



The Perfect Storm II

How to Correct the Problem: OVDP, Streamline or Other Alternative?

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Overview

- US Citizen or Green Card Holder and Unreported Income and/or non-filer of FBAR documents – Civil or Criminal considerations
- Serious Tax Compliance Problems – Impact of FATCA, OECD, Israeli Banks, IRS and Mas Hachnasa
- Increased reporting and technology increases compliance risks
- Can the tax problems be solved in the U.S.?

Possible Options

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

2014 OVDP – Filed after July 1, 2014

- 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

- 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
- When or if Israeli banks to be added?

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

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

- 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)

- 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

- 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

- 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

- 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

- 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

- 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

- 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

- 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

- 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

- 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

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

■ שאלות?

■ Questions?