

# MODIFIED STREAMLINED FOREIGN OFFSHORE PROGRAM FOR U.S. TAXPAYERS RESIDING OUTSIDE THE U.S.

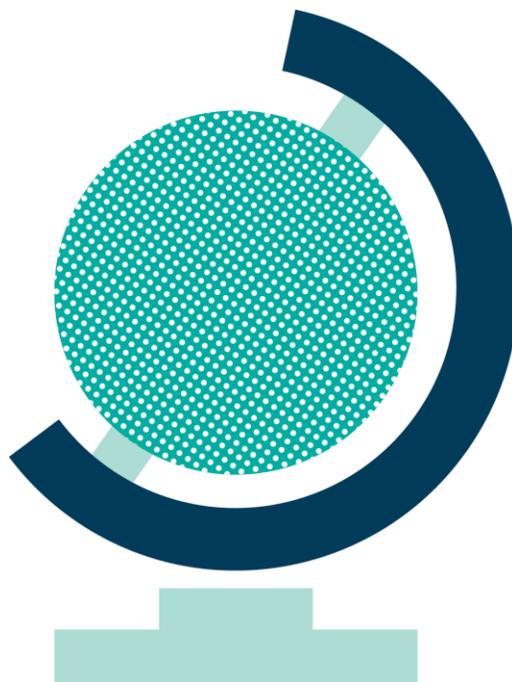
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## REFERENCE GUIDE

UHY VICTOR U.S. WORKING GROUP

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# 1 – BACKGROUND & PURPOSE

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## BACKGROUND

Streamlined program was initiated by the IRS on September 1, 2012.

Major program changes were introduced which became effective July 1<sup>st</sup>, 2014.

The main changes to the streamlined procedures include:

- (1) extension of the eligibility of the program to U.S. taxpayers residing in the United States;
- (2) elimination of the \$1,500 tax threshold and;
- (3) elimination of the original risk assessment process.

## PURPOSE OF THE STREAMLINED PROCEDURES

The streamlined filing compliance program is available to U.S taxpayers who certify that their failure to report foreign financial assets and pay all tax due in respect of those assets did not result from willful conduct on their part.

The streamlined procedures are designed to provide to taxpayers in such situations:

- (1) a streamlined procedure for filing amended or delinquent returns and
- (2) terms for resolving their tax and penalty obligations.

These procedures will be available for an indefinite period, until otherwise announced.

## 2 – OVERVIEW

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- The modified streamlined filing compliance procedures are designed for only individual taxpayers, including estates of individual taxpayers.
- The streamlined procedures are available to both U.S. individual taxpayers residing outside the United States and U.S. individual taxpayers residing in the United States.
- Taxpayers using either the Streamlined Foreign Offshore Procedures or the Streamlined Domestic Offshore Procedures will be required to certify that the failure to report all income, pay all tax, and submit all required information returns ( including FBARs/FinCEN Form 114), was due to non-willful conduct.
- If the IRS has initiated a civil examination of a taxpayer's returns for any taxable year, regardless of whether the examination relates to undisclosed foreign financial assets, the taxpayer will not be eligible to use the streamlined procedures. Taxpayers under examination may consult with their agent. Similarly, a taxpayer under criminal investigation by IRS Criminal Investigation is also ineligible to use the streamlined procedures.
- Taxpayers eligible to use the streamlined procedures who have previously filed delinquent or amended returns in an attempt to address U.S. tax and information reporting obligations with respect to foreign financial assets (so-called "quiet disclosures" made outside of the OVDP or its predecessor programs) may still use the streamlined procedures. However, any penalty assessments previously made with respect to those filings will not be abated.
- All tax returns submitted under the streamlined procedures must have a valid Taxpayer Identification Number (TIN). For U.S. citizens, resident aliens, and certain other individuals, the proper TIN is a valid Social Security Number (SSN). For individuals who are not eligible for an SSN, an Individual Taxpayer Identification Number (ITIN) is a valid TIN. Tax returns submitted without a valid SSN or ITIN will not be processed under the streamlined procedures. However, for taxpayers who are ineligible for an SSN but do not have an ITIN, a submission may be made under the streamlined procedures if accompanied by a complete ITIN application.

