



Chief Counsel

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Compliance and Criminal Enforcement Options for Noncompliant International Taxpayers

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Objectives

- Broadly summarize Offshore Compliance Options Available to U.S. Taxpayers
- Describe the Offshore Voluntary Disclosure Program (OVDP)
- Describe the Streamlined Filing Compliance Procedures and the key differences between Streamlined Domestic Offshore (SDO) and Streamlined Foreign Offshore (SFO)
- Briefly highlight delinquent FBAR filing procedures and delinquent international information return filing procedures



Four Offshore Compliance Options

1. OVDP
 - Transition Streamlined
2. Streamlined Filing Compliance Procedures
 - Streamlined Foreign Offshore
 - Streamlined Domestic Offshore
3. Delinquent FBAR Submission Procedures
4. Delinquent International Information Return Submission Procedures

Reference: Options Available for U.S. Taxpayers with Undisclosed Foreign Financial Assets on IRS.gov



Offshore Compliance Options on IRS.gov

The screenshot shows the IRS website interface. At the top left is the IRS logo. To the right are links for 'Subscriptions' and 'Language'. Below these is a search bar with the text 'Search'. A navigation menu contains links for 'Filing', 'Payments', 'Refunds', 'Credits & Deductions', 'News & Events', 'Forms & Pubs', and 'Help & Resources'. On the left side, there is a vertical menu with categories: 'Employees', 'Self-Employed', 'International Taxpayers' (highlighted), 'Military', 'Parents', 'Seniors & Retirees', and 'Students'. The main content area features the title 'Options Available For U.S. Taxpayers with Undisclosed Foreign Financial Assets' with icons for heart, plus, and print. The text explains that FATCA implementation has raised awareness of U.S. tax and information reporting obligations for non-U.S. investments. It lists four options for addressing previous failures to comply: 1. [Offshore Voluntary Disclosure Program](#); 2. [Streamlined Filing Compliance Procedures](#); 3. [Delinquent FBAR submission procedures](#); and 4. [Delinquent international information return submission procedures](#). A note states that each option is explained below and that taxpayers should consult with professional tax or legal advisors. The page footer indicates it was last reviewed or updated on 14-May-2015.



Statistics

- OVDP
 - 55,800 taxpayers made OVDP disclosures
 - Over \$9.9 billion collected
- Streamlined Procedures
 - More than 48,000 taxpayers made submissions
 - More than 96,000 delinquent and amended returns submitted

Source of statistics- IR-2016-137 (10/21/2016)



OVDP – Key terms for all programs

- Preclearance through CI (not required)
- Amended/delinquent returns for disclosure period
 - Pass on criminal prosecution
 - Pay back taxes, accuracy-related penalty and/or delinquency penalties, and miscellaneous offshore penalty (MOP)
- IRS “certifies” the submission
 - Less than an examination
 - Review of amended returns
 - Review financial records
 - Verify FBAR reporting
 - Taxpayer cooperation essential



OVDP – Key terms for all programs

- Miscellaneous Offshore Penalty (MOP)
 - Determine Highest Aggregate Balance (HAB)
 - All assets related to tax noncompliance
 - Compute the MOP based on HAB (MOP % x \$ in HAB)
- Close case with Form 906 Closing Agreement
 - Identifies offshore income
 - Includes accuracy-related or delinquency penalties
 - Applies MOP to specific year

