



# How to solve the U.S. Tax Compliance problem?

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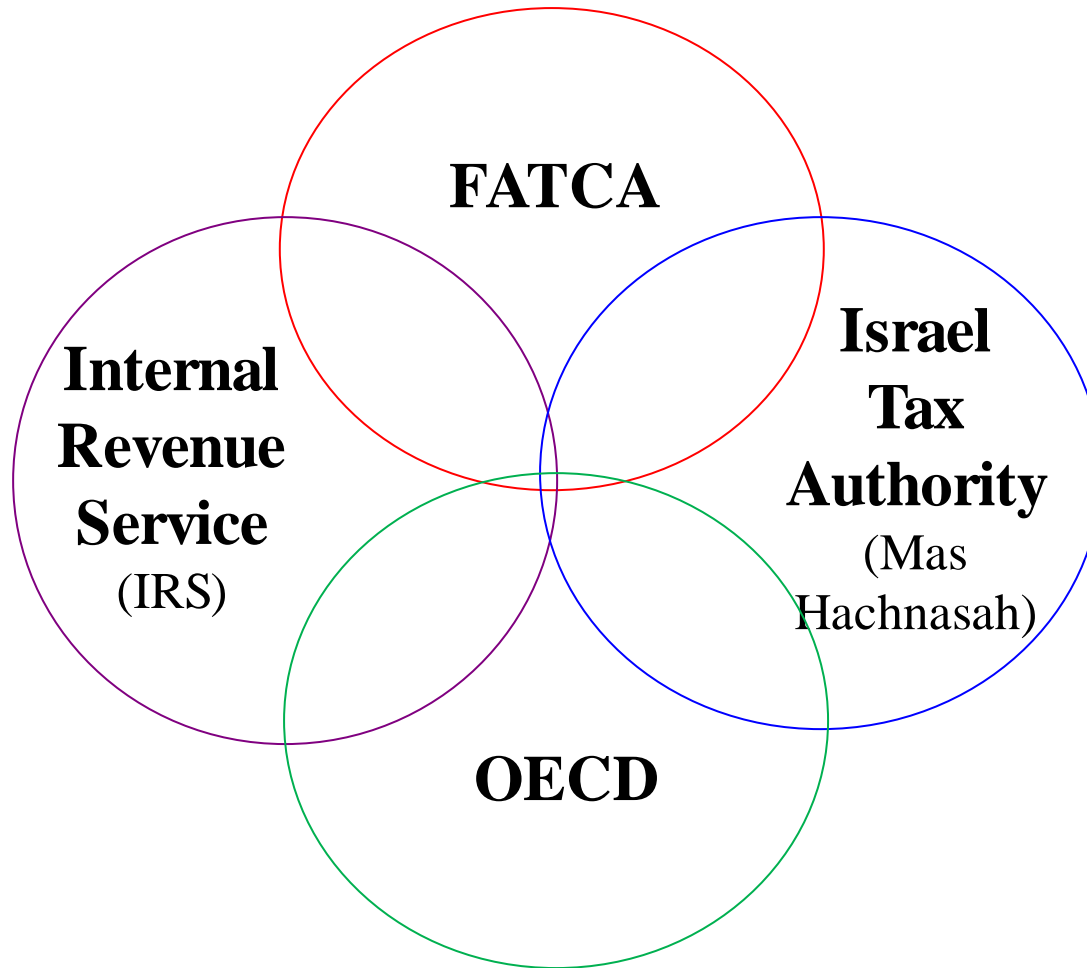
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# Why now more than before?

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# Agenda

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- Overview of U.S. tax compliance problem of unreported foreign income or foreign bank accounts by U.S. Citizen and/or Green Card holder
- Prior IRS Offshore Voluntary Disclosure Programs (“OVDP”)
  - 2009, 2011, 2012 through June 30, 2014
- Significant changes as of July 1, 2014

# Prior OVDP

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## ■ 2009 OVDI

- 8 years income tax returns and FBARs (start from 2002 or 2003)
- 20% FBAR Penalty on non-complaint:
  - bank accounts
  - assets purchased with “tainted” funds

## ■ 2011 OVDI

- Increased FBAR penalty to 25%
- Introduction of FAQ 52, Part 3
  - **Reduced 5% FBAR penalty for foreign residents**

# Prior OVDP

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- Make a good faith showing of timely compliance with all tax reporting and payment requirements in the country of residency; and
- Limited to under \$10,000 of U.S. sourced income:
  - Use of Possible Treaty Protection: U.S.~Israel
    - e.g. Social Security Payments
- Major emphasis on PFIC and Mark-to-Market – Section 1291 election
- Many cases still unassigned
- FAQ 17 – Failure to file FBAR’s and no unreported income

# Prior OVDP

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- 2012 OVDP
  - Increasing FBAR penalty to 27.5%
  - Very limited formal Streamlined Program
    - 3 years of tax returns
    - 6 years of FBAR documents
    - Less than \$1,500 of tax per year – no offset for refunds
    - Extremely limited feedback (if at all)
    - No protection from IRS audits

# Prior OVDP

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- For these taxpayers only, the offshore penalty is not applicable to non-financial assets
  - Such as real property, business interests, or artworks, purchased with funds for which the taxpayer can establish that all applicable taxes have been paid, either in the U.S. or in the country of residence.
  - Exception only applies if the income tax returns filed with the foreign tax authority included the offshore-related taxable income that was not reported on the U.S. tax return.

