



BDO Seidman, LLP
Accountants and Consultants

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International Tax Alert

Subject:

Voluntary Compliance Program for Payments to Foreign Persons Set to Expire March 31

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For More Information & Your Local Contacts, please contact:

Jack Frame

330 Madison Ave
New York, NY 10017
Phone: 212-885-8125
Fax: 707-982-0633
Email: jframe@bdo.com

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Details:

The Internal Revenue Service Voluntary Compliance Program for payments to foreign persons is scheduled to expire March 31, 2006. For U.S. businesses that are not in compliance with U.S. reporting and withholding requirements for such payments, significant late payment interest and penalties may result if the U.S. business is found to be in noncompliance.

U.S. businesses making payments to foreign persons are generally considered to be withholding agents. Certain requirements for withholding tax and reporting of the payments are required under IRC section 1441 and 1443 for payments of U.S. source dividends, interest, rents, royalties, and other fixed and determinable, annual or periodical income to foreign persons. In general, the voluntary compliance program applies only to tax and reporting obligations related to Forms 1042 and 1042-S. However, other tax reporting and compliance may also need to be done by payers and payees of the payments.

The VCP under Revenue Procedure 2004-59 is a temporary program in which U.S. businesses that are qualified withholding agents that are not currently under audit may voluntarily report to the IRS certain failures and steps to remediate them in connection with their withholding obligations under IRC Sections 1441-1443 and their related payment and reporting requirements. On November 3, 2005, under Revenue Procedure 2005-71, the IRS extended the sunset date for the program to March 31, 2006. The compliance initiative originally was only available until December 31, 2005.

To participate in the program, withholding agents agree to identify areas which are not in compliance with obligations on payments to foreign persons, pay tax, interest, and any penalties, and implement corrective procedures to ensure future compliance. In turn, the IRS won't impose penalties on underpayments that are due to reasonable cause, and will provide the withholding agent with written acknowledgement that its compliance procedures and policies are acceptable.

The March 31 expiration date is an extension from December 31, 2005. There has been some informal discussion on whether the IRS may extend the expiration date. However, as of March 21, 2006, no formal indication of an extension has been issued by the IRS.

Thus, time is very limited to participate in the Voluntary Compliance Program. A request to participate needs to be filed by March 31, 2006.