

## Streamlined Filing Compliance Procedures

---

With the increased efforts to locate tax revenue in relation to foreign assets and accounts and the increased media attention in this area, many US individuals residing abroad are just now becoming aware of their US filing obligations. Many of these individuals have not filed US tax returns, filed incomplete tax returns or did not realize they had filing obligations beyond a tax return. Often these individuals were simply not aware of their filing obligations.

The good news for these Individuals is that in September 2011, the IRS created the Streamlined Filing Compliance Procedures, which allowed many US individuals to become compliant with US tax laws by simply filing a few years of tax returns and informational filings. In return, the IRS waived any penalties associated with the returns and informational filings. The program was available to US Individuals if they met certain criteria and were considered to be at low risk for tax evasion. In June 2014, the IRS expanded this program, which opened its eligibility criteria and eliminated the risk assessment. The expansion of the program also created two different processes and sets of criteria for Individuals wishing to participate; those residing inside (reduced penalties) or outside of the United States (no penalties). Now, almost any US Individual or Estate of a US Individual can become fully compliant through the Streamlined Filing Compliance Procedures if they failed to report any foreign assets and income as required under US rules and regulations, ***but only if they can certify under penalty of perjury that the failure was due to “non-willful conduct”***.

### Willful vs. Non-Willful

‘Willful’ is defined as “a voluntary and intentional violation of a known legal duty”<sup>1</sup>. This simply means the filer chooses not to file after being informed of the requirement to do so. ‘Non-willful’ means “conduct due to negligence, inadvertence, or mistake or conduct that is the result of a good faith misunderstanding of the requirements of the law.”<sup>2</sup> This means the violation was unintentional and due to a reasonable cause; an example would be ignorance of the requirement. Certification of non-willful conduct is not a statement to be made in haste. One must ensure they fully understand the meaning of this statement before certifying under penalty of perjury that they did so.

### Program Treatment

- ✦ Returns submitted through the program will be treated like any other return.
- ✦ There will be no formal acknowledgement from the IRS that returns were “accepted” into the program.
- ✦ Returns will not be automatically subject to audit. They will instead be subject to the regular review and audit procedures for any other return submitted to the IRS.
- ✦ Returns may be subject to usual verification procedures to ensure accuracy and completeness of the information as compared to information received by the IRS from financial institutions, financial advisors and other sources.
- ✦ After submitting a package through the program, the taxpayer will be expected to comply with all future filing obligations, as required and on time.

### Offshore Voluntary Disclosure Program (OVDP)

Taxpayers who have previously submitted under the Offshore Voluntary Disclosure Program (a different compliance program), but have not yet signed a closing agreement may use the terms outlined in the Streamlined Filing Procedures if otherwise eligible. By certifying that the failure to file, report and pay was due to non-willful conduct, the IRS will consider the request and decide whether to apply the same treatment in light of all other facts of the case.

---

<sup>1</sup> IRS Circular 230 - <https://www.irs.gov/pub/irs-pdf/pcir230.pdf>

<sup>2</sup> Streamlined Procedures - <http://www.irs.gov/Individuals/International-Taxpayers/U-S-Taxpayers-Residing-Outside-the-United-States>

## Eligibility Requirements<sup>3</sup>

Taxpayers residing both inside or outside the US are eligible if;

1. They have a valid US tax identification number,
2. The IRS has not initiated a civil or criminal examination of any return for any taxable year,
3. They certify under penalty of perjury that the failure to file, report and pay was due to non-willful conduct, and
4. All penalties assessed on previously filed delinquent or amended returns have been paid.

## Foreign Offshore vs Domestic Offshore

In addition to the eligibility requirements above, the steps involved in making a submission through Streamlined Procedures will depend on whether the taxpayer is submitting through the Foreign Offshore or Domestic Offshore Procedures. The most significant difference between the two methods is whether the taxpayer can be considered a non-resident in any of the last three tax years. There are also a few minor differences. The filer will need to check both sets of program requirements to confirm eligibility.