Summary of OVDP Evolution

	2009 Offshore Voluntary Disclosure Program	2011 Offshore Voluntary Disclosure Initiative	2012 Offshore Voluntary Disclosure Program	Modified 2012 Offshore Voluntary Disclosure Program
CI protection	Yes	Yes	Yes	Yes
Information required for preclearance by CI	Name, address, date of birth, and TIN	Name, address, date of birth, and TIN	Name, address, date of birth, and TIN	Name, address, date of birth, TIN, telephone number, identifying information of all financial institutions at which undisclosed accounts were held, and identifying information of all foreign and domestic entities (e.g., corporations, partnerships, LLCs, trusts, foundations) through which undisclosed accounts were held
Penalty terms	Miscellaneous Title 26 offshore penalty of 20% in lieu of other applicable penalties	Miscellaneous Title 26 offshore penalty of 25% in lieu of other applicable penalties Reduced penalty of 5% offered to taxpayers meeting certain criteria deemed to be non-willful conduct Reduced penalty of 12.5% for taxpayers with accounts with balances below \$75,000	Miscellaneous Title 26 offshore penalty of 27.5% in lieu of other applicable penalties Reduced penalty of 5% offered to taxpayers meeting certain criteria deemed to be non-willful conduct Reduced penalty of 12.5% for taxpayers with accounts with balances below \$75,000	Miscellaneous Title 26 offshore penalty of 27.5% in lieu of other applicable penalties The miscellaneous offshore penalty increases to 50% if the taxpayer has or had an undisclosed foreign financial account held at a foreign financial institution or if the account was established with the help of a facilitator where the institution or facilitator has been publicly identified as being under investigation or cooperating with a government investigation.
Covered period	6 years	8 years	8 years	8 years
Closing agreement	Yes	Yes	Yes	Yes
Relief for taxpayers who did not timely elect to defer U.S. income tax on undistributed income earned by certain registered Canadian retirement and savings plans	No	No	Yes	Yes

Not used or cited as precedent.



2014 OVDP Key Modifications

- Increase information required for preclearance (FAQ 23)
- 50% offshore penalty in connection with public disclosures (FAQ 7.2)
 - Accounts with foreign financial institutions
 - Account established or maintained by a facilitator
- Eliminate the existing reduced penalty categories for certain non-willful taxpayers (FAQs 52 and 53)
- Payment of the offshore penalty at the time of the OVDP submission (FAQs 7 and 25)
 - FAQ 20 and 25 contemplate raising inability to fully pay at beginning of OVDP process

Reference FAQ 1.1 for all significant changes to the 2012 OVDP.

Not to be used or cited as precedent.



2014 OVDP Key Modifications (cont.)

- Submit all account statements (voluminous account records may be provided on a CD) (FAQs 25 and 25.2)
- Changes to asset base and elimination of valuation discounts (FAQs 31 through 41)
- Emphasizes that protection from criminal prosecution is contingent on cooperation through the end of the process



Opt Out and Removal

- Statute extensions requested with OVDP submission in the event of opt out/removal - (FAQs 25 and 43)
- Cases that cannot be resolved in OVDP with a Form 906 (FAQ 51)
 - Opt Out - Taxpayer's choice
 - Removal - Service's choice
 - Procedures in place – see Opt Out and Removal Guide (link to guide is embedded in FAQ 51)



CI Office of International Operations (IO)

- CI's Office of International Operations (IO) promotes a comprehensive international strategy in responding to global financial crimes and provides support in combating offshore tax evasion
- Over the past twenty years, CI has increased its presence overseas
 - CI has special agent attachés strategically stationed in ten foreign countries – attachés continue to build strong alliances with foreign government and law enforcement partners.



CI Priorities

- To identify tax haven countries, financial institutions and promoters of abusive offshore structures that aid and abet U.S. taxpayers who evade tax and foreign financial reporting requirements.
- To provide quality investigative support, assistance, strategic planning, coordination, policy, direction and guidance on international investigations and referrals related to international tax fraud, narcotics, terrorist financing and global financial crimes.



CI Priorities

- To work with domestic and international law enforcement to identify and investigate Transnational Organized Crime (TOC) organizations, narcotics trafficking, and the financing of terrorism.
- To identify emerging international enforcement trends by intelligence sharing and working with U.S. law enforcement, both domestic and abroad, foreign governments and their law enforcement components, other IRS business units, and the private sector.