## 3 – IRS PROCESSING UNDER THE STREAMLINED PROCEDURES

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- Tax returns submitted in the Streamlined Program will be processed like any other return submitted to the IRS. Consequently, receipt of the returns will not be acknowledged by the IRS, and the streamlined filing process will not culminate in the signing of a closing agreement with the IRS.
- Returns submitted will not be subject to IRS audit automatically, but they may be selected for audit under the existing audit selection processes applicable to any U.S. tax return. Thus, returns submitted may be subject to IRS examination, additional civil penalties, and even criminal liability.
- Taxpayers who are concerned that their failure to report income, pay tax, and submit required information returns was due to willful conduct should consider participating in the Offshore Voluntary Disclosure Program (OVDP).
- After a taxpayer has completed the streamlined filing compliance procedures, he or she will be expected to comply with U.S. law for all future years and file returns according to regular filing procedures.

## 4 – U.S. TAXPAYERS RESIDING OUTSIDE THE UNITED STATES

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Individual U.S. taxpayers, or estates of individual U.S. taxpayers, seeking to use the Streamlined Foreign Offshore Procedures described in this section must:

- (1) meet the applicable non-residency requirement described below (for joint return filers, both spouses must meet the applicable non-residency requirement described below) and
- (2) have failed to report the income from a foreign financial asset and pay tax as required by U.S. law, and may have failed to file an FBAR (FinCEN Form 114) with respect to a foreign financial account, and such failures resulted from non-willful conduct.

**Non-willful conduct is conduct that is due to negligence, inadvertence, or mistake or conduct that is the result of a good faith misunderstanding of the requirements of the law.**

Individuals who are U.S. citizens or lawful permanent residents (i.e., “green card holders”) meet the applicable non-residency requirement if, in any one or more of the most recent three years for which the U.S. tax return due date (or properly applied for extended due date) has passed, the individual did not have a U.S. abode and the individual was physically outside the United States for at least 330 full days.

[Under IRC section 911 and its regulations, which apply for purposes of these procedures, neither temporary presence of the individual in the United States nor maintenance of a dwelling in the United States by an individual necessarily mean that the individual’s abode is in the United States.]

Individuals who are not U.S. citizens or lawful permanent residents meet the applicable non-residency requirement if, in any one or more of the last three years for which the U.S. tax return due date (or properly applied for extended due date) has passed, the individual did not meet the substantial presence test of IRC section 7701(b)(3).

## 5 – DESCRIPTION OF SCOPE AND EFFECT OF PROCEDURES

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Filers in the Streamlined Program must

- (1) for each of the most recent **3 years** for which the U.S. tax return due date (or properly applied for extended due date) has passed, file delinquent or amended tax returns, together with all required information returns (e.g., Forms 3520, 5471, and 8938) and
- (2) for each of the most recent **6 years** for which the FBAR due date has passed, file any delinquent FBARs (FinCEN Form 114, previously Form TD F 90-22.1). The full amount of the tax and interest due in connection with these filings must be remitted with the delinquent or amended returns.

A taxpayer who is eligible to use these Streamlined Foreign Offshore Procedures and who complies with all of the instructions will not be subject to failure-to-file and failure-to-pay penalties, accuracy-related penalties, information return penalties, or FBAR penalties.

Even if returns properly filed under these procedures are subsequently selected for audit under existing audit selection processes, the taxpayer will not be subject to failure-to-file and failure-to-pay penalties or accuracy-related penalties with respect to amounts reported on those returns, or to information return penalties or FBAR penalties, unless the examination results in a determination that the original tax noncompliance was fraudulent and/or that the FBAR violation was willful.

Any previously assessed penalties with respect to those years, however, will not be abated. Further, as with any U.S. tax return filed in the normal course, if the IRS determines an additional tax deficiency for a return submitted under these procedures, the IRS may assert applicable additions to tax and penalties relating to that additional deficiency.

For returns filed under these procedures, retroactive relief will be provided for failure to timely elect income deferral on certain retirement and savings plans where deferral is permitted by the applicable treaty. The proper deferral elections with respect to such plans must be made with the submission.

