

# TAX 101 – INTRODUCTORY LESSONS: UNDISCLOSED OFFSHORE ACCOUNTS, ARE YOU ELIGIBLE FOR STREAMLINED PROCEDURES?

## Authors

Stanley C. Ruchelman  
and Armin Gray

## Tags

O.V.D.P.  
Streamlined Procedures

For persons having undisclosed offshore accounts and contemplating participation in the I.R.S. voluntary disclosure program, one frequently asked question is eligibility for the streamlined procedures (“Streamlined Procedures”) announced by the I.R.S. O.V.D.I.<sup>61</sup> The Streamlined Procedures are effective as of September 1, 2012 and should be considered if there are offshore tax-noncompliance issues. If an individual qualifies, the benefits are substantial: he or she will be eligible for fast-track resolution of the case, the look-back period is limited to three years of delinquent tax returns and six years of F.B.A.R.s, and he or she will avoid penalties. However, most taxpayers will not qualify as eligibility is limited to a narrow class of taxpayers where intentional tax non-compliance is unlikely to exist.

To be eligible for the Streamlined Procedures:

- The individual must have resided outside of the U.S. since January 1, 2009.
- The individual must be a non-filer and must not have filed a U.S. tax return for the same period. Subject to a limited exception with respect to retirement or savings plans such as certain Canadian retirement plans for which a Form 8891 is applicable, amended returns will be treated as high-risk returns and not eligible for fast-track.
- The taxes due after foreign tax credit and after the foreign earned income exclusion must, in general, be less than \$1,500 for each of the years in the three-year period. If the tax due exceeds \$1,500, the return will be treated as high risk. However, the I.R.S. has stated that persons with high risk returns are not *per se* ineligible for the program. Rather, the I.R.S. will review the taxpayer’s file more carefully to determine whether evidence of

---

<sup>61</sup>

See [New Filing Compliance Procedures for Non-Resident U.S. Taxpayers, Instructions for New Streamlined Filing Compliance Procedures for Non-Resident, Non-Filer U.S. Taxpayers, and Frequently Asked Questions Regarding the Streamlined Filing Compliance Procedures for Non-Resident, Non-Filer Taxpayers, available at: \[www.irs.gov\]\(http://www.irs.gov\).](#)

tax fraud or willfulness exists. In addition, the I.R.S. warns that it may impose penalties where appropriate.

- None of the following “high risk” factors must be present:
  - The return seeks a refund;
  - The return reflects material economic activity in the U.S.;
  - The individual has not declared all of his or her income in the tax returns of the country of residence;
  - The individual is under audit or investigation by the I.R.S.;
  - F.B.A.R. penalties have been previously assessed against the individual or the individual has previously received an F.B.A.R. warning letter;
  - The individual has a financial interest in or authority over a financial account located outside the country of residence;
  - The individual has a financial interest in an entity or entities located outside the country of residence;
  - The individual has U.S. source income;
  - The individual engaged in sophisticated tax planning or tax avoidance.

A person participating in the Streamlined Procedures will be required to fill out a questionnaire that is reviewed by the I.R.S. to determine eligibility.<sup>62</sup> All answers must be certified as truthful under the penalty of perjury.

If a person is eligible for the program, complete and accurate delinquent tax returns must be filed for “the last three years for which a U.S. tax return is due,” six years of F.B.A.R.s, and payment of back taxes owed (if any).

The following examples illustrate the eligibility requirements of the Streamlined Procedures.

---

<sup>62</sup> See Non-Resident Questionnaire, available at: [http://www.irs.gov/pub/irs-utl/non-resident\\_questionnaire.pdf](http://www.irs.gov/pub/irs-utl/non-resident_questionnaire.pdf).

*“At least one I.R.S. examiner informally advised that tax returns should be filed from 2009 onwards presumably because the I.R.S. does not want participants to choose which three years are covered. According to this examiner, the three-year look-back period always begins in 2012 and additional years could be filed through the program or through regular channels.”*

**Example 1** Taxpayer (“T”) is a U.S. citizen who has lived for the past decade in Italy. T is employed in Italy. T has filed U.S. income tax returns (Form 1040) reporting his foreign earned income but failed to report his interest in or pay taxes on income earned from several foreign bank accounts located in Italy.

Because T has filed Form 1040’s in previous years, T is not eligible for the Streamlined Procedures. Amended returns are treated as high risk returns.

**Example 2** The facts are the same as Example 1, except T was a non-filer and thus did not file any returns. Also, several bank accounts are maintained in Switzerland and T did not pay taxes in Italy on income earned from those accounts. Since T has not declared all of his income in Italy, T may not be eligible for the program as a high risk factor is present.

**Example 3** The facts are the same as Example 1, except T was a non-filer but the aggregate U.S. tax liability was \$10,000 for each year in question as T’s invested in a Channel Islands partnership that was tax transparent for U.S. tax purposes but not for Italian tax purposes. No distributions were received from those partnerships even though the income of the partnerships was substantial. Although T is not *per se* disqualified from the program, T’s submission may be treated as high risk.

One final point is that the I.R.S. may believe that the years included in the catch-up filing requirement can extend beyond three years. At least one I.R.S. examiner informally advised that tax returns should be filed from 2009 onwards presumably because the I.R.S. does not want participants to choose which three years are covered. According to this examiner, the three-year look-back period always begins in 2012 and additional years could be filed through the program or through regular channels.