## Foreign Offshore Procedures

In addition to the requirements discussed earlier, **Foreign Offshore Procedures** also require;

1. The taxpayer must have failed to include income from a Foreign Financial asset or account and pay tax on it. They may have also failed to file an additional informational filing and/or an FBAR,
2. Must meet the non-residency requirement in at least one of the last three most recent tax years that are delinquent, including extensions.

### NON-RESIDENCY REQUIREMENT

#### **US Citizens and Green Card Holders (even if expired)**

- ✦ Must have been outside of the United States for at least 330 full days.
- ✦ Must not have had a US abode as defined in the Internal Revenue Code Section 911. It is also discussed in Publication 54 which can be found at [www.irs.gov](http://www.irs.gov).

#### **Non-Citizens and Non-Residents of the US**

- ✦ Must not have met the Substantial Presence Test as outlined in the Internal Revenue Code Section 7701(b)(3) and discussed in Publication 519 which can be found at [www.irs.gov](http://www.irs.gov).

## IRS Treatment of Foreign Offshore Returns

Returns that have been submitted through this process will be processed as regular returns; will not be subject to special scrutiny or audit outside of the usual procedures; all failure to file, failure to pay, accuracy and FBAR penalties will be waived, and late elections in respect of qualified retirement accounts will also be granted through this program.

## Domestic Offshore Procedures

In addition to the requirements discussed earlier, **Domestic Offshore Procedures** requires that the taxpayer;

1. Must be a US Citizen, Green Card Holder or have met the substantial presence test,
2. Failed to meet the non-residency requirement for Foreign Offshore Procedures,
3. Must have filed a US tax return for each of the last 3 years, and

---

<sup>3</sup> OVDP Eligibility - <http://www.irs.gov/Individuals/International-Taxpayers/Streamlined-Filing-Compliance-Procedures>

4. Must have failed to include income from a Foreign Financial asset or account and pay tax on it. They may have also failed to file an additional informational filing and/or an FBAR.

### **IRS TREATMENT OF DOMESTIC OFFSHORE RETURNS**

Returns that have been submitted through this process will be processed as regular returns; will not be subject to special scrutiny or audit beyond the usual procedures, and late elections in respect of qualified retirement accounts will also be granted through this program.

All accuracy, informational return and FBAR penalties will be waived, but the taxpayer will be required to pay a 5% Title 26 Miscellaneous Offshore penalty<sup>4</sup>. While taxpayers will not escape penalty free, they will pay a very small penalty in relation to the severe and often catastrophic penalties that can be assessed outside of the program.

## **Required Filings**

Taxpayers qualifying under the Streamlined Filing Compliance Program are required to file as follows:

- ✦ The 3 most recent delinquent years of Form 1040 tax returns or amended Form 1040X returns depending on whether the taxpayer is using the Foreign or Domestic Procedures,
- ✦ The 3 most recent years of any informational filings that were required (Forms 5471, 8865, 3520A, 3520, etc.),
- ✦ And the 6 most recent years of FinCEN Form 114 (FBAR) Reports.

All returns and filings are to be filed in a specific format as outlined under the applicable program, along with accompanying certification statement(s), Forms 14653 (Foreign Offshore) or 14654 (Domestic Offshore). The taxpayer must also certify under penalty of perjury that failure to file was non-willful, as described above.

## **Other Options**

The IRS offers several options for taxpayers who have unreported foreign income and assets. Streamlined Filing Compliance Procedures is only one. Taxpayers can review their options at [Options for Taxpayers with undisclosed foreign assets](#).

## **Additional Information**

- ✦ [International Streamlined Filing Procedures](#)
- ✦ [US Taxpayers Residing in the United States](#)
- ✦ [US Taxpayers Residing in the United States-FAQ](#)
- ✦ [US Taxpayers Residing Outside the US](#)
- ✦ [US Taxpayers Residing Outside the US-FAQ](#)
- ✦ [Options Available for US Taxpayers with Undisclosed Foreign Assets](#)

---

<sup>4</sup> Offshore Penalty - <http://www.irs.gov/Individuals/International-Taxpayers/U-S-Taxpayers-Residing-in-the-United-States>