## 6 – TRANSITION RULES FOR TAXPAYERS UNDER THE 2012 STREAMLINED FILING PROCEDURES

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The risk assessment process associated with the 2012 Streamlined Filing Compliance Procedures for Non-Resident, Non-Filer U.S. Taxpayers has been eliminated for all streamlined filers. A taxpayer who has initiated participation in the 2012 Streamlined Filing Compliance Procedures prior to July 1, 2014, and has not already been notified of a high or low risk determination will not receive correspondence related to their risk determination and the returns will be processed without regard to that risk assessment.

## 7 – SPECIFIC INSTRUCTIONS FOR THE STREAMLINED FOREIGN OFFSHORE PROCEDURES

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Failure to follow these instructions or to submit the items described below will result in returns being processed in the normal course without the benefit of the favorable terms of these procedures.

For each of the most recent 3 years for which the U.S. tax return due date (or properly applied for extended due date) has passed:

- if a U.S. tax return has not been filed previously, submit a complete and accurate delinquent tax return using Form 1040, U.S. Individual Income Tax Return, together with the required information returns (e.g., Forms 3520, 5471, and 8938) even if these information returns would normally be filed separately from the Form 1040 had the taxpayer filed on time, or
- if a U.S. tax return has been filed previously, submit a complete and accurate amended tax return using Form 1040X, Amended U.S. Individual Income Tax Return, together with the required information returns (e.g., Forms 3520, 5471, and 8938) even if these information returns would normally be filed separately from the Form 1040 had the taxpayer filed a complete and accurate original return.
- Include at the top of the first page of each delinquent or amended tax return and at the top of each information return "Streamlined Foreign Offshore" written in red to indicate that the returns are being submitted under these procedures.

- Complete and sign a statement on the Certification by U.S. Person Residing Outside of the U.S. certifying :

(1) that you are eligible for the Streamlined Foreign Offshore Procedures;

(2) that all required FBARs have now been filed; and

(3) that the failure to file tax returns, report all income, pay all tax, and submit all required information returns, including FBARs, resulted from non-willful conduct.

You must submit the original signed statement and you must attach copies of the statement to each tax return and information return (but not FBAR's) being submitted through these procedures.

Failure to submit this statement, or submission of an incomplete or otherwise deficient statement, will result in returns being processed in the normal course, without the benefit of the favorable terms of these procedures.

- Submit payment of all tax due as reflected on the tax returns and all applicable statutory interest with respect to each of the late payment amounts. You may receive a balance due notice or a refund if the tax or interest is not calculated correctly.
- If you are not eligible to have a Social Security Number and do not already have an ITIN, submit an application for an ITIN along with the required tax returns, information returns, and other documents filed under these streamlined procedures.

If you seek relief for failure to timely elect deferral of income from certain retirement or savings plans where deferral is permitted by an applicable treaty, submit:

- a statement requesting an extension of time to make an election to defer income tax and identifying the applicable treaty provision;
- a dated statement signed by you under penalties of perjury describing:
  - (1) the events that led to the failure to make the election,
  - (2) the events that led to the discovery of the failure, and
  - (3) if you relied on a professional advisor, the nature of the advisor's engagement and responsibilities; and
  - (4) 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.

The documents listed above, together with the payments described above, must be sent in paper form (electronic submissions will not be accepted) to:

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

This address may only be used for returns filed under these procedures. For all future filings, you must file according to regular filing procedures.

For each of the most recent 6 years for which the FBAR due date has passed, file delinquent FBARs. You are required to file these delinquent FBARs electronically at FinCen.

On the cover page of the electronic form, select "Other" as the reason for filing late. An explanation box will appear. In the explanation box, enter "Streamlined Filing Compliance Procedures."

