

Current IRS Programs for Non-Compliant US Persons

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Who is a US Person?

- ⊙ **US citizen by virtue of:**

- US birth (except children of foreign diplomats)
- US parent
- Naturalisation

- ⊙ **Green Card Holder**

- Lawful permanent resident

- ⊙ **Resident Alien**

- Substantial Presence Test
- 183 days in a calendar year

US Basics – Worldwide Taxation

⊙ Worldwide Taxation

- Annual tax return filing requirement
- For 2016 filing threshold ranges from \$4,050 to \$20,700
- Federal Income Tax Rates 10%, 15%, 25%, 28%, 33%, 35% and 39.6%
- 39.6% applies over \$415,050 of taxable income if single or \$466,950 if MFJ
- Qualifying dividends/long-term capital gains taxed at beneficial rates 0% to 20%
- Net Investment Income Tax @ 3.8%
- Foreign Earned Income Exclusion \$101,300
- Foreign Housing Exclusion (\$98,092 limit for Hong Kong)

US Basics – Worldwide

⊙ Worldwide Taxation

- Foreign tax credit allowed against foreign (non-US) income
- Deductions allowed and include mortgage interest, state, real estate and personal property taxes and charitable contributions to US registered charities
- Filing deadline 15th April but can be extended
- Taxpayers residing outside US benefit from automatic filing extension to 15th June
- State taxes?

IRS Reporting Requirements – Information Returns

⊙ Foreign Bank Account Report (FBAR)

- US persons must annually report their financial interest in or signature authority over a financial account maintained with a financial institution located in a foreign country if for any calendar year the aggregate value of all foreign financial accounts exceeds \$10,000
- Penalties for non-filing range from \$10,000 to greater of \$100,000 or 50% of the total balance of the foreign financial account per violation

⊙ Form 8938 – Statement of Specified Foreign Financial Assets

- Penalty for non-filing is \$10,000 for each return where filings thresholds are met

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IRS Reporting Requirements – Information Returns

- ⊙ **Form 3520 – Annual Return to Report Transactions with Foreign Trusts and Receipt of Certain Foreign Gifts**
 - Penalty for non-filing is greater of \$10,000 or 35% of the gross reportable amount except for reporting gifts where penalty can be up to 25% of gift
- ⊙ **Form 3520-A – Information Return of Foreign Trust with US Owner**
 - Penalty for non-filing is greater of \$10,000 or 5% of gross value of trust assets determined to be owned by US person
- ⊙ **Form 5471 – Information Return of US Persons with respect to Certain Foreign Corporations**
 - Penalty for non-filing is \$10,000 for each return

Streamlined Foreign Offshore Procedures

⊙ IRS approved procedure for delinquent filers to get back in the system with NO penalties

- Changes expand previous program to allow more people to qualify
- Available to taxpayers who meet non-US residency requirement, who failed to report foreign financial assets and pay all tax due in respect of such assets and failure results from non-willful conduct
- Requires taxpayers to certify under penalties of perjury that previous failures to comply were due to non-willful conduct
- IRS defines non-willful conduct as “conduct that is due to negligence, inadvertence, or mistake or conduct that is a result of a good faith misunderstanding of the requirements of the law.”
- Taxpayers who qualify must file tax returns/amended tax returns for last three years, including all required information returns as well as last 6 years of FBARs and pay tax interest.

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Offshore Voluntary Disclosure Program

- ⦿ **2012 program – open ended**
- ⦿ **Undisclosed foreign accounts/unreported income**
- ⦿ **Protection from Criminal Prosecution**
- ⦿ **Civil Settlement of Compliance Obligations**
- ⦿ **Fixed penalty in lieu of reporting penalties**
- ⦿ **Must not be currently under investigation**

OVDP - Process

- ⊙ **Taxpayer requests acceptance into program**
- ⊙ **Preliminary IRS acceptance by Criminal Investigations**
- ⊙ **All taxpayers submit:**
 - Returns/Amended Returns
 - Information returns
 - FBARS
 - Offshore account and asset statement
 - Taxpayer account summary with penalty calculation
 - Time limit extension agreement for assessing tax/FBAR penalties
 - Offshore Voluntary Disclosure Letter
 - Account statements for all bank accounts reflecting account activity for OVDP period
 - Full payment

OVDP – The cost

⊙ Period covered?

- Most recent 8 non compliant years i.e. 2008 to 2015 if 2016 timely filed/extended

⊙ How much?


- Tax due
- Interest (4% p.a.)
- 20% Accuracy related penalty
- Failure to file/pay penalties (max 25% of unpaid tax)
- 27.5%/50% OVDP penalty

OVDP – The Penalty

- ⦿ Undisclosed foreign accounts/financial assets aggregated each year
- ⦿ Penalty imposed at 27.5% on highest year's amount
- ⦿ 50% penalty applies if the account -holding foreign bank/institution publically identified as either under or co-operating with an investigation.
- ⦿ Can choose to opt out if statutory penalties are preferable
- ⦿ Case handled under normal IRS audit process

QUESTIONS?

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Conclusion

- ⦿ **Unclear how long Streamlined Program will remain open or under its current terms**
- ⦿ **OVDP may also be revised in the future**
- ⦿ **Unclear what Trump's tax changes will be**
- ⦿ **Time to catch up is now!**