



# THE LATEST IN: INTERNATIONAL TAXES

**FEATURING ARTICLES BY ELI NOFF,  
PARTNER & MARY LUNDSTEDT, ESQ.**

**End of Offshore Voluntary Disclosure Program,  
New International Tax Enforcement Unit &  
The Handling of Passport Transactions**

*Contact Frost & Associates, LLC today if you have questions regarding international tax issues.*



## **END OF OFFSHORE VOLUNTARY DISCLOSURE PROGRAM IMMINENT**

Written by: Eli S. Noff, Partner and  
Mary Lundstedt, Esq.

On March 13, 2018, the IRS issued news release, IR-2018-52, announcing that the Offshore Voluntary Disclosure Program (OVDP) will close on September 28, 2018. The OVDP's objective has enabled willful US taxpayers with undisclosed foreign assets to become compliant with US tax laws, while simultaneously avoiding substantial statutory civil penalties and virtually eliminating their risk of criminal prosecution. Now, willful US taxpayers with undisclosed foreign financial assets have just over 6 months to use the program.

The news release quotes Acting IRS Commissioner David Kautter as stating, "All along, we have been clear that we would close the program at the appropriate time, and we have reached that point. Those who still wish to come forward have time to do so."

Versions of the program date back to 2009, and the IRS reports that, since the initial launch, over 56,000 taxpayers have voluntarily complied. The IRS calculates that the program has generated a total of \$11.1 billion in back taxes, penalties and interest.

The IRS states that "the planned end of the current OVDP also reflects advances in third-party reporting and increased awareness of U.S. taxpayers of their offshore tax and reporting obligations."

Significantly, the end of the program also likely stems from an increased IRS confidence in its ability to unveil the identities of those who have undisclosed foreign assets. Besides the wealth of information available from a number of sources, including tax treaties, the Foreign Account Tax Compliance Act (FATCA), the Foreign Financial Asset Reporting (IRC §6038D), and whistleblower submissions, the IRS assembled its elite international tax enforcement unit in 2017-- dedicated to working and developing significant international tax cases.

The news release provides the following from Don Fort, Chief, IRS Criminal Investigation, "The IRS remains actively engaged in ferreting out the identities of those with undisclosed foreign accounts with the use of information resources and increased data analytics." Fort continued, saying, "Stopping offshore tax noncompliance remains a top priority of the IRS."

While the OVDP is ending, the Streamlined Filing Compliance Procedures program is currently still available to qualifying taxpayers; however, the IRS cautions that it may end this program just as it ended OVDP.

According to the news release, the IRS considers that "the implementation of the Foreign Account Tax Compliance Act (FATCA) and the ongoing efforts of the IRS and the Department of Justice to ensure compliance by those with U.S. tax obligations have raised awareness of U.S. tax and information reporting obligations with respect to undisclosed foreign financial assets." Noting that "the circumstances of taxpayers with foreign financial assets vary widely," the IRS stated that it will continue to provide the following options for non-compliant taxpayers with respect to those assets:

1. IRS-Criminal Investigation Voluntary Disclosure Program;
2. Streamlined Filing Compliance Procedures;
3. Delinquent FBAR submission procedures; and
4. Delinquent international information return submission procedures.

Remember, a 6-month window remains to submit an offshore voluntary disclosure. Without a voluntary disclosure, willful taxpayers run the increasing risk of IRS detection, substantial penalties (including fraud and foreign information return penalties), and criminal prosecution.





## **IRS CRIMINAL INVESTIGATION DIVISION ASSEMBLES**

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## **NEW INTERNATIONAL TAX ENFORCEMENT UNIT**

Written by: Mary Lundstedt, Esq.

With international tax compliance on the IRS's radar, it was revealed publicly to reporters on August 2, 2017, that the IRS Criminal Investigation Division (IRS-CI) is assembling a new, dedicated international tax enforcement unit. The new initiative is expected to be fully operational by October 1. U.S. persons' worldwide income and foreign financial assets are targeted.

