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Newest Offshore IRS Amnesty Not For Everyone

Earlier this summer, the [IRS announced tax relief for dual citizens and U.S. citizens abroad](#). The IRS [announced](#) it would unfurl details by September 1, 2012. Late on August 31st, the IRS made good with [Instructions for New Streamlined Filing Compliance Procedures for Non-Resident, