

## IRS Offshore Compliance Programs

The IRS has two offshore voluntary compliance programs; namely, the Streamlined Filing Compliance Process and the Offshore Voluntary Disclosure Program (OVDP). These programs are part of a wider effort to stop offshore tax evasion, which includes enhanced enforcement, criminal prosecutions, and implementation of third-party reporting via the Foreign Account Tax Compliance Act (FATCA). The changes provide new options to help both taxpayers residing overseas and those residing in the United States come into compliance with their U.S. tax obligations.

### Streamlined Filing Compliance Process

The streamlined filing compliance process, often referred to as the "streamlined procedures," are aimed at U.S. taxpayers who have failed to disclose their foreign accounts but are not willfully evading their tax obligations.

The streamlined procedures announced in 2012 were offered only to nonresident non-filers. They also subjected taxpayer submissions to different degrees of review based on the amount of tax due and the outcome of a risk questionnaire they were required to complete.

The modifications to the streamlined procedures accommodate a wider group of U.S. taxpayers with unreported foreign financial accounts. For the first time, certain U.S. taxpayers residing in the United States may qualify for the program. In addition, the risk questionnaire and the requirement that the taxpayer have \$1,500 or less unpaid tax per year **have been eliminated**. In their place, the taxpayer must certify that any previous failures to comply were due to non-willful conduct.

The program waives all penalties for eligible U.S. taxpayers residing outside the United States. However, U.S. taxpayers residing in the United States must pay a miscellaneous offshore penalty equal to 5 percent of the foreign financial assets that gave rise to the tax compliance issue.

### Offshore Voluntary Disclosure Program (OVDP)

Historically, the Offshore Voluntary Disclosure Program (OVDP) has helped individuals avoid criminal prosecution if they disclose their foreign accounts and pay a substantial penalty. Overall, previous versions of the OVDP have resulted in more than 45,000 voluntary disclosures from individuals who have paid about \$6.5 billion in back taxes, interest and penalties. The latest initiative makes the following important modifications to the OVDP:

- additional information is required from applicants;
- the reduced penalty percentage for certain non-willful taxpayers is eliminated due to the expansion of the streamlined procedures;
- all account statements must be submitted, and the offshore penalty paid, at the time of application;
- the penalty percentage is increased (from 27.5% to 50%) if it becomes public that a financial institution where the taxpayer holds an account, or another party facilitating the taxpayer's offshore arrangement, is under investigation by the IRS or Department of Justice before the taxpayer's OVDP pre-clearance request is submitted; and
- the voluminous records required for an OVDP filing may be submitted electronically rather than on paper.



The OVDP can be a significant benefit to affected taxpayers, as penalties outside the program can be onerous. In addition to the penalties below, criminal penalties may also apply.

- For a non-willful failure to file FinCEN Form 114, Report of Foreign Bank and Financial Accounts (FBAR), there is a penalty of up to \$10,000. If the failure to file is willful, the penalty is up to the greater of \$100,000 or 50% of account balances.
- For a failure to disclose foreign financial assets on Form 8938, Statement of Specified Foreign Financial Assets, the penalty is up to \$10,000. However, the penalty increases an additional \$10,000 for each 30 days of non-filing after an IRS notice of a failure to disclose is issued, up to a maximum of \$60,000.

As you can imagine, these offshore account filings can be quite complex. If you are interested in pursuing one of these programs, please call our office at your earliest convenience.

IRS STREAMLINED PROCEDURES

<https://www.irs.gov/individuals/international-taxpayers/streamlined-filing-compliance-procedures>