

New Streamlined Represents BONANZA GIFT for Non-Reported U.S. Tax Return Filers

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Executive Summary; - June 18, 2014 Changes Affecting Existing Streamlined:

Streamlined- expanded and eased to a wider population of U.S. taxpayers living outside the U.S. and for the first time to certain U.S. taxpayers residing in the U.S.

1- Amended to extend to U.S. taxpayers residing in the U.S.- called: 'Streamlined Domestic Offshore Procedures'- Completion of new Form 14654- Certification of U.S. Person Residing in the United States for Streamlined Domestic Offshore Procedures- , introducing a 5% Title 26 Misc. Offshore Penalty on the Highest Aggregate Year End Account and Asset values of Specified Foreign Financial Asset Balances

-For taxpayers residing outside U.S. called "Streamlined Foreign Offshore Procedures". Completion of new Form 14653- Certification of U.S. person residing Outside the United States for Streamlined Foreign Offshore Procedures.

2- Eliminates Questionnaire requirement and concept of Risk Assessment or \$1,500 or less of unpaid tax.

3- Introduces a wide sweeping definition and concept of 'non-willful'- requiring a Certification by taxpayer that they were non-willful in failing to report all income, pay all tax and submit all information returns, including FBARS.

4- Eliminated situation in OLD Streamlined Program where if taxpayer concluded they represented a low level of compliance risk, but IRS later concluded as gleaned from the required associated filings, including above stated Questionnaire- and based upon multiple (about 8) additional factors that taxpayer represented in fact a high level compliance risk and was ineligible to participate, taxpayer had already red flagged themselves subjecting themselves to potential audit!

Where- *Non-willful*- is defined as: **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.**

When Streamlined was originally announced on 6/26/12 to become effective 9/1/12 most C.P.A.'s were reluctant to get involved in the Streamlined process since the old program required the completion of an intrusive Questionnaire to establish risk factors in part that required a low unpaid tax threshold resulting from low income, all suggesting that affected taxpayers would not pay fees required to involve professional assistance. Of course taxpayers were also reluctant to use a Streamlined process that could red flag themselves and lead to a certain audit.

The new Guidelines/ Program significantly alters the playing field eliminating this risk assessment, introducing a very wide sweeping and all-encompassing definition of 'non-willful' to apply to all but the most egregious violators making compliance easier with the introduction of a simple Certification and a more certain result and end game.

This new Streamlined program means that taxpayers owing an unlimited substantial amount of unpaid tax can now participate in the Streamlined Program regardless of where they reside, that is inside or outside the U.S.

The Streamlined Program always offered a penalty free environment, which was initially and now is even more attractive to delinquent filers. This included protection from the late filing, late payment, accuracy, information return and FBAR penalties.

Tax returns submitted by taxpayers under the newly admitted Streamlined Domestic or Foreign Offshore Procedures, although subject to a penalty free environment- other than the 5% Title 26 Misc. penalty for Streamlined Domestic only- continue to remain subject to criminal liability as prior.

The new Streamlined Procedures are not eligible to taxpayers where the IRS has already initiated civil or criminal examinations or investigations for any tax year of the taxpayer.

The penalty free concept only applies to penalties on a prospective basis, it will not apply to prior penalty assessments under prior quiet disclosures.

Streamlined Foreign or Domestic Offshore filings are not subject to automatic audit, but only to regular submission audit selection processes, including matching audits.

Tax returns submitted under the Streamlined Domestic or Foreign Offshore Procedures as is generally the case, will be processed as any regular filing, will not be acknowledged by the IRS and additionally no closing agreements are required.

For some time since the swearing in of John A. Koskinen on December 23, 2013 as the IRS's 48th IRS Commissioner then effective October 1, 2018, Charles P. Rettig the 49th IRS Commissioner we had been aware through both IRS Commissioner's prior statements of impending changes to the old Streamlined Program originally announced 6/26/12 to be effective 9/1/12.

On June 18, 2014 changes to the Streamlined Program represented a huge gift to delinquent U.S. tax return filers.

The purpose of the expansion of these programs was to allow thousands of taxpayers who did not meet the requirements for the preexisting Streamlined Program an opportunity to come out of the cold and become compliant with the U.S. tax law regime. In the words of the prior 48th IRS Commissioner Koskinen- "This opens a new pathway for people with offshore assets to come into compliance". In effect expanding the program to cover a much broader group of U.S. delinquent taxpayers who have failed to disclose their foreign accounts, but are not willfully evading U.S. income taxes. To effect this change- per the executive summary as above- the eligibility criteria was expanded- now available to U.S. taxpayers residing in the U.S.- eliminating the risk based cap on the amount of tax owed in fact eliminating the concept of a risk assessment all together in addition to eliminating the requirement for a questionnaire which many found overly burdensome and intrusive.

However, we have been aware for some time now, that at any moment after being available to delinquent taxpayers for some twelve (12) years now the IRS has expressed their desire to terminate the Streamlined Program. There is no effective termination date as of yet. We have Covid-19 to thank for that, seemingly putting off a Streamlined termination date due to more overriding priorities facing the IRS.