According to the new IRS-CI Chief Don Fort, "we're going to be standing up a group of elite special agents in our Washington, D.C., field office that are going to be dedicated to working and developing significant international tax cases. What we're essentially doing is consolidating some of our foremost experts in these international tax cases who are really the nationwide experts in this field and put them under the umbrella of one focused operational group." Before serving as chief, Fort was IRS-CI deputy chief and has spent the past 26 years of his career as an IRS criminal investigation agent.

Besides the base in the Washington, D.C., field office, members of the team will be strategically located throughout the country. The Department of Justice's Tax Division will also be supporting the IRS in this endeavor.

The unit will involve a very heavy data analytics component in order to identify noncompliant taxpayers. Fort clarified that "the goal of the unit is to really use all of the data that we have available to us to help identify and develop areas of noncompliance."

Specifically, the unit will utilize the mass of data recently collected by the IRS from sources such as Foreign Bank Account Reports (FBARs), foreign financial institutions' data gathered as required under the Foreign Account Tax Compliance Act (FATCA), the Panama Papers, and amnesty programs like the Offshore Voluntary Disclosure Program (OVDP).



NOTICE CC-2018-005:

## **HOW CHIEF COUNSEL ATTORNEYS HANDLE PASSPORT ACTIONS**



Written by: Mary Lundstedt, Esq.

On April 5, 2018, the Chief Counsel's Office provided advice in Notice CC-2018-005 to Chief Counsel attorneys who handle I.R.C. §7345 passport actions. The Chief Counsel's Office detailed both the certification and reversal processes for "seriously delinquent taxpayers," as well as the procedures for the judicial review of certifications. Lastly, the Notice indicates that since this is a new area of litigation, with questions still unanswered, these cases are ultimately to be coordinated with Procedure & Administration, Branches 3 and 4.

### **Guidance re Certification and Reversal Processes**

Under the Fixing America's Surface Transportation Act (FAST Act), the State Department must deny a passport application by any individual certified by the IRS as having a "seriously delinquent tax debt." [1] Additionally, the FAST Act authorizes the State Department to revoke a passport held by an individual with seriously delinquent tax debt. The certification process itself is governed by I.R.C. §7345, which also provides taxpayers a limited right to judicial review.

The elements of a "seriously delinquent tax debt," provided by the Notice, are as follows:

1. It is an unpaid, legally enforceable federal tax liability of an individual.[2]
2. The liability must be assessed.[3]
3. The liability must exceed \$50,000.[4]
4. The IRS must have filed a notice of federal tax lien under I.R.C. §6323,[5] or levied under §6331 with respect to the liability.[6]

Under I.R.C. §7345(b)(2), "seriously delinquent tax debt" does not include, (1) a liability being paid timely pursuant to an installment agreement or an offer-in-compromise, and (2) a liability for which a collection due process (CDP) hearing or innocent spouse relief request is pending.[7]

Notice CC-2018-005 also advises that the IRS "will rely on automated systems to identify every module (electronic record of tax liability) on an individual's account with an unpaid assessed tax liability that is not statutorily excepted from the definition of seriously delinquent tax debt or otherwise in a category excluded from certification." Once identified, according to the Notice, the systems will total the amount of unpaid liabilities; if the resulting total exceeds the statutory threshold, then the taxpayer will be identified as having a seriously delinquent tax debt. The Notice clarifies that under these circumstances, a Transaction Code (TC) 971 Action Code (AC) 641 will then post to each module.

Next, according to the Notice, the Small Business/Self Employed Commissioner will make the certification, and the IRS will provide the list of all certified individuals to the State Department. Upon receipt of this list, the State Department will not issue a passport to a listed individual, and it may revoke an already-issued passport, except as necessary for return travel to the United States. Notice CC-2018-005 also states that along with the certification, the IRS will notify individuals of their certification by issuing them a CP508C Notice by regular mail. Among other things, the CP508C Notice will inform the individual of the right to judicial review in a federal district court or the Tax Court.

