



# Wood LLP Tax Alert



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## Consider IRS Relief Deals Carefully

If you still have undisclosed foreign bank accounts you should feel uneasy. It's clear that more data is coming from [IRS whistleblowers](#). Plus, the IRS has mined banking details from thousands of U.S. taxpayers under the IRS voluntary disclosure programs in [2009](#), [2011](#) and [2012](#). And FATCA compliance rules are requiring even more disclosures



(Photo credit: Salvatore.Freni)

It's not enough to simply close your offshore accounts even if you give the money away. See [Is Closing Foreign Bank Accounts An Alternative To Disclosure?](#) But some choices can seem painful. The OVDP involves eight amended tax returns, eight [FBARs](#) and a 27.5% [penalty](#). The latter can be a bitter pill so you may have been waiting anxiously for a new and easier IRS program as an alternative.

When the IRS announced details of its streamlined program on August 31, 2012, there was some disappointment at its narrow scope. See [Newest Offshore IRS Amnesty Not For Everyone](#). The newest program is a simplified alternative for certain U.S. citizens living abroad who did not file tax returns and who owe minimal U.S. taxes, typically because of paying taxes where they reside. Although not restricted to dual U.S. Canadian citizens, it seems primarily targeted at them.

For those who qualify, it requires only three years of tax returns and six FBARs, with the promise of no penalties. Although this streamlined program sounds very attractive, it is only for U.S. citizens (including dual citizens) who have resided outside the U.S. since January 1, 2009. They must **not have filed** a U.S. tax return during that period and they must be **low risk**. See [Instructions for New Streamlined Filing Compliance Procedures for Non-Resident, Non-Filer U.S. Taxpayers](#). To determine if you are low risk, see this IRS [questionnaire](#).

A taxpayer meeting these criteria and owing less than \$1,500 in tax for each of the three tax years should qualify—unless there are high risk factors, such as if the taxpayer:

- Claims a refund;
- Has “material economic activity” in the U.S;
- Has not declared all income in his country of residence;
- Is under audit or investigation by the IRS;
- Has had prior FBAR penalties or an FBAR warning letter;
- Has an interest or authority over an account **outside** the taxpayer’s country of residence;
- Has a financial interest in an entity outside the taxpayer’s country of residence;
- Has U.S. source income; or
- Shows indications of sophisticated tax planning or avoidance;

Thus, even this streamlined IRS program has risks and numerous rules. The IRS states that it does not guarantee immunity from prosecution. Moreover, a taxpayer who applies for this streamlined program becomes ineligible for the OVDP.

For these and other reasons, some advisers suggest that this streamlined program should be approached with caution. For some, the OVDP is the only safe choice. But whatever you do, get some advice and proceed carefully.

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