

# TTN Conference Miami 2014

US Offshore Voluntary Disclosure *Streamlined* Compliance  
Procedures for Non-Filing US Taxpayers Residing Abroad

**NO PENALTIES IMPOSED**

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The Bankers Club  
May 2, 2014



# Criminal Investigation Voluntary Disclosure Practice

- Long standing practice of IRS Criminal Investigation (CI)
- Takes truthful, timely and complete voluntary disclosures into account
- Decides whether to recommend to DOJ for criminal prosecution
- Counterpart to the civil (offshore) voluntary disclosure program
  
- Taxpayer shows willingness to cooperate to determine correct tax liability; and
- Taxpayer makes good faith arrangements to pay tax, interest, and penalties
- IRS has not initiated or notified taxpayer of intent to commence civil or criminal investigation;
- IRS has not received information from a third party or from a criminal enforcement action alerting the IRS to the specific taxpayer's noncompliance

# More Recent Civil Voluntary Disclosure Programs

- **2009** Offshore Voluntary Disclosure Program (OVDP)
  - 20% offshore penalty, ended Oct. 15, 2009
- **2011** Offshore Voluntary Disclosure Initiative (OVDI)
  - 25% offshore penalty, ended Sept. 9, 2011
- **2012** Offshore Voluntary Disclosure Program (OVDP)
  - 27.5% offshore penalty
  - announced June 26, 2012 (IR-2012-64), FAQ's posted same date
  - no set deadline for taxpayers to apply
  - program could end or change at any time (i.e., penalties, eligibility)
- **Streamlined Filing Compliance Procedures for Non-Resident, Non-Filer US Taxpayers**
  - no offshore penalty
  - announced June 26, 2012, effective Sept. 1, 2012 (IR-2012-65)
  - referenced in 2012 OVDP FAQ's 17, 18, 51.1, 52

# More Recent Civil Voluntary Disclosure Programs

## Goals

- Uniform penalty structure
- Centralized civil processing of offshore voluntary disclosures
- Avoid substantial civil penalties, including fraud and information return penalties
- Eliminate risk of criminal prosecution
- Degree of certainty as to total cost to resolve all offshore tax issues

# 2012 OVDP Requirements

- File original or amended tax and information returns for most recent 8 years
- Pay 20% accuracy related penalty on additional tax due
- Pay interest and penalty interest on additional tax due
- Pay miscellaneous offshore penalty of 27.5%
  - based upon highest aggregate value of foreign financial accounts (and entities) and value of includible foreign assets (acquired with untaxed funds related to tax non-compliance)
  - charged in lieu of all other applicable penalties on undisclosed foreign assets and entities, including FBAR and offshore related information return penalties
- Enter into closing agreement (Form 906)
- Agree to cooperate with IRS offshore enforcement efforts, if requested

# 2012 OVDP Miscellaneous Offshore Penalty

- Generally, **27.5% of highest aggregate value** of foreign financial accounts/entities
  - add value of **foreign assets (acquired with untaxed funds)**
  - Taxpayers not required to pay penalties in excess of maximum imposed by statute (FAQ 50)
  - **Examiners have no discretion** to negotiate a different penalty percentage
    - **Option to opt out** or withdraw into standard audit process to negotiate (FAQ 51)
      - Election is **irrevocable**
      - **No penalty floor or ceiling** (other than statute)
      - **Reasonable cause, willfulness, mitigating factor and other circumstances considered**

# 2012 OVDP Miscellaneous Offshore Penalty

## FAQ 52, 5% offshore penalty cases

- Heirs
  - Did not open account (unless required by bank upon death of original owner)
  - Minimal, infrequent contact with the account
  - No withdrawals in excess of \$1,000 in any year (except when closing the account)
  - All applicable US income tax (if any was due) paid on deposits (not earnings)
- Foreign residents unaware of US citizenship
- Foreign residents aware of US citizenship or resident alien status
  - Must be compliant with all tax obligations in country of residence
  - \$10,000 or less of US source income each year
  - Foreign income tax returns must include offshore income not reported to US
  - Miscellaneous offshore penalty not applicable to non-financial assets

# 2012 OVDP Miscellaneous Offshore Penalty

FAQ 53, 12.5% offshore penalty cases

- Less than \$75,000 highest aggregate account balance
  - include value of foreign assets acquired with untaxed funds related to tax non-compliance

# Streamlined Filing Compliance Procedures

## Eligibility

- Available to US citizens and green card holders
- Must **reside outside US** since Jan. 1, 2009
- **No filing of US tax return** since Jan. 1, 2009
- Simple returns
- Little or no tax due
- Present **low compliance risks**
  - absent high risk factors, less than \$1500 in tax due each year treated as low risk
- **Does not provide protection from criminal prosecution**
  - ineligible for later participation in OVDP

# Streamlined Filing Compliance Procedures

## Filing Requirements

- File delinquent tax and attached information returns for last 3 years
  - Pay tax and interest due when returns filed
- File FBAR's for last 6 years
- Elect income deferral on retirement plans permitted by treaty
  - only form of amended tax return accepted (Form 8891 for Canadians)
- Submit returns with **valid SSN or ITIN** (or ITIN application)
- Submit **completed and executed Questionnaire** (for eligibility and compliance risks)

# Streamlined Filing Compliance Procedures

## High Risk Factors

- Claims for refund submitted
- Material economic activity in US or US employer
- Failure to declare all income (required) in country of residence
- Awareness of US taxpayer status
- Awareness of US tax filing obligations
- Currently under audit by IRS
- FBAR penalties previously assessed or warned
- Any FBAR filing history

# Streamlined Filing Compliance Procedures

## High Risk Factors (continued)

- Financial accounts located outside country of residence
- Financial interest in any entities located outside country of residence
- Disclosure of foreign accounts or entities to local tax professional
- US source income
- Sophisticated tax planning or avoidance

# Streamlined Filing Compliance Procedures

## IRS Expected Response

- Expedited review, less than 1 year
- No penalties imposed
- Processing confirmation, no-action letter (Letter 5062)

## Questions or Comments?

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