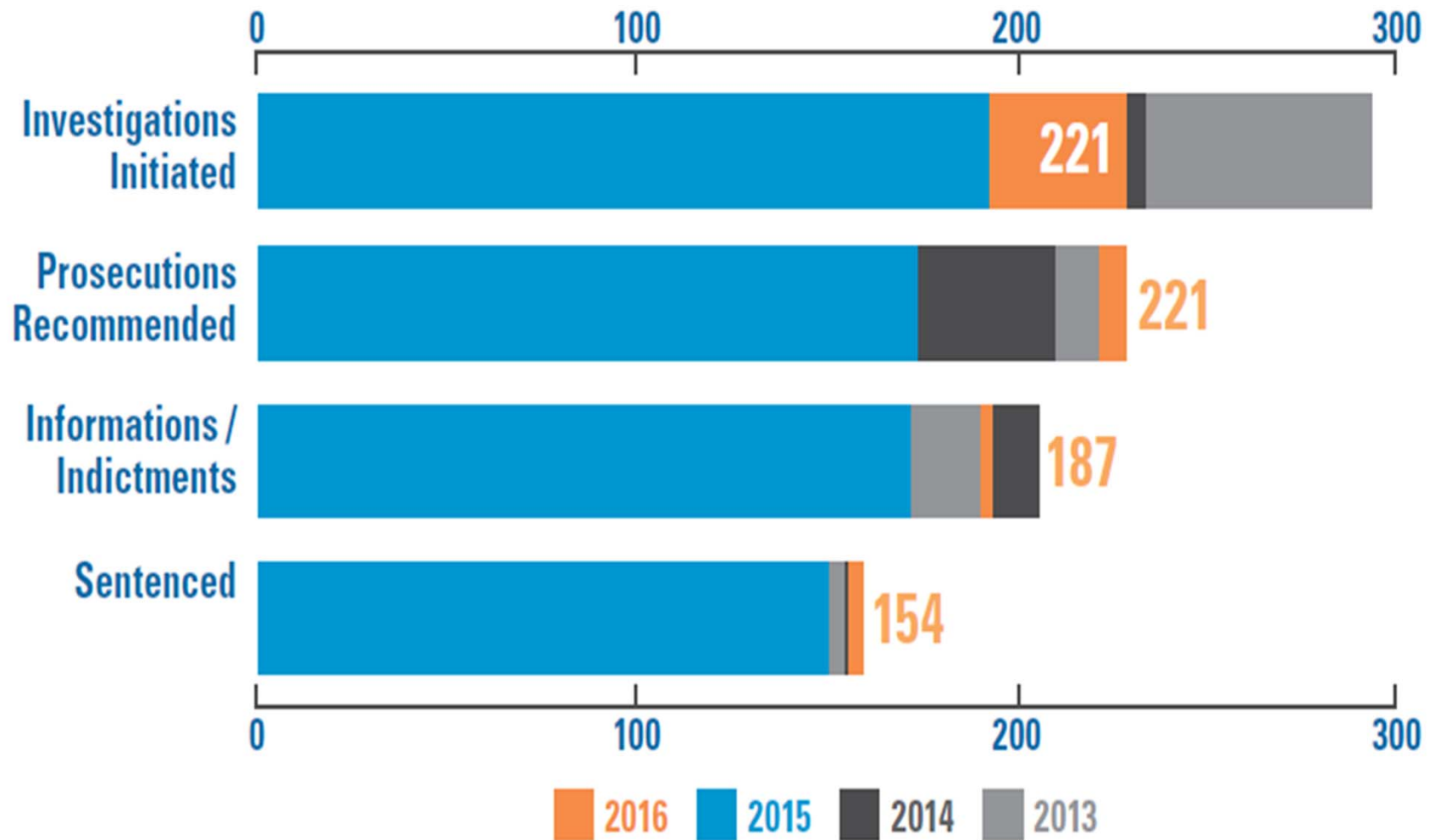


CI FY 2016 YTD Statistics

	FY 2014	FY 2015	FY 2016
Investigations Initiated	4297	3853	3395
Prosecution Recommendations	3478	3289	2744
Informations /Indictments	3272	3208	2761
Conviction Rate	93.4%	93.2%	92.1%
Total Sentenced	3268	3092	2699
Percent to Prison	79.6%	80.8%	79.9%
Average Months to Serve	42	40	41



INTERNATIONAL INVESTIGATIONS



Not to be used or cited as precedent.