# Possible Options

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- New Offshore Voluntary Disclosure Program (“OVDP”) (as of July 1, 2014)
- New Streamline Program (as of July 1, 2014) – Requires Non-Willful Certificate
- Quiet Disclosure
- Prospective Compliance only - מכאן ולהבא
- No submission - שב ואל תעשה



# 2014 OVDP – Filed after July 1, 2014

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- No more 5% FBAR Penalty – foreign residents
- FBAR Penalties – Either **27.5% or 50%**
- Must pay FBAR penalty at time of submission
- Preclearance and full intake forms require more information
- IRS processing time is getting longer...and longer

# OVDP Filings as of August 4, 2014

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## ■ Increasing the FBAR penalty percentage (from 27.5% to 50%) if any one of the following banks are involved:

- UBS AG
- Credit Suisse AG, Credit Suisse Fides, and Clariden Leu Ltd.
- Wegelin & Co.
- Liechtensteinische Landesbank AG
- Zurcher Kantonalbank
- Swisspartners Investment Network AG, swisspartners Wealth Management AG, swisspartners Insurance Company SPC Ltd., and swisspartners Versicherung AG
- CIBC FirstCaribbean International Bank Limited, its predecessors, subsidiaries, and affiliates
- Stanford International Bank, Ltd., Stanford Group Company, and Stanford Trust Company, Ltd.
- The Hong Kong and Shanghai Banking Corporation Limited in India (HSBC India)
- The Bank of N.T. Butterfield & Son Limited (also known as Butterfield Bank and Bank of Butterfield), its predecessors, subsidiaries, and affiliates

(last update as per IRS website was 20-Jun-2014)

## ■ When or if Israeli banks to be added?

# 2014 OVDP Initiative – New Streamline Program (Post July 1, 2014 Filing)

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- If comfortable “non-willful” activity
  - No need for prior IRS approval
  - No Stage 2 filing requirements (extensive bank account details not required)
  - FBAR penalty:
    - “0” - Foreign Resident
    - 5% - domestic resident

# 2014 OVDP Initiative – New Streamline Program (Post July 1, 2014 Filing)

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- The new Streamline Program
  - File last 3 years tax returns (e.g., 2011, 2012 and 2013 or begin with 2010 if 2013 on valid extension)
  - File last 6 year FBAR documents (e.g., 2008, 2009, 2010, 2011, 2012 and 2013)
  - Use IRS Form 14653 and develop statement of Non-Willful Certification
  - Must be signed under Penalties of Perjury

# New Streamline Program/Non-Willful

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- Fundamental questions:
  - Was failure to comply with IRS tax rules “Non - Willful”?
  - What does “Non - Willful” mean?
  - See new IRS certification forms (separate for domestic and foreign taxpayers)
  - Very little “new” guidance issued by IRS
  - How risky is the effort?
  - Some traps for the unwary

# New Streamline Program/Non-Willful

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- Can statement of non-willful activities hurt the taxpayer?
  - The taxpayer could face more severe penalties and/or criminal prosecution.
- Does size of account matter?
- What if:
  - Maintain account in country with bank secrecy rules
  - Account in a trust or foundation (or other entity used to conceal ownership)
  - Has account been moved, and if so, why?
  - Large withdrawals
  - Asked for mail to be held and not sent to U.S.
  - Managed Account

# New Streamline Program/Non-Willful

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- Options – KYC (Know Your Client)
  - Have you received full disclosure of facts?
  - What if you are wrong?
  - Did you receive and review account opening statements and beneficial ownership forms from bank?

# Quiet Disclosure

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- File some delinquent tax returns and prior FBARs (may be “noisy” disclosure if include short narrative especially on FBAR filing).
- Not to be used if “**Willful**” cases.
- Pros:
  - Ease of use
- Cons:
  - Open Statute of Limitations
  - No formal closure nor peace of mind



# Old OVDP Cases Filed Before September 2012

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## ■ Options include:

- Opt Out and be removed entirely from OVDP
- Stay in old OVDP and secure a 5% FBAR penalty but may have late filing and late payment delinquency penalties
- Request Transition Streamline treatment – requires Non-Willful certification
  - No FBAR penalty but delinquency penalties apply
  - Still secure Form 906, Closing Agreement

# Old OVDP Cases Filed Before September 2012

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- Request modified 2012 Streamline program
  - Non filer since 2009
  - Foreign resident
  - No Mark-to-Market election for PFIC's

## Pros:

- No delinquency or FBAR penalties – could be huge savings
- May provide quick closure of case

## Cons:

- No formal Form 906, Closing Agreement (risk should be low given completed audit results)

# Old OVDP Cases Filed from September 2012 – June 30, 2014

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- Options include:

- Opt Out and be removed entirely from OVDP
- Request Streamline program (not the new post July 1, 2014 Streamline program)

**Pros:**

- No FBAR Penalty
- May expedite process
- If not accepted then may continue in OVDP
- Still have formal Form 906, Closing Agreement

**Cons:**

- Delinquency penalties (late filing or late payment) will still apply
- Need formal IRS consent to “transition”

# Delinquent FBAR's & No Unreported Income

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- As of July 1, 2014 new rules for filing delinquent FBAR documents where no unreported income:
  - Follow FBAR filing instructions; and
  - Include statement explaining why FBAR's are filed late – Very Important

# Delinquent FBAR's & No Unreported Income

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- No FBAR penalty
  - Not previously contacted (e.g., income tax exam)
  - No request for delinquent returns for years in which FBAR's are submitted.
- Not automatically subject to audit but may be selected for audit

# Summary

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- Still have time to correct problem but need to take action
- Increased FATCA requirements and Israeli banks regulatory oversight

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■ שאלות?

■ Questions?