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THE TAX LAWYER

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Got IRS Amnesty Lite?

No matter how sophisticated having undisclosed offshore accounts may once have seemed, it's clearly no fun now. You can't just close them since that doesn't reduce your serious legal exposure for the past. See [Is Closing Foreign Bank Accounts An Alternative To Disclosure?](#) You can go into the IRS program known as the Offshore Voluntary Disclosure Program ([OVDP](#)), but that costs taxes, interest, penalties, and a 27.5% highest balance penalty. See [IRS Offers Carrot And Stick For Offshore Disclosures](#).



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If you were waiting and hoping for a better deal, the IRS came out with [Instructions for New Streamlined Filing Compliance Procedures for Non-Resident, Non-Filer U.S. Taxpayers](#). If you qualify, the new streamlined IRS program could be attractive, but what's it involve? Unfortunately, it's designed only for a limited class of non-resident non-filers.

You must be a U.S. citizen (including dual citizens) who has resided outside the U.S. since January 1, 2009, has **not filed** a U.S. tax return during that period, and is low risk. You can go into the [OVDP](#) of course, but if you qualify this deal is cheaper. You have to file three years' of tax returns labeled "Streamlined."

You must pay all tax reflected on those returns plus interest at the usual IRS rates. You must file six years' of FBARs with details of your offshore accounts. Finally, you must submit a complete, accurate, signed [Questionnaire](#).

If you filed returns but didn't report all income, you can't amend via this program. Amended returns are high risk, except for the sole purpose of filing Form 8891 regarding retirement or savings plans by treaty. Many other things are also considered high risk including:

- You claim a refund.
- You have "material economic activity" in the U.S.
- You haven't declared all your income in your country of residence.
- You are under audit or investigation by the IRS.
- You had prior FBAR penalties or an FBAR warning letter.
- You have an interest or authority over an account **outside** your country of residence.
- You have a financial interest in an entity outside your country of residence.
- You have U.S. source income.
- There are indications of sophisticated tax planning or avoidance.

Obviously, most people don't qualify. Besides, there's no amnesty from criminal prosecution if the IRS and Justice Department determine your circumstances warrant it. The OVDP seems safer even if you qualify for this streamlined program. See [OVDP page](#). Be careful: once you submit under this streamlined program, the OVDP is no longer available. Consult your legal adviser.

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