



IRS Amnesty Explained: Streamlined Filing Compliance Procedures for U.S. Taxpayers with Offshore Accounts



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Over 4.4 million U.S. citizens live abroad – four times the population of Delaware! Moving abroad poses various challenges, particularly regarding income taxation, as the U.S. taxes based on citizenship, not residence. This worldwide income taxation captures U.S. and foreign income from both U.S. individuals moving abroad as well as foreign individuals becoming U.S. taxpayers. While the law provides for ways to avoid double taxation, U.S. taxpayers may also have additional reporting requirements under the Report of Foreign Bank and Financial Accounts (FBAR) regime, requiring U.S. persons with financial interest in or signature authority over foreign financial accounts exceeding \$10,000 in aggregate at any time during the year to file an FBAR. Failure to comply can result in penalties of at least \$10,000/year. Often, in lending applications or in reviewing financial or estate plans, it is discovered that clients have offshore assets and have not been aware of these filing requirements, let alone disclosed the assets and paid taxes on the income.

Enter the Streamlined Filing Compliance Procedures, an IRS amnesty program allowing taxpayers who have failed to report foreign financial assets and pay related taxes to come into compliance. The program requires taxpayers to certify that their noncompliance was due to non-willful conduct which includes conduct that was due to negligence, inadvertence, mistake, or conduct that was the result of a good faith misunderstanding of the requirements of the law.

Who Can Use the Streamlined Filing Compliance Procedures?

Only individual U.S. taxpayers, including their estates, can use these procedures. Corporations, partnerships, S-Corps, and trusts are ineligible. Eligible individuals include U.S. citizens, lawful permanent residents, or resident aliens, but exclude those under IRS examination or criminal investigation. While both taxpayers residing inside and outside the U.S. can qualify, the eligibility requirements and scope differ slightly.

Streamlined Foreign Offshore Procedures (SFOP)

Taxpayers filing under SFOP must meet the non-residency requirements. U.S. citizens and lawful permanent residents (LPRs) qualify if, in any one or more of the most recent three years for which the due date (including extensions) of their tax return has passed, the taxpayer had no U.S. abode and was physically outside the U.S. for at least 330 full days. Non-citizens and non-LPRs qualify if they did not meet the substantial presence test of IRC §7701(b)(3) in any one or more of the last three years for which the tax return due date (including extensions) has passed. Additionally, taxpayers must have failed to report income from foreign financial assets, pay the resulting taxes, and may have failed to file FBARs with respect to those assets.

Streamlined Domestic Offshore Procedures (SDOP)

SDOP are designed for taxpayers who fail to meet the non-residency

requirements discussed above but otherwise satisfy the general eligibility rules. Additionally, taxpayers must have previously filed a U.S. tax return for each of the most recent three years for which the due date (including extensions) has passed and must have failed to report income from foreign financial assets, pay the resulting taxes, and may have failed to file FBARs with respect to those assets.

Filing Requirements

Using either procedure requires filing delinquent or amended tax returns for the most recent three years for which the due date (including extensions) has passed and any delinquent FBARs for the most recent six years. Taxpayers must pay any tax and interest due at the time of filing. Under SFOP, taxpayers avoid paying penalties for failure-to-file and failure-to-pay, accuracy-related penalties, information return penalties, and FBAR penalties. Under SDOP, however, taxpayers are required to pay a 5% penalty on the highest aggregate balance (by year) of their foreign financial assets.

Special Considerations for Expatriation

Taxpayers planning to relinquish citizenship or permanent residence can use the program to become compliant but must certify that they have complied with all U.S. federal tax obligations for the five years preceding the date of the expatriation. While the streamlined foreign offshore procedures can significantly reduce taxpayers' penalties for the three most recent years, taxpayers will still have to file the additional years and may incur additional penalties and interest.

The Streamlined Filing Compliance Procedures offer an important path to compliance for U.S. taxpayers, alleviating penalties for many and ensuring adherence to U.S. tax laws.



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