about the return are not privileged. That means that the returns preparer can be called as a witness and notes subpoenaed if a case is ultimately brought.

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Additionally, many of the offshore banks are now scrubbing their account records to find evidence of U.S. status. These banks are currently asking account holders to close accounts and provided evidence of U.S. compliance as part of planning to comply with disclosure rules that affect the banks under the Foreign Account Tax Compliance Act (FATCA).

Therefore, given all the various opportunities for discovery of previously unreported foreign assets, gifts or bequests participation in the OVDI program is worth considering.

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