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## a closer look

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## Debunking Six Myths About The IRS Tax Amnesty Programs After The Tax Reform

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### Introduction

With sweeping changes coming as a result of the newly enacted Tax Cuts and Jobs Act ("TCJA"),<sup>1</sup> it's important to set the record straight about how the new law will affect the ability of delinquent or late-filing expats to get caught up with the IRS under one of its sanctioned amnesty programs.

In this article, we review common myths about the IRS tax amnesty programs, including more recent misconceptions that have arisen as a result of the recent tax reform legislation.

### Myth 1 – Expats Are No Longer Subject To Citizenship-Based Taxation So I'm Off The Hook

When President Trump initially laid out his tax reform plan during his campaign for the US presidency, he very broadly suggested that he would push for a shift to a system of territorial or residence-based taxation. There was some ambiguity about whether such a shift would apply to both US companies<sup>2</sup> and individuals.

As enacted, the TCJA does, in fact, change the scope of taxation for US corporations – shifting to what can be described as a quasi-territorial system.

However, it does not affect the overall tax and reporting obligations of US individuals living abroad. So yes – FBAR<sup>3</sup> and FATCA<sup>4</sup> and the other foreign information reporting rules and concepts we've become accustomed to will continue to apply.

So for delinquent US citizens living abroad, the IRS amnesty programs remain an essential path to coming back into compliance with the IRS, which still requires you to file even though you may be living and working abroad.

## **Myth 2 – Tax Amnesty Is Rarely Granted**

In recent years, the IRS has made it clear to taxpayers that it is more interested in disclosure than in punishing late filers or non-filers. In 2014, the IRS expanded its more lenient program, the Streamlined Procedures, allowing taxpayers to participate if they can explain in a written statement<sup>5</sup> how their delinquency was not intentional.

This lenient approach has allowed many delinquent taxpayers to successfully enter its amnesty programs. According to the IRS,<sup>6</sup> 45,000 taxpayers participated in the Streamlined program between its inception in 2012 and its modification in 2014, and tens of thousands of taxpayers have since successfully used the programs each year.

## **Myth 3 – I Need To Disclose My Entire Tax History**

One of the strongest benefits of entering a tax amnesty program is the ability to become completely compliant without having to disclose your entire past. The IRS recognized that gathering financial information about the distant past can be cumbersome, if not impossible, so in order to encourage disclosure, it limited the tax years that require filing.

The two main amnesty programs currently offered by the IRS are the Offshore Voluntary Disclosure Program (OVDP) and the Streamlined Procedures. Under the OVDP, US expats are required to file tax returns and FBARs for the prior eight years. Under the Streamlined Procedures, taxpayers are required to file only the prior three years of tax returns, including required information returns, and six years of FBARs.

## **Myth 4 – I'll Suffer Severe Penalties**

A taxpayer who qualifies for the foreign offshore Streamlined Procedures<sup>7</sup> can come clean with the IRS and suffer no penalties. In order to qualify, a taxpayer must fulfill a non-residency requirement and certify that the failure to report all income, pay all tax, and submit all required information returns, including FBARs, resulted from non-willful conduct. Unpaid taxes and interest must be paid, if due, but in many cases, taxpayers can utilize the Foreign Earned Income Exclusion and/or foreign tax credits to reduce or eliminate taxes due.

Taxpayers who cannot certify that their past failures were the result of non-willful conduct should consider the OVDP. While the OVDP is not penalty-free, it does limit the penalties that would otherwise be imposed. Under the OVDP, in lieu of all other penalties that may apply to the

undisclosed foreign assets and entities, including the FBAR penalty, a reduced penalty of 27.5 percent (which can be increased up to 50 percent in certain cases) will be calculated based on the highest aggregate balance in foreign bank accounts/entities or value of foreign assets during the period covered by the voluntary disclosure.

The difference between the Streamlined Procedures, which can be penalty-free, and the OVDP, which carries a 27.5 percent penalty, is significant enough that taxpayers should carefully consider whether their past failures qualify as non-willful.

### **Myth 5 – The OVDP And Streamlined Procedures Are My Only Two Options**

While the OVDP and Streamlined Procedures are the two main tax amnesty programs, there are a number of additional options available to delinquent taxpayers. For example, there are special programs and procedures for taxpayers who have only failed to file FBARs or have failed to include an informational form<sup>8</sup> with their tax return, such as the form for ownership of a foreign corporation.

For this reason, if you are a delinquent taxpayer looking to catch up with the IRS, it is critical that you weigh all of the options available to you.

### **Myth 6 – The IRS Tax Amnesty Programs Will Last Forever So There's No Rush**

Contrary to popular belief, the IRS has given no certainty that it will maintain its tax amnesty programs on a permanent basis. In fact, with respect to the Streamlined Procedures, IRS officials have repeatedly expressed that the program will end when it feels that there's no way a taxpayer who would want to participate couldn't have heard about the process (rendering the taxpayer willfully delinquent by default).

For this reason, if you are a delinquent taxpayer living abroad, it is critical that you consider coming clean sooner rather than later. A number of options are currently available to you, including and in addition to the IRS amnesty programs. Each option has its advantages and disadvantages, and choosing the best way forward requires a careful analysis of your particular facts and circumstances.

### **ENDNOTES**

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<sup>1</sup> <https://www.expattaxprofessionals.com/tax-reform-officially-arrived-mean-u-s-expats/>

<sup>2</sup> <https://www.expattaxprofessionals.com/tax-reform-officially-arrived-mean-u-s-expats-2/>

- 3 <https://www.expattaxprofessionals.com/expat-tax-information-fbar/>
- 4 <https://www.expattaxprofessionals.com/expat-tax-information-fatca/>
- 5 <http://www.expattaxprofessionals.com/irs-further-tweaks-form-14653-for-the-streamlined-amnesty-program/>
- 6 <https://www.irs.gov/newsroom/irs-makes-changes-to-offshore-programs-revisions-ease-burden-and-help-more-taxpayers-come-into-compliance>
- 7 <http://www.expattaxprofessionals.com/the-expat-streamline-question/>
- 8 <http://www.expattaxprofessionals.com/resident-owns-foreign-corporation-trust-failed-file-required-offshore-information-forms-irs-painless-cure/>