## 8 – TAXPAYER’S BEWARE

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### TAXPAYER’S BEWARE: PROVING NON-WILLFUL CONDUCT IN THE NEW IRS STREAMLINED FILING COMPLIANCE PROCEDURES

by Parag Patel, Attorney on July 2, 2014

*Taxpayers should think carefully before entering a new Internal Revenue Service program titled Streamlined Filing Compliance Procedures for offshore-account holders whose conduct was not “willful”. On June 18th, the IRS announced significant changes to its limited-amnesty programs for U.S. taxpayers holding undeclared offshore accounts abroad. These offshore-account holders now can opt for a new “streamlined procedure.” Participants must file three years of back tax returns and six years of Foreign Bank Account Reports. Participants must also sign a statement certifying that their previous mistakes were “due to non-willful conduct.”*

*Under this new option, there is a 5% penalty on the balance of the undisclosed account for taxpayers living in the U.S.—and none at all for taxpayers living elsewhere.*

*Taxpayers in the IRS’s Offshore Voluntary Disclosure Program—for those who intentionally hid money abroad—must pay a much higher penalty: 27.5% of the account’s peak balance. Interest, other penalties and advisers’ fees can raise the total cost to about 50% of the account’s value.*

*People who are considering opting for the more lenient, streamlined program to be aware of the meaning of “willful” in tax law. Those who sign the statement in error are at risk of severe penalties and criminal prosecution. The IRS has stated that “willfulness is determined by the facts and circumstances of each case,” and that it will depend on tax professionals “to help taxpayers get the right answer in individual cases.”*

*Evidence of willfulness often includes the following: having an account in a country with bank secrecy rules; holding the account in a trust, foundation or other entity typically used to conceal ownership; moving the account from a firm under U.S. pressure to another, presumably to avoid disclosure; making large cash withdrawals; instructing a firm not to mail statements to the U.S., or communicating in code with it; or having secret meetings with advisers or account representatives. The amount of money is also important: the larger the asset value, the less likely it is nonwillful.*

*Evidence of nonwillful behavior could include having a small account, especially in comparison to the taxpayer's other assets; an account on which no U.S. tax is due; a foreign government-sponsored savings or pension account; minimal or no withdrawals; and no prior U.S. tax filings.*

**There is no perfect fact pattern or objective test for non-willful conduct.** *The IRS certification requires a signed sworn statement that “[the taxpayer’s] non-willful conduct is conduct that is due to negligence, inadvertence, or mistake or conduct that is the result of a good faith misunderstanding of the requirements of the law.” Furthermore the taxpayer must “provide specific reasons for your failure to report all income, pay all tax, and submit all required information returns, including FBARs. If you relied on a professional advisor, provide the name, address, and telephone number of the advisor and a summary of the advice. If married taxpayers submitting a joint certification have different reasons, provide the individual reasons for each spouse separately in the statement of facts.” See the “non-willful” certification statement available at <http://www.irs.gov/pub/irs-utl/CertUSResidents.pdf>. Advocacy is required to affirmatively and persuasively demonstrate legal grounds for non-willfulness. Do not disclose too much and beware of badges (evidence) of willfulness, blind willfulness, concealment, etc. For more information see IRS IRM 4.26.16.4.5.*

***It is likely that the IRS will carefully monitor taxpayer filings with large accounts making fraudulent claims in the streamlined program and punish them severely to send a warning.***

*While the streamlined program offers a welcome option for many taxpayers with undeclared accounts, other ways to address past noncompliance remain viable, including the [OVDP](#) program and Delinquent [FBAR](#) Submission Procedures and Delinquent International Information Return Submission Procedures.*

# 9 – FORM 14653

Form <b>14653</b> (August 2014)	Department of the Treasury - Internal Revenue Service <b>Certification by U.S. Person Residing Outside of the United States for Streamlined Foreign Offshore Procedures</b>	OMB Number 1545-2241
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Name(s) of taxpayer(s)	TIN(s) of taxpayer(s)

Note: Spouses should submit a joint certification if they are submitting joint income tax returns under the Streamlined Foreign Offshore Procedures. If this certification is a joint certification, the statements will be considered made on behalf of both spouses, even though the pronoun "I" is used. If spouses submitting a joint certification have different reasons for their failure to report all income, pay all tax, and submit all required information returns, including FBARs, they must state their individual reasons separately in the required statement of facts.