CRIMINAL INVESTIGATION FIELD OPERATIONS: INTERNATIONAL





CI Case Activity Update

- Voluntary Disclosure Case Development Project
 - Targeting financial institutions that assist criminals in hiding and laundering illicit proceeds.
 - Continue using the Voluntary Disclosure Analysis Capability (“VDAC”) database to identify potential bank targets.
- International Investigations
- Swiss Bank Project
- “Global Leaks”-ICIJ
 - Panama Papers, Luxembourg, Bahamas



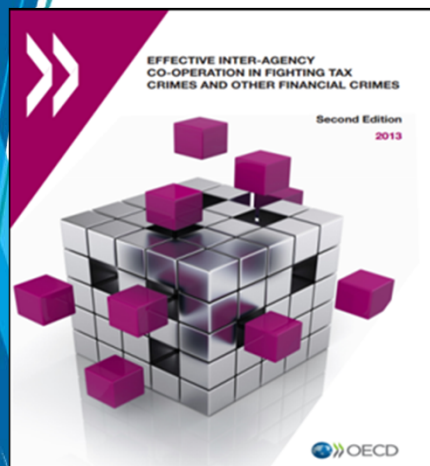
International Criminal Tax Collaboration “Force Multiplier”

- **Shared Priorities:**
 - Identification of Global Tax Crime Trends.
 - Development of Investigative Strategies.
 - Enhance International Collaboration.
 - Assessment of Current Programs and Strategies.
 - Sharing of Best Practices/Future Partnership Opportunities.

OECD-Task Force on Tax Crimes and Other Financial Crimes

For many years, the OECD has developed recommendations, best practices and practical guidance for countries to:

- strengthen their legal and regulatory framework, and
- their administrative and practical ability to prevent, detect, investigate, and prosecute tax crimes and other financial crimes.
- IRS-CI is the Chair of the Task Force
- Over 40 Countries Participate





International Bank & Financial Institution Investigations

- Involved in Numerous International Bank/Financial Institution Investigations.
- Criminal Violations include Tax (Title 26); Conspiracy (Title 18); Money Laundering (Title 18); War & National Defense (Title 50); and Bank Secrecy Act – BSA (Title 31).
- Some Deferred Prosecution Agreements (DPAs) and Non-Prosecution Agreements (NPAs) used.
- Violations Have Included:
 - Conspiracy.
 - Impeding the Lawful Function of the IRS.
 - Fraud and False Statements.
 - International Emergency Economic Powers Act (IEEPA).
 - Trading With the Enemy Act (TWEA).



Int'l Bank & Fin. Inst. Investigations (cont'd)

- Charges Brought Against 18 Int'l Banks to date
 - 6 Resulted in Criminal Charges
 - 10 Resulted in Deferred Prosecution Agreements
 - 2 Resulted in Non-Prosecution Agreements
- Fines, Penalties, Restitution, and Forfeitures Involved
 - Extraordinary fines paid by banks:
 - UBS \$780,000,000
 - Credit Suisse \$2,600,000,000
 - Bank Leumi \$270,000,000
- Related Indictments:
 - In Excess of 30 Foreign Bank Employees and Investment Advisors
 - More than 100 U.S. Citizens with Hidden Offshore Accounts



Swiss Bank Program

- Program announced August 29, 2013.
- Purpose for Swiss banks not the target of a criminal investigation to obtain resolution for the past and to assist DOJ in its law enforcement efforts.
- Joint Statement reflected that Switzerland would take measures within its existing legal framework to put Swiss banks in position to cooperate with DOJ.
- Swiss banks encouraged to inform U.S. account holders of voluntary disclosure programs.
- Treaty requests pursuant to current U.S. - Swiss double tax treaty and 2009 Protocol, when it is in force and applicable.
- Program first of its kind targeted at financial institutions in a particular country.



Swiss Bank Program

- **Category 1.** Swiss banks under DOJ investigation as of August 29, 2014 (14 banks). Not eligible under Program.
- **Category 2.** Swiss banks that have reason to believe may have committed tax-related or monetary transaction offenses. Request NPA but subject to penalties, offset by penalty mitigation; cooperation required.



Swiss Bank Program - Program Limitations

- Program does not contemplate disclosure of names of account holders.
 - In limited cases, disclosure may occur; e.g., pursuant to a client waiver.
- Program only encompassed Swiss Financial Institutions that are depository or custodial institutions.
- Program did not cover individuals or other Swiss Financial Institutions, such as Investment Entities or Insurance companies.
- Swiss banks that did not enter Program no longer have opportunity to participate in Program.



