

Instructions for New Streamlined Filing Compliance Procedures for Non-Resident, Non-Filer U.S. Taxpayers

On June 26, 2012, the IRS announced new streamlined filing compliance procedures for non-resident U.S. taxpayers to go into effect on September 1, 2012. These procedures are being implemented in recognition that some U.S. taxpayers living abroad have failed to timely file U.S. federal income tax returns or Reports of Foreign Bank and Financial Accounts (FBARs), Form TD F 90-22.1, but have recently become aware of their filing obligations and now seek to come into compliance with the law. These new procedures are for non-residents including, but not limited to, dual citizens who have not filed U.S. income tax and information returns.

Description of the New Streamlined Procedure:

This streamlined procedure is designed for taxpayers that present a low compliance risk. All submissions will be reviewed, but, as discussed below, the intensity of review will vary according to the level of compliance risk presented by the submission. For those taxpayers presenting low compliance risk, the review will be expedited and the IRS will not assert penalties or pursue follow-up actions. Submissions that present higher compliance risk are not eligible for the streamlined processing procedures and will be subject to a more thorough review and possibly a full examination, which in some cases may include more than three years, in a manner similar to opting out of the Offshore Voluntary Disclosure Program.

Taxpayers utilizing this procedure will be required to file delinquent tax returns, with appropriate related information returns (e.g. Form 3520 or 5471), for the past three years and to file delinquent FBARs (Form TD F 90-22.1) for the past six years. Payment for the tax and interest, if applicable, must be remitted along with delinquent tax returns. For a summary of information about federal income tax return and FBAR filing requirements and potential penalties, see IRS Fact Sheet FS-2011-13. (December 2011).

In addition, retroactive relief for failure to timely elect income deferral on certain retirement and savings plans where deferral is permitted by relevant treaty is available through this process. The proper deferral elections with respect to such arrangements must be made with the submission. See instructions below.

Eligibility:

This procedure is available for non-resident U.S. taxpayers who have resided outside of the U.S. since January 1, 2009 and who have not filed a U.S. tax

return during the same period. These taxpayers must present a low level of compliance risk as described below

Amended returns submitted through this program will be treated as high risk returns and subject to examination, except for those filed for the sole purpose of submitting late-filed Forms 8891 to seek relief for failure to timely elect deferral of income from certain retirement or savings plans where deferral is permitted by relevant treaty. It should be noted that this relief is also available under the Offshore Voluntary Disclosure Program. See below for the information required to be submitted with such requests. (If you need to file an amended return to correct previously reported or unreported income, deductions, credits, tax etc, you should not use this streamlined procedure. Depending on your circumstances, you may want to consider participating in the Offshore Voluntary Disclosure Program.)

All tax returns submitted under this procedure must have a valid Taxpayer Identification Number (TIN). For U.S. citizens, a TIN is a Social Security Number (SSN). For individuals that are not eligible for an SSN, an Individual Taxpayer Identification Number (ITIN) is a valid TIN. Tax returns filed without a valid SSN or ITIN will not be processed. For those who are ineligible for an SSN, but who do not have an ITIN, a submission may be made through this program if accompanied by a complete ITIN application. For information on obtaining an SSN, see www.ssa.gov. For information on obtaining an ITIN, see the [ITIN page](#).

Compliance Risk Determination:

The IRS will determine the level of compliance risk presented by the submission based on information provided on the returns filed and based on additional information provided in response to a Questionnaire required as part of the submission. Low risk will be predicated on simple returns with little or no U.S. tax due. Absent any high risk factors, if the submitted returns and application show less than \$1,500 in tax due in each of the years, they will be treated as low risk and processed in a streamlined manner.

The risk level may rise if any of the following are present:

- If any of the returns submitted through this program claim a refund;
- If there is material economic activity in the United States;
- If the taxpayer has not declared all of his/her income in his/her country of residence;
- If the taxpayer is under audit or investigation by the IRS;
- If FBAR penalties have been previously assessed against the taxpayer or if the taxpayer has previously received an FBAR warning letter;
- If the taxpayer has a financial interest or authority over a financial account(s) located outside his/her country of residence;

- If the taxpayer has a financial interest in an entity or entities located outside his/her country of residence;
- If there is U.S. source income; or
- If there are indications of sophisticated tax planning or avoidance.

For additional information about what information will be requested to evaluate risk, please see the Questionnaire.

Instructions for Using This Procedure:

Taxpayers wishing to use these streamlined procedures must:

1. Submit complete and accurate delinquent tax returns, with appropriate related information returns, for the last three years for which a U.S. tax return is due.
 - a. Please note that all delinquent information returns being filed under this procedure should be sent to the address below with the rest of the submission.
2. Include at the top of the first page of each tax return "Streamlined" to indicate that the returns are being submitted under this procedure. **This is very important to ensure that your returns get processed through these procedures.**
3. Submit payment of all tax due and owing as reflected on the returns and statutory interest due and owing.
 - a. For returns determined to be high risk, failure to file and failure to pay penalties may be imposed in accordance with U.S. federal tax laws and FBAR penalties may be imposed in accordance with U.S. law. Reasonable cause statements may be requested during review or examination of the returns determined to be high risk. For a summary of information about federal income tax return and FBAR filing requirements and potential penalties, see IRS Fact Sheet FS-2011-13 (December 2011).
4. Submit complete and accurate delinquent FBARs for the last six years for which an FBAR is due.
 - a. Please note that all delinquent FBARs being filed under this procedure should be sent to the address below with the rest of the submission and not to the Detroit address where timely filed FBARs are submitted.
5. Submit a complete, accurate, and signed Questionnaire.
6. If the taxpayer must apply for an ITIN in order to file delinquent returns under this procedure, the application and other documents required for applying for an ITIN must be attached to the the required forms, information, and documentation required under this streamlined procedure. See the ITIN page for more.

