

**THE IRS' NEW 2014 OFFSHORE VOLUNTARY DISCLOSURE  
PROCEDURES  
ANALYZED IN THE NEW OFFSHORE ENFORCEMENT  
ENVIRONMENT**

On June 18, 2014, the Internal Revenue Service (the “IRS” or “Service”) announced “major changes” to its offshore voluntary compliance programs. They include “four distinct options” for addressing prior offshore non-compliance. See, <http://www.irs.gov/Individuals/International-Taxpayers/Options-Available-For-U-S-Taxpayers-with-Undisclosed-Foreign-Financial-Assets>.

**INTRODUCTION**

This is the “Introduction” to an article which will be released in six parts over the next two weeks. The article will analyze disclosures made pursuant to each of the IRS’ four offshore compliance options and compare to them to disclosures which would realistically meet the requirements of a voluntary disclosure submitted pursuant to the “Voluntary Disclosure Practice” in Internal Revenue Manual 9.5.11.9 (hereinafter referred to as “IRM 9.5.11”).

The IRS doesn’t include the voluntary disclosure procedures in IRM 9.5.11 as one of the four “options available for U.S. taxpayers with undisclosed foreign financial assets.”

IRS Commissioner John Koskinen, in a written statement released with the announcement of the New Procedures, described the IRS web site as containing “a wealth of wealth of information about what disclosures are required and how to make them; we plan to add to this area.” In describing the twin actions which created the new Streamlined Procedures and the 2014 OVDP, the Commissioner acknowledged that the new actions:

“involve some very technical issues, but they carry great importance for thousands of taxpayers and our continuing efforts in the offshore arena....For anyone who wants to come into compliance but isn’t sure what to do, I recommend talking to a tax professional or going to our website, IRS.gov. This has a wealth of information about what disclosures are required and how to make them; we plan to add to this area.”

## **The IRS's Four Offshore Compliance Options:**

The rationale for the release of the new and distinct options is explained as follows:

### **“Options Available For U.S. Taxpayers with Undisclosed Foreign Financial Assets**

The implementation of FATCA and the ongoing efforts of the IRS and the Department of Justice to ensure compliance by those with U.S. tax obligations have raised awareness of U.S. tax and information reporting obligations with respect to non-U.S. investments. Because the circumstances of taxpayers with non-U.S. investments vary widely, the IRS offers the following options for addressing previous failures to comply with U.S. tax and information return obligations with respect to those investments.”

The four options, collectively referred to herein as the “New Procedures,” are:

1. Offshore Voluntary Disclosure Program (“OVDP”) (herein, sometimes “Option 1”);
2. Streamlined Filing Compliance Procedures (herein, sometimes “Option 2,” or the “Streamlined Procedures”);
3. Delinquent FBAR submission procedures (herein, sometimes “Option 3,” the “Delinquent FAR Procedures,” or, when referenced with Option 4 below, the “Delinquent FBAR/Information Return Procedures”); and
4. Delinquent international information return submission procedures (herein, sometimes “Option 4, or the “Delinquent Information Return Procedures, or when referenced with Option 3 above, the “Delinquent FBAR/Information Return Procedures”).

In its New Procedures, the IRS makes it clear that civil penalties and even criminal prosecution may apply to taxpayers who submit voluntary disclosures pursuant to the Streamlined Procedures and the Delinquent FBAR/Information Return Procedures if their submissions are selected for audit and the IRS finds them to be untruthful or if the submissions are otherwise ineligible for the New Procedures.

In contrast, the IRS seems to promise that taxpayers making OVDP submissions benefit not only from “protection from criminal liability” but also because they receive a known resolution of their “civil tax and penalty obligations.” However, a very careful reading of OVDP procedures clarifies that untruthful disclosures made pursuant to the OVDP will provide neither protection from criminal penalties nor certainty in resolving civil taxes and penalties.

The Article is divided into six parts: (I) Part I- the 2014 OVDP; (II) Part II- the Streamlined Procedures, (III) Part III- the Delinquent FBAR Procedures; (IV) Part IV- the Delinquent Offshore Information Return Procedures ; (V) Part V- Minimizing Risk of Criminal Prosecution By Meeting Requirements of Voluntary Disclosures under IRM 9.5.11.9; and (VI) Part VI- Willful and Non-Willful Omissions.

After examining the Four Options, it becomes apparent that the New Streamlined Procedures fail to provide sufficient guidance pursuant to which taxpayers can determine whether the IRS will consider their offshore violations as being willful rather than “non-willful.” Similarly, the New Procedures for Delinquent FBARs and Delinquent Information Returns don’t help taxpayers avoid making submissions which don’t qualify under the certification or eligibility requirements.

Due to these deficiencies in the New Procedures, the article suggests that taxpayers who are concerned about potential criminal exposure but who don’t think the OVDP penalties should be applied to them, consider making their disclosures pursuant to the procedures in IRM 9.5.11.

Since the IRS has clearly stated that “quiet disclosures” made solely through the filing of amended returns won’t meet the requirements of IRM 9.5.11, the article suggests that voluntary disclosures made pursuant to IRM 9.5.11 contain the type of information required from participants in the 2014 OVDP.

The article concludes that its time for the IRS to clearly define non-willful and willful offshore violations, as recommended in 2013 Report to Congress issued by the National Taxpayer Advocate. If the IRS doesn’t so act, the New Procedures will prove to be neither “new” nor “streamlined,” and will fail to promote the significant amount of hoped for truly voluntary offshore compliance.