CI - Where are we going next?



Not to be used or cited as precedent.



Reasons for 2014 Streamlined Procedures

- OVDP penalty structure disproportionate for certain taxpayers
- Taxpayers who disagreed with penalty structure were:
 - Filing “quiet disclosures”
 - Entering OVDP then opting out
 - Remaining non-compliant
- 2012 Streamlined Procedures had narrow eligibility requirements
- 2014 Streamlined Procedures modifications greatly expanded eligibility



Modifications to Streamlined Procedures

“Our goal is to ensure we have struck the right balance between emphasis on aggressive enforcement and focus on the law-abiding instincts of most U.S. citizens who, given the proper chance, will voluntarily come into compliance and willingly remedy past mistakes.”

“We are considering whether our voluntary programs have been too focused on those willfully evading their tax obligations and are not accommodating enough to others who don’t necessarily need protection from criminal prosecution because their compliance failures have been of the non-willful variety.”

(Commissioner Koskinen, 6/18/14 , Quote from U.S. Council for Int’l Business – OECD Int’l Tax Conference)



Streamlined Procedures Eligibility

- U.S. Individuals and estates only
- Failed to report foreign financial assets or pay all tax due in respect of those assets
- Able to certify failures are related to non-willful conduct
- Not currently under IRS examination or criminal investigation
- Have a valid Taxpayer Identification Number



SSN/TIN required for submissions

If a taxpayer is not eligible for a Social Security Number (SSN) and does 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.
- Search “ITIN” on www.irs.gov for more information.

If a taxpayer is eligible for an SSN and does not have one, first obtain an SSN before making a submission under the Streamlined Procedures. If a taxpayer eligible for an SSN makes a Streamlined Procedures submission without an SSN, the return will be processed subject to penalties applicable outside of the Streamlined Procedures.



Certifications for 2014 Streamlined Procedures

- Form 14654 – SDO
 - Requires foreign financial asset information for 6 year period
 - Includes computation of MOP
- Form 14653 – SFO
- Forms have been revised several times in the last 2 years
 - Feb. 2016: revision emphasize that taxpayers **MUST** include narrative statement of facts and provide guidance on providing a complete narrative
 - Latest version - June 2016



Certifications required on Forms 14653 and 14654

Both forms require taxpayers to agree to terms and represent certain facts:

- Retaining records for 6 years and providing records upon request
- Representing that failures were due to non-willful conduct
- Acknowledging possibility of examination



Definition of “Non-Willful” for Streamlined Procedures

“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.”

- Based on facts and circumstances of each case
- No one fact controls analysis
- Press coverage includes 2014 TNT 212-7, document 2014-26106 (11/3/2014)



Statement of Facts for Non-Willful Certifications

- Written statement signed under penalties of perjury
- Certifying non-willful conduct with respect to all foreign activities and assets
- Provide reasons for the income and information reporting failures
- Specifically identify professional advisor and advice relied upon



Explaining Non-Willful Conduct

SFO FAQ #6 and SDO FAQ #13 provide guidance

- Provide specific reasons and background
- Include the whole story including favorable and unfavorable facts
- Explain the source of funds in all foreign financial accounts/assets
- Explain contacts with the account/asset including withdrawals, deposits, and investment/management decisions



Explaining Non-Willful Conduct (cont'd)

- What if I checked no on Schedule B?
- What if I owned or controlled a foreign entity?

You must complete this part if you (a) had over \$1,500 of taxable interest or ordinary dividends; (b) had a foreign account; or (c) received a distribution from, or were a grantor of, or a transferor to, a foreign trust.		Yes	No
Part III Foreign Accounts and Trusts <small>(See instructions on back.)</small>	7a At any time during 2015, did you have a financial interest in or signature authority over a financial account (such as a bank account, securities account, or brokerage account) located in a foreign country? See instructions		
	If "Yes," are you required to file FinCEN Form 114, Report of Foreign Bank and Financial Accounts (FBAR), to report that financial interest or signature authority? See FinCEN Form 114 and its instructions for filing requirements and exceptions to those requirements		
	b If you are required to file FinCEN Form 114, enter the name of the foreign country where the financial account is located ► 		
	8 During 2015, did you receive a distribution from, or were you the grantor of, or transferor to, a foreign trust? If "Yes," you may have to file Form 3520. See instructions on back		