**Certification**

I am providing delinquent or amended income tax returns, including all required information returns, for each of the most recent 3 years for which the U.S. tax return due date (or properly applied for extended due date) has passed. The tax and interest I owe for each year are as follows

Year <i>(list years in order)</i>	Amount of Tax I Owe <i>(Form 1040, line 76, or Form 1040X, line 19)</i>	Interest	Total
			\$0.00
			\$0.00
			\$0.00
<b>Total</b>	\$0.00	\$0.00	\$0.00

Note: Your payment should equal the total tax and interest due for all three years. You may receive a balance due notice or a refund if the tax or interest is not calculated correctly.

I failed to report income from one or more foreign financial assets during the above period.

I meet the non-residency requirements for the Streamlined Foreign Offshore procedures.

Note: Both spouses filing a joint certification must meet the non-residency requirements.

I meet all the other eligibility requirements for the Streamlined Foreign Offshore procedures.

If I failed to timely file correct and complete FBARs for any of the last six years, I have now filed those FBARs.

I agree to retain all records related to my income and assets during the period covered by my delinquent or amended returns until three years from the date of this certification. If I was required to file delinquent FBARs in accordance with these procedures, I also agree to retain all records (including, but not limited to, account statements) related to my foreign financial accounts until six years from the date of this certification. Upon request, I agree to provide all such records to the Internal Revenue Service.

My failure to report all income, pay all tax, and submit all required information returns, including FBARs, was due to non-willful conduct. I understand that non-willful conduct is conduct that is due to negligence, inadvertence, or mistake or conduct that is the result of a good faith misunderstanding of the requirements of the law.

I recognize that if the Internal Revenue Service receives or discovers evidence of willfulness, fraud, or criminal conduct, it may open an examination or investigation that could lead to civil fraud penalties, FBAR penalties, information return penalties, or even referral to Criminal Investigation.

Provide specific reasons for your failure to report all income, pay all tax, and submit all required information returns, including FBARs. If you relied on a professional advisor, provide the name, address, and telephone number of the advisor and a summary of the advice. If married taxpayers submitting a joint certification have different reasons, provide the individual reasons for each spouse separately in the statement of facts. The field below will automatically expand to accommodate your statement of facts.

Under penalties of perjury, I declare that I have examined this certification and all accompanying schedules and statements, and to the best of my knowledge and belief, they are true, correct, and complete.

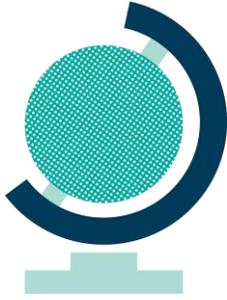
Signature of Taxpayer	Name of Taxpayer	Date
Signature of Taxpayer (if joint certification)	Name of Taxpayer (if joint certification)	Date

**For Estates Only**

Signature of Fiduciary	Date
Title of Fiduciary (e.g., executor or administrator)	Name of Fiduciary

**Privacy Act and Paperwork Reduction Notice**

We ask for the information on this certification by U.S. person residing in the United States for streamlined domestic offshore procedures to carry out the Internal Revenue laws of the United States. Our authority to ask for information is sections 6001, 6109, 7801, 7803 and the regulations thereunder. This information will be used to determine and collect the correct amount of tax under the terms of the streamlined filing compliance program. You are not required to apply for participation in the streamlined filing compliance program. If you choose to apply, however, you are required to provide all the information requested on the streamlined certification. You are not required to provide the information requested on a document that is subject to the Paperwork Reduction Act unless the document displays a valid OMB control number. Books or records relating to a document or its instructions must be retained as long as their contents may become material in the administration of any Internal Revenue law. Generally, tax returns and return information are confidential, as required by section 6103. Section 6103, however, allows or requires the Internal Revenue Service to disclose or give this information to others as described in the Internal Revenue Code. For example, we may disclose this information to the Department of Justice to enforce the tax laws, both civil and criminal, and to cities, states, the District of Columbia, and U.S. commonwealths or possessions to carry out their tax laws. We may also disclose this information to other countries under a tax treaty, to federal and state agencies to enforce federal nontax criminal laws, or to federal law enforcement and intelligence agencies to combat terrorism. Failure to provide this information may delay or prevent processing your application. Providing false information may subject you to penalties. The time needed to complete and submit the streamlined certification will vary depending on individual circumstances. The estimated average time is: 2 hour



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