Furthermore, Notice CC-2018-005 provides that I.R.C. §7345(c) requires reversal of certification when:

1. Certification is found to be erroneous,
2. The seriously delinquent tax debt is fully satisfied, or
3. The debt ceases to be a seriously delinquent tax debt due to an exception under I.R.C. §7345(b)(2).[8]

Once a certified module is qualified for reversal, a TC 972 AC 641 will be posted to it, according to Notice CC-2018-005. Certification "will not be reversed until all modules covered by it have been fully satisfied or otherwise meet the criteria for reversal," the Notice clarifies. After the TC 972 AC 641 is posted, the IRS will concurrently provide notice of the reversal to both the taxpayer and the State Department. The taxpayer will be notified in a CP508R Notice by regular mail.

## Guidance re Judicial Review of Certifications

The Notice explains that per I.R.C. §7345(e)(1), any certified individual may bring a civil action to determine the validity of the certification or whether the certification should have been reversed. The action may be filed in either a federal district court or the Tax Court, according to the Notice. Note that if an action is filed in both federal district court and the Tax Court, the court where the first action was filed has sole jurisdiction.[9] Furthermore, if the court finds an erroneous certification, or that certification should be reversed, the court may order the IRS to notify the State Department.

Additionally, the Notice states that the Tax Court has proposed adding a new Title XXXIV to its Rules of Practice and Procedure. Generally, the proposed rules:

1. Describe the court's jurisdiction,
2. Specify the title and content of a petition,
3. Require the filing of an answer, and
4. State when the case is deemed at issue.

The proposed rules also require, according to Notice CC-2018-005, that a petition include a copy of the CP508C Notice.

The Notice then presents a discussion of the three issues that are expected to be raised by petitioners in certification challenges (ones that the Code fails to specifically address). These are identified in Notice CC-2018-005 as challenges to the underlying liabilities, the period of limitations for bringing an action, and the scope and standard of review in certification actions.



First, the Notice emphasizes that judicial review under I.R.C. §7345 does not include review of the amount of the liability. Secondly, since I.R.C. §7345(e) lacks a specific period of limitations within which a certification action may be brought, the Notice explains that a period of six-years will apply.[10] Thus, individuals will have six years from the issuance of a certification notice to bring an action. Finally, as I.R.C. §7345(e) also fails to specify the scope or standard of review for certification actions, the Notice provides that "review should be limited to the Service's records and whether the certification or failure to reverse the certification was 'arbitrary, capricious, an abuse of discretion, or otherwise not in accordance with law.'"[11] Significantly, the Notice advises that for certification actions arising in Tax Court, I.R.C §7482(b)(1) places appellate venue in the U.S. Court of Appeals for the District of Columbia Circuit.

Notice CC-2018-005 then provides instructions for Chief Counsel Counsel attorneys as to how to handle very particular procedural aspects of certification actions in both the Tax Court and the District Courts. Included in the section for the Tax Court, is (1) a direction for attorneys to include the CP508C Notice along with the answer, in the event that the taxpayer neglects to attach it to the petition, (2) a description of five types of motions for attorneys to consider using, and (3) clarification that "a case may be resolved with a stipulated decision document when the Service erroneously certified a taxpayer, a basis for reversal of a valid certification currently exists, or the taxpayer concedes either that the certification is valid or that there is no basis for reversal." In the context of the District Courts, the Notice states that the Department of Justice will represent the Government and indicates the source of the procedures which Chief Counsel attorneys should follow.

### Coordinating I.R.C. §7345(e) Cases With the National Office

Finally, the Notice ends with the advice that:

"Chief Counsel attorneys should contact Branches 3 or 4 in Procedure & Administration with questions about these cases. Additionally, any document to be submitted to the Tax Court, except for answers not making affirmative allegations and motions to change caption, must be reviewed by those branches before filing. The same is true for any defense letters to be sent to the Department of Justice. To assist in the review, the following documents should be submitted with the document being reviewed: (1) petition or complaint, (2) any attachments to the petition or complaint, (3) a copy of the CP508C if not attached to the petition or complaint, and (4) a copy of the Form 4340 for each tax period giving rise to the certification."