SFO vs. SDO

SFO – Streamlined Foreign Offshore

- Meet non-residency requirement
- Provide delinquent or amended income tax returns (Form 1040/1041)
- Forms 1040NR are not accepted
- No penalties

SDO – Streamlined Domestic Offshore

- Do not meet SFO residency requirements
- Must have filed income tax returns before submitting amended returns through procedures
- 5% penalty on assets reportable on FBAR/F. 8938
(explained infra)



SFO Non-Residency Requirements

Individuals who are U.S. citizens or lawful permanent residents

- In any one or more of the most recent three years
 - Not have a U.S. abode and
 - Physically outside the United States for at least 330 full days
- Both taxpayers on joint return must meet residency requirements
- Snowbird Issue— some taxpayers fail SFO if present in US more than 35 days/year but cannot use SDO because they did not file income tax returns



SDO Miscellaneous Offshore Penalty

5% Title 26 miscellaneous offshore penalty applied to assets:

- in the covered FBAR period if the asset should have been, but was not, reported on an FBAR (FinCEN Form 114) for that year
- in the covered tax return period if the asset should have been, but was not, reported on a Form 8938 for that year
- in the covered tax return period if the asset was properly reported for that year, but gross income in respect of the asset was not reported in that year

See SDO FAQ 6

Year end account/asset values are used to aggregate assets

Exceptions for assets:

- Accounts with no financial interest are excluded (e.g. mere signature authority)- see SDO FAQ 1
- Canadian RRSP/RRIF accounts – see SDO FAQ 8

Not to be used or cited as precedent.



OVDP and Streamlined Procedures Refinements

- **FAQs**
 - Refined, modified, new FAQs added based on feedback from stakeholders
 - Service welcomes practitioner feedback
- **Form changes and new forms (e.g., Form 14708)**



FAQs for Streamlined Procedures and Delinquent Return Procedures

- Initial Streamlined Procedures FAQs released on 10/8/14, additional FAQs released 7/16/15 and 1/7/16
- Key FAQs for SDO
 - FAQ 1: Assets included in penalty base
 - Assets in which taxpayer had no financial interest are not included in penalty base
 - FAQ 4: Valuing entities
 - Disregarded entities- look through to the underlying financial accounts
 - Corporations- use stock value (no discounts per FAQ 5)
 - FAQ 7: Allows recently compliant taxpayers (2013, 2012, 2011) to enter Streamlined and pay 5% for earlier years
 - Recurring pattern for certain Swiss account holders



Streamlined Procedures FAQs (cont'd)

- SFO FAQ 7 and SDO FAQ 14 provide a procedure for a joint filer to make an individual Streamlined Procedure submission
 - Joint amended income tax returns with only one signature
 - Amended income tax returns must reflect increase in tax
 - Explain circumstances
 - Write “SFO FAQ 7” or “SDO FAQ 14” in red ink on amended returns and certification form



Streamlined Procedures FAQs (cont'd)

- SFO FAQ 9 and SDO FAQ 16 provide a procedure for correcting mistakes in earlier Streamlined Procedures submissions
 - Explain all facts and circumstances concerning the error in the original Streamlined Procedures submission
 - Opportunity to self-correct before IRS identifies issue and initiates examination
 - On certification form write “amended” in red ink
 - On tax returns write “Amended Streamlined Domestic Offshore” or “Amended Streamlined Foreign Offshore”



Rev. Proc. 2014-55

Certain Canadian Retirement Plans

- Rev. Proc. 2014-55 provides procedures for Canadian retirement plans
 - Deemed treaty election for eligible taxpayers
 - Form 8891 obsolete
 - FBARs and Form 8938 still required
- 2014 OVDP and Streamlined Procedures FAQs take into account Rev. Proc. 2014-55
 - SDO FAQ 12 addresses reconsideration process for SDO submissions that paid MOP on RRSP accounts
 - Form 14708