Streamlined-

Information on general Streamlined Filing Compliance Procedures may be found at:

<http://www.irs.gov/Individuals/International-Taxpayers/Streamlined-Filing-Compliance-Procedures>

Streamlined Procedures would require the filing of the three (3) most recent U.S. tax returns that have passed as delinquent or amended together with all information returns and the most recent six (6) years of Form 114 FBARs either delinquent or as amended FBARs, with the Certification and the 5% Title 26 Misc. Offshore Penalty if a Streamlined Domestic Offshore matter.

Information on the Streamlined Foreign Offshore Procedures may be found at:

<http://www.irs.gov/Individuals/International-Taxpayers/U-S-Taxpayers-Residing-Outside-the-United-States>

Eligibility: 1) taxpayers must meet applicable non-residency requirements (if joint filing BOTH taxpayers must meet this residency requirement), 2) have failed to report income from a Foreign Financial Asset (FFA) and pay the tax as required by U.S. tax law, 3) may have failed to file an FBAR and one or more information returns and 4) all resulting from non-willful conduct, as defined above.

Non-residency- for U.S. citizens or green card holders- where in at least 1 or more of the last 3 years the taxpayer has no U.S. abode (meets the Tax Home Test) and meets the Physical Presence Test as defined in IRC Sec. 911.

For non-U.S. citizens the individual- in at least 1 or more of the last 3 years did not meet the Substantial Presence Test under IRC Sec 7701(b)(3).

Instructions include: 1) Submitting three (3) prior years of U.S. tax returns Form 1040 or 1040X as may be the case, with all Information returns even if filed separately. 2) At top of each return, and/ or information return “Streamlined Foreign Offshore” must be written in red, 3) Complete and sign Form 14653- Certification of U.S. person residing Outside the United States for Streamlined Foreign Offshore Procedures, 4) Submit payment of all tax and interest, 5) If no SSN then Submit Form W-7, 6) Relief/ failure to timely elect deferral of income from certain retirement or savings plans procedures, 7) Send documents and payment to specified Streamlined address per instructions, 8) FBARs filed electronically, choosing as a delinquent reason Other and type in “Streamlined Filing Compliance Procedures”.

Information on the Streamlined Domestic Offshore Procedures may be found at:

<http://www.irs.gov/Individuals/International-Taxpayers/U-S-Taxpayers-Residing-in-the-United-States>

Eligibly: 1) taxpayers FAIL to meet applicable non-residency requirements (if joint filing BOTH must meet this non-residency requirement), 2) having previously filed a U.S. tax return (if required to) for each of the three (3) most recent years, and 3) failed to report gross income from a FFA and pay tax as required by U.S. tax law, 4) may have failed to file FBAR and one or more information returns and 5) all resulting from non-willful conduct, as defined above.

The payment of the 5% Title 26 Misc. Offshore Penalty must accompany the tax returns, information returns, FBARs and Certification.

The 5% Title 26 Misc. Offshore Penalty is equal to 5% of the highest aggregate Year -End balance/ value of the taxpayers FFA that are subject to the misc. offshore penalty during the years in the covered tax return period and the covered FBAR period.

The highest aggregate year-end balance/ value is determined by aggregating the Year End account balances and Year End asset values of all FFA’s subject to the misc. offshore penalty for each of the years in the covered tax returns period and the covered FBAR period and selecting the highest aggregate Year-End balance/ value from among those years.

An FFA is subject to the 5% offshore penalty in a given year if it should have been but was not: 1) reported as an FBAR on Form 114 for that year, or 2) reported on a Form 8938 or 3) gross income in respect of the FFA was not reported in that year.

Instructions include: 1) Submitting 3 prior years of U.S. tax returns Form(s) 1040X, with all Information returns even if filed separately, 2) At top of each return, and/ or information return “Streamlined Domestic Offshore” must be written in red, 3) Complete and sign Form 14654- Certification of U.S. person residing in the United States for Streamlined Domestic Offshore Procedures, 4) Submit payment of all tax and interest, 5) Payment of Title 26 Misc. 5% offshore penalty, 6) Relief/ failure to timely elect deferral of income from certain retirement or savings plans procedures, 7) Send documents and payment to specified Streamlined address per instructions and 8) FBARs file electronically, choosing as a delinquent reason Other and type in “Streamlined Filing Compliance Procedures”.

Delinquent FBAR Submission-

Information on Delinquent FBAR Submissions may be found at:

<http://www.irs.gov/Individuals/International-Taxpayers/Delinquent-FBAR-Submission-Procedures>

If no Streamlined program procedures are required to file delinquent or amended tax returns to report gross income or pay additional U.S. income tax, then delinquent or amended FBARs should be filed quietly.

Delinquent International Information Returns Submission Procedures:

Information on Delinquent Information Return Submissions may be found at:

<http://www.irs.gov/Individuals/International-Taxpayers/Delinquent-International-Information-Return-Submission-Procedures>

If no Streamlined program procedures are required to file delinquent or amended tax returns to report gross income or pay additional U.S. income tax, then delinquent or amended Information Returns should be filed with Reasonable Cause quietly also Certifying that the entity is not engaged in tax evasion.

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