7. Any taxpayer seeking relief for failure to timely elect deferral of income from certain retirement or savings plans where deferral is permitted by relevant treaty will be required to submit:
 - a. a statement requesting an extension of time to make an election to defer income tax and identifying the pertinent treaty provision;
 - b. for relevant Canadian plans, a Form 8891 for each tax year and each plan and a description of the type of plan covered by the submission; and
 - c. a dated statement signed by the taxpayer under penalties of perjury describing:
 - i. the events that led to the failure to make the election,
 - ii. the events that led to the discovery of the failure, and
 - iii. if the taxpayer relied on a professional advisor, the nature of the advisor's engagement and responsibilities.
8. This program has been established for non-resident non-filers. Generally amended returns will not be accepted in this program. The only amended returns accepted through this program are those being filed for the sole purpose of submitting late-filed Forms 8891 to seek relief for failure to timely elect deferral of income from certain retirement or savings plans where deferral is permitted by relevant treaty. Non-resident taxpayers who have previously filed returns but wish to request deferral provisions will be required to submit:
 - a. an amended return reflecting no adjustments to income deductions, or credits; and
 - b. all documents required in item 7 above.
9. The documents listed above must be sent to:

Internal Revenue Service
3651 South I-H 35
Stop 6063 AUSC
Attn: Streamlined
Austin, TX 78741

Other Considerations:

Taxpayers who are concerned about the risk of criminal prosecution should be advised that this new procedure does not provide protection from criminal prosecution if the IRS and Department of Justice determine that the taxpayer's particular circumstances warrant such prosecution. Taxpayers concerned about criminal prosecution because of their particular circumstances should be aware of and consult their legal advisers about the Offshore Voluntary Disclosure Program (OVDP), announced on January 9, 2012, which offers another means by which taxpayers with undisclosed offshore accounts may become compliant. For additional information go to the OVDP page. It should be noted, however, that once a taxpayer makes a submission under the new procedure described in

this document, OVDP is no longer available. It should also be noted that taxpayers who are ineligible to use OVDP are also ineligible to participate in this procedure.

**Streamlined Filing Compliance Procedures for
Non-Resident, Non-Filer Taxpayers Questionnaire**

NAME			
ADDRESS			
TIN			
TAX YEARS	YEAR:	YEAR:	YEAR:

Please respond to the following questions by checking YES or NO or providing the requested information.

ELIGIBILITY	YES	NO
1. Have you resided in the U.S. for any period of time since January 1, 2009?		
2. Have you filed a U.S. tax return for tax year 2009 or later?		
3. Do you owe more than \$1,500 in U.S. tax on any of the tax returns you are submitting through this program?		
4. If you are submitting an amended return (Form 1040X) solely for the purpose of requesting a retroactive deferral of income on Form 8891, are there any adjustments reported on the amended return to income, deductions, credits or tax?		
<p>If you answered yes to questions 1, 2 (except for taxpayers submitting amended returns solely for the purpose of requesting a retroactive deferral of income on Form 8891), 3, or 4, any returns submitted through this program will not be eligible for the streamlined processing procedures and will be treated as high risk returns subject to an examination. If your answer is yes to any of these questions, you may want to consider a submission through the Offshore Voluntary Disclosure Program.</p>		

FINANCIAL ACCOUNTS/ENTITIES

5. Since January 1, 2006, have you had a financial interest in or signature or other authority over any financial accounts located outside your country of residence?		
a. If yes, are the accounts held in your name?		
b. If yes, list the countries where the accounts were/are held.		
6. Since January 1, 2006, did you have a financial interest in any entities located outside your country of residence?		
a. If yes, do these entities control U.S. investments?		
b. If yes, list the countries where the entities were/are located.		
7. Do you have a retirement account located in your country of residence?		

a. If yes, are earnings from the retirement account non-taxable in the U.S. under current treaty provisions?		
b. If yes, is the retirement account located in Canada and are you filing a delinquent Form 8891 for each year?		
TAX ADVISORS		
8. Did you rely on the advice of a tax professional for not filing required U.S. tax returns?		
a. If yes, is your tax advisor located in the U.S.?		
9. During the above-listed tax years for this submission did you know that you were a U.S. citizen or resident alien?		
a. If yes, did you disclose to your tax professional that you were a U.S. citizen or resident alien?		
10. During the above-listed tax years for this submission, have you declared all of your income in your country of residence?		
11. If you used a tax professional, did you disclose the existence of the accounts/entities you hold outside your country of residence to your tax professional?		
12. Did you know you had a Report of Foreign Bank and Financial Accounts (FBAR), Form TD F 90-22.1, filing requirement when you failed to file an FBAR?		
TAX POSITION		
13. Have you ever filed a U.S. tax return?		
14. Are you currently under audit or investigation by the IRS?		
15. Have you ever filed an FBAR?		
16. Have you received an FBAR warning letter for any of the above-listed tax years for failing to file an FBAR?		
17. Do you have a treaty-based position for your country of residence that reduces your U.S. tax liability?		
18. Were you employed by a U.S. company or entity during any of the above-listed tax years?		
19. During any of the above-listed tax years, did you receive income from any of the following income sources in your country of residence: rental income, sales of property, inheritance?		
20. Are you claiming a refund on any of the returns you are submitting through this program?		
Under penalties of perjury, I declare that I have examined the facts stated in this Questionnaire and to the best of my knowledge and belief, they are true, correct and complete.		
Taxpayer(s) Signature(s)		Date