Streamlined Procedures – Post Submission

- Unlike OVDP, Streamlined Procedures cases do not involve Service personnel certifying submissions and do not culminate in a closing agreement
- Streamlined Procedures attempt to normalize return processing
 - Returns are processed by Submission Processing
 - Returns may be selected for examination



Trending Problems Observed with Streamlined Procedures Submissions

- Insufficient narrative statement of fact
 - Provide a complete story
 - See SFO FAQ 6 and SDO FAQ 13 for guidance
- OVDP MTM PFIC computation used for Streamlined Procedures submissions
- Filing Forms 1040NR
- Depreciation method for foreign residential rental property. See I.R.C. 168(g)(2) (requiring 40 year recovery using straight line method)
- Request for relief of taxes not contemplated by Procedures (e.g., Form 5329)



Trending Problems (cont'd)

- Related parties selecting different compliance paths (OVDP and Streamlined Procedures) attempting to allocate ownership of asset
 - Example of impermissible allocation: Father, Brother, and Sister all have signature authority over same Swiss bank account. Bank account has \$1,000,000 balance for all years. Father enters OVDP and claims he's 50% owner of account, paying MOP at rate of 27.5% on \$500,000. Brother and Sister make SDO submissions, each paying SDO MOP at rate of 5% on \$250,000 each.



Trending Problems (cont'd)

- Mistakes with SDO penalty base

“A foreign financial asset is subject to the 5-percent miscellaneous offshore penalty in a given year in the covered FBAR period if the asset should have been, but was not, reported on an FBAR (FinCEN Form 114) for that year. A foreign financial asset is subject to the 5-percent miscellaneous offshore penalty in a given year in the covered tax return period if the asset should have been, but was not, reported on a Form 8938 for that year. A foreign financial asset is also subject to the 5-percent miscellaneous offshore penalty in a given year in the covered tax return period if the asset was properly reported for that year, but gross income in respect of the asset was not reported in that year.”

quote from <https://www.irs.gov/individuals/international-taxpayers/u-s-taxpayers-residing-in-the-united-states>



Trending Problems – Mistakes with SDO Penalty (cont'd)

- Submissions that fail to include in the SDO penalty base foreign financial assets that were not reported on FBARs but were tax compliant
 - Some representatives are pointing out their creativity with footnotes
 - Other representatives do not make their creativity clear and later argue including tax compliant accounts in SDO penalty base is “unfair”



Trending Problems – Mistakes with SDO Penalty (cont'd)

- Failure to include assets in the penalty base may result in
 - IRS reversing beneficial penalty provisions of procedures
 - Examination
- What should a representative do if an asset was omitted from the SDO penalty base?
 - Follow the procedures in SDO FAQ 14 to provide an amended certification



Recurring Practitioner Question about Non-willful Certifications

Question: Does feedback on non-willful certifications for OVDP Transition Streamlined requests indicate how the Service reviews non-willful certifications for new Streamlined submissions?

Answer: The review of non-willful certifications in OVDP Transition Streamlined cases is different from the review of new Streamlined Procedures submissions.



Recurring Practitioner Question about Virtual Currencies

Question: Are virtual currencies held on foreign exchanges reportable under I.R.C. section 6038D?

Provide written comments on I.R.C. § 6038D reporting to:

Joseph S. Henderson
Office of Chief Counsel
1111 Constitution Ave NW
Rm. 4554 (CC:INTL)
Washington, DC 20224



Delinquent FBAR Procedures

- File all FBARs electronically with FinCEN
 - <http://bsaefiling.fincen.treas.gov/main.html>
 - BSA e-filing system offers an instruction booklet that provides line by line instructions for filing FBARs
- On cover page select reason for filing late
- Include statement explaining why filing late



FBAR Developments

- Change in due date
 - The FBAR is due by April 15 of the following year beginning with 2016 FBAR (31 U.S.C. § 1010.306(c))
- Statutory penalties adjusted for inflation
 - For FBARs due after August 1, 2016:
 - “Non-willful” penalty raised from \$10,000 to \$12,459 per account for failing to file a timely, complete, and correct FBAR
 - Minimum “willful” penalty raised from \$100,000 to \$124,588 (penalty based on the account balance unaffected)
- Interim Final Rule, 31 CFR § 1010.821 (6/30/2016)



FBAR Penalty Guidance

- May 13, 2015 interim guidance provided new guidance on FBAR penalties
- Penalty guidance incorporated into I.R.M. 4.26.16 (11/6/2015)
- Penalties are based on the facts and circumstances of each case



FBAR Penalty Guidance

- Penalty for Willful FBAR Violations - Calculation – I.R.M. 4.26.16.6.5.3
 - (2) “[I]n most cases, the total penalty ... will be limited to 50 percent of the highest aggregate balance...”
 - (3) “Examiners may recommend a penalty that is higher or lower than 50 percent of the highest aggregate account balance ... In no event will the total penalty amount exceed 100 percent of the highest aggregate balance... .”
- Highest aggregate balance occurs on any day during the reporting year
- See 2014 OVDP FAQ 50.1 for application to OVDP FAQ 50 analysis



FBAR Penalty Guidance

- Penalty for Nonwillful Violations - Calculation – I.R.M. 4.26.16.6.4.1
 - (1) “[I]n most cases, examiners will recommend one penalty per open year, regardless of the number of unreported foreign accounts. The penalty for each year is limited to \$10,000.”
 - (4) “In no event will the total amount of the penalties for nonwillful violations exceed 50 percent of the highest aggregate balance of all unreported foreign financial accounts... .”



Delinquent Information Return Procedures

Taxpayers who:

- have not filed required international information returns,
- have reasonable cause,
- are not under civil examination/criminal investigation, and
- have not been contacted about the delinquent information returns

May file the delinquent information returns with a statement of all facts establishing reasonable cause for the failure to file

- Normalizes handling delinquent information returns
- Penalties may be imposed if the Service does not accept the explanation of reasonable cause

Summary of Offshore Compliance Options

	Offshore Voluntary Disclosure Program	Streamlined Filing Compliance Procedures		Delinquent FBAR Procedure	Delinquent International Information Return Procedure
		U.S. Persons Living Outside the United States	U.S. Persons Living Inside the United States		
Taxpayers for whom the compliance option is designed	Bad actors	Persons living outside the United States who were not aware of their U.S. tax obligations	Non-willful actors	Persons not seeking treatment under OVDP or Streamlined Procedures but who failed to file FBARs	Persons not seeking treatment under OVDP or Streamlined Procedures but who failed to file international information returns
Penalty terms	Miscellaneous Title 26 offshore penalty of 27.5% in lieu of other applicable penalties	No Penalties	Miscellaneous Title 26 offshore penalty of 5% in lieu of other applicable penalties	No automatic penalties; taxpayer provides statement of why late	No automatic penalties; taxpayer provides statement of reasonable cause
Covered period	8 years	3 years for income tax returns; 6 years for FBARs	3 years for income tax returns; 6 years for FBARs	Up to taxpayer	Up to taxpayer
CI protection	Yes	No	No	No	No
Closing agreement	Yes to be used or cited as precedent.	No	No	No	No



OVDP and Streamlined Resources

- IRS.gov
 - <http://www.irs.gov/Individuals/International-Taxpayers/Options-Available-For-U-S--Taxpayers-with-Undisclosed-Foreign-Financial-Assets>
- FAQs
- OVDP and Streamlined Hotline
267-466-0020 (new phone number)



FBAR Resources

FinCEN website:

www.FinCEN.gov

• FinCEN Resource Center:

1-800-767-2825 or (703) 905-3591

FRC@fincen.gov



Webinar Resources

- Webinar on filing FBARs (June 4, 2014)
 - <http://www.irsvideos.gov/ElectronicFBAR/>
- Webinar on Streamlined Filing Compliance Procedures (May 11, 2016)
 - <https://irsvideos.gov/Business/FilingPayingTaxes/StreamlinedFilingComplianceProceduresAComplianceOptionForSomeTaxpayers>
- Webinar on “Overseas Filings for US Taxpayers” covering filing requirements, claiming the Foreign Earned Income Exclusion and Foreign Tax Credit, and foreign financial account reporting requirements (May 25, 2016)
 - <https://www.webcaster4.com/Webcast/Page/490/14725>