

New Help for U.S. Citizens Overseas

Cross References

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The Internal Revenue Service has announced a plan to help U.S. citizens residing overseas, including dual citizens, catch up with tax filing obligations and provide assistance for people with foreign retirement plan issues. "Today we are announcing a series of common-sense steps to help U.S. citizens abroad get current with their tax obligations and resolve pension issues," said IRS Commissioner Doug Shulman.

Shulman announced the IRS will provide a new option to help some U.S. citizens and others residing abroad who haven't been filing tax returns and provide them a chance to catch up with their tax filing obligations if they owe little or no back taxes. The new procedure will go into effect on September 1, 2012.

The IRS is aware that some U.S. taxpayers living abroad have failed to timely file U.S. federal income tax returns or Reports of Foreign Bank and Financial Accounts (FBARs). Some of these taxpayers have recently become aware of their filing requirements and want to comply with the law.

To help these taxpayers, the new procedures will allow taxpayers who are low-compliance risks to get current with their tax requirements without facing penalties or additional enforcement action. These people generally will have simple tax returns and owe \$1,500 or less in tax for any of the covered years.

The new procedures will also allow resolution of certain issues related to certain foreign retirement plans (such as Canadian Registered Retirement Savings Plans). In some circumstances, tax treaties allow for income deferral under U.S. tax law, but only if an election is made on a timely basis. The streamlined procedures will be made available to resolve low-compliance risk situations even though this election was not made on a timely basis.

Description of proposed new procedure. Taxpayers utilizing the new procedure are required to file delinquent tax returns, with appropriate related information returns, for the past three years and to file delinquent FBARs for the past six years. All submissions will be reviewed, but the intensity of review will vary according to the level of compliance risk presented by the submission. For those taxpayers presenting low-compliance risk, the review will be expedited and the IRS will not assert penalties or pursue follow-up actions. Submissions that present higher compliance risk are not eligible for the procedure and will be subject to a more thorough review, and possibly a full examination, which in some cases may include more than three years, in a manner similar to opting out of the Offshore Voluntary Disclosure Program.

Tax, interest and penalties, if appropriate, will be imposed in accordance with U.S. federal tax laws based on a review of the submission.

In addition, retroactive relief for failure to timely elect income deferral on certain retirement and savings plans, where deferral is permitted by relevant treaty, will be available through this process. The proper deferral elections with respect to such arrangements must be made with the submission.

Compliance risk determination. The IRS will determine the level of compliance risk presented by the submission based on certain information provided on the returns filed, and based on certain additional information that will be required as part of the submission. Low risk will be predicated on simple returns with little or no U.S. tax due. Absent high risk factors, if the submitted returns and application show less than \$1,500 in tax due in each of the years, they will be treated as low risk. In general, the risk level will rise as the income and assets of the taxpayer rise, if there are indications of sophisticated tax planning or avoidance, or if there is material economic activity in the United States. Additional risk factors include any additional history of noncompliance with U.S. tax law and the amount and type of U.S. source income. Additional information regarding the specific factors the IRS will use to assess the level of compliance risk, and how information regarding those factors should be presented in the submission, will be released prior to the effective date of the new procedure.

How taxpayers will be able to take advantage of the new procedure. Taxpayers wishing to use the new procedure will be required to submit: (1) delinquent tax returns, with appropriate related information returns, for the past three years, (2) delinquent FBARs for the past six years, and (3) any additional information regarding compliance risk factors required by future instructions. Payment of any federal tax and interest due must accompany the submission. More information about the application process, including where submissions should be sent, will be provided prior to the effective date.

Any taxpayer claiming reasonable cause for failure to file tax returns, information returns, or FBARs will be required to submit a dated statement, signed under penalties of perjury, explaining why there is reasonable cause for previous failures to file. See IRS Fact Sheet FS-2011-13 (December 2011) at www.irs.gov for examples of reasonable cause. Any taxpayer seeking relief for failure to timely elect deferral of income from certain retirement or savings plans, where deferral is permitted by relevant treaty, will be required to submit:

- A statement requesting an extension of time to make an election to defer income tax and identifying the pertinent treaty position,
- For relevant Canadian plans, a Form 8891 for each tax year and description of the type of plan covered by the submission, and
- A statement describing:
 - a) The events that led to the failure to make the election,
 - b) The events that led to the discovery of the failure, and
 - c) If the taxpayer relied on a professional advisor, the nature of the advisor's engagement and responsibilities.

Other considerations. Taxpayers who are in a situation where they are concerned about the risk of criminal prosecution should be advised that this new procedure does not provide protection from criminal prosecution if the IRS and Department of Justice determine that the taxpayer's particular circumstances warrant such prosecution. Taxpayers concerned about criminal prosecution because of their particular circumstances should be aware of and consult their legal advisers about the Offshore Voluntary Disclosure Program (OVDP), announced on January 9, 2012, which offers another means by which taxpayers with undisclosed offshore accounts may become compliant. It should be noted, however, that once a taxpayer makes a submission under the new procedure described in this document, OVDP is no longer available. It should also be noted that taxpayers who are ineligible to participate in OVDP are also ineligible to participate in this procedure.

Anyone interested in using this procedure should be aware that all tax returns must have a valid Taxpayer Identification Number (TIN). For U.S. citizens, a TIN is a Social Security Number (SSN). For individuals that are not eligible for an SSN, an Individual Taxpayer Identification Number (ITIN) is a valid TIN. Tax returns filed without a valid SSN or ITIN will not be processed.