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Tax Alert



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Offshore Accounts? Choose OVDP Or Streamlined Despite FATCA

Offshore accounts can keep you up at night. Starting in 2009 with changes in 2011, 2012, and 2014, the IRS has had big success in bringing people into compliance. Over the last 6 years, [over 50,000 people have done it, paying about \\$7 billion](#) in back taxes, interest and penalties. And since [June 18, 2014](#), there are now several programs to choose from: Offshore Voluntary Disclosure Program ("OVDP"), Domestic Streamlined, Foreign Streamlined, Transitional Relief, and Delinquent FBAR.

The IRS has kept the vanilla OVDP, involving 8 years of amended tax returns and FBARs. You pay taxes, interest and a 20% penalty on whatever you owe. For most people, there's also a 27.5% penalty on your highest offshore account balance. In some cases, that penalty may be 50% [depending on the bank](#) and timing.

Understandably, many people ask about the other main flavor, the Streamlined one. It's not for everyone, and it's important to know the differences. For instance, the OVDP protects you from prosecution, while the Streamlined program does not. The OVDP costs more, but you get more. And if bad facts that you hope not to discuss come up, the OVDP absolves them.



In contrast, the Streamlined program is rigid. Most importantly, the Streamlined program hinges on you certifying under penalties of perjury that you made mistakes but were non-willful. Be careful, though, since the IRS can examine you. Especially if there are [signs your tax missteps were willful](#), beware that the IRS may be harsh.

There's a Domestic Streamlined program for people in the U.S., and a Foreign Streamlined program for those living abroad. Whether you are abroad for the requisite time is its own issue, but the real difference is in the penalty. For clients who are comfortable with the willfulness issue, either Streamlined program is a comparative bargain.

Both Streamlined programs involve 3 years of tax returns, not 8. Both Streamlined programs require FBARs for 6 years instead of 3, to match the FBAR statute of limitations. The Foreign Streamlined program has no penalty at all. The Domestic Streamlined program is still a good deal, applying a 5% penalty to the highest account balance over the 6 FBAR years.

If you are not worried about the willfulness element on your facts, comparing the 27.5% OVDP penalty and the 5% Domestic Streamlined penalty seems like a no-brainer. Yet as it turns out, there are differences in how the 5% and the 27.5% penalties are computed. This isn't apples to apples.

First, the Domestic Streamlined penalty is calculated on the *year-end* account balances and *year-end* asset values. This is different from the OVDP which typically requires you to take the highest value of the account during the year. See [2014 OVDP FAQ #31](#).

As important as what goes into the penalty is what you can take out. For the 27.5% OVDP penalty, you can typically remove accounts that are tax compliant, but were not reported. [2014 OVDP FAQ #45](#). The [Domestic Streamlined base](#) is broader. For the 5% Domestic Streamlined penalty, you must include *all* accounts that were *either* unreported *or* tax non-compliant.

What about people who already disclosed their accounts? For people in the OVDP process before July 1, 2014, who still have open cases, the IRS has a [Transitional Relief](#) program. You still go through 8 years of tax returns and FBARs. You also make a non-willful certification. The result is a kind of blend: the security of the OVDP, but instead of the 27.5% penalty, the [transitional FAQs #5 and #9](#) say you may be able to get a 5% Streamlined penalty.

The IRS will not reopen closed cases. Thus, anyone who already went through the OVDP and has a signed and completed Closing Agreement can't get a better deal. The [transitional FAQ #2](#) says it is too late to try for the 5% penalty.

Clients who reported all of their income, paid all their taxes, but forgot to file FBARs should be able to escape penalties entirely by sending in their delinquent paperwork. This used to be covered under OVDP [FAQs #17 and #18](#). Now, the IRS has re-branded them under the [Delinquent FBAR](#) and [Delinquent International Information Return](#) procedures. Still, be careful with these. The IRS

can be harsh if they think you are willful. Similarly, the IRS can reach its own conclusion about whether you really did report and pay tax on every last penny.

It's unlikely that anyone relishes the prospect of doing paperwork. If you add to that uncertainties about how you and your actions may be perceived, family worries, and what can be big dollars at stake, it can be daunting indeed. Even so, any of these avenues is considerably better than ignoring the issues. In our post-FATCA world, ignoring these issues is increasingly dangerous.

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