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New Streamlined Program for Domestic Taxpayers

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Eligibility for the Streamlined Domestic Offshore Procedures

In addition to having to meet the general eligibility criteria described above, individual U.S. taxpayers, or estates of individual U.S. taxpayers, seeking to use the Streamlined Domestic Offshore Procedures described in this section must: (1) fail to meet the applicable non-residency requirement described in section 2.A. above (for joint return filers, one or both of the spouses must fail to meet the applicable non-residency requirement described in 2.A. above); (2) have previously filed a U.S. tax return (if required) 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; (3) have failed to report gross 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, previously Form TD F 90-22.1) and/or one or more international information returns (e.g., Forms 3520, 3520-A, 5471, 5472, 8938, 926, and 8621) with respect to the foreign financial asset, and (4) 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.

For information on the meaning of foreign financial asset, see the [instructions for FinCEN Form 114](#) and the [instructions for Form 8938](#).

Description of Scope and Effect of Procedures

U.S. taxpayers (U.S. citizens, lawful permanent residents, and those meeting the substantial presence test of IRC section 7701(b)(3)) eligible to use the Streamlined Domestic Offshore Procedures 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 (the “covered tax return period”), file amended tax returns, together with all required information returns (e.g., Forms 3520, 3520-A, 5471, 5472, 8938, 926, and 8621), (2) for each of the most recent 6 years for which the FBAR due date has passed (the “covered FBAR period”), file any delinquent FBARs (FinCEN Form 114, previously Form TD F 90-22.1), and (3) pay a Title 26 miscellaneous offshore penalty. The full amount of the tax, interest, and miscellaneous offshore penalty due in connection with these filings should be remitted with the amended tax returns.

The Title 26 miscellaneous offshore penalty is equal to 5 percent of the highest aggregate balance/value of the taxpayer’s foreign financial assets that are subject to the miscellaneous offshore penalty during the years in the covered tax return period and the covered FBAR period. For this purpose, the highest aggregate balance/value is determined by aggregating the year-end account balances and year-end asset values of all the foreign financial assets subject to the miscellaneous offshore penalty for each of the years in the covered tax return period and the covered FBAR period and selecting the highest aggregate balance/value from among those years.

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.

For information on the meaning of foreign financial asset, see the [instructions for FinCEN Form 114](#) and the [instructions for Form 8938](#). For example, foreign financial assets may include:

1. Financial accounts held at foreign financial institutions;



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2. Financial accounts held at a foreign branch of a U.S. financial institution;
3. Foreign stock or securities not held in a financial account;
4. Foreign mutual funds; and
5. Foreign hedge funds and foreign private equity funds.

A taxpayer who is eligible to use these Streamlined Domestic Offshore Procedures and who complies with all of the instructions below will be subject only to the Title 26 miscellaneous offshore penalty and will not be subject to 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 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 return 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. See the instructions below for the information required to be submitted with such requests.

If you would like to discuss this or any other U.S. tax or accounting matter, please feel free to call Gabriel at 773.269.6513 or email Gabriel.wise@wisecpagroup.com.

We look forward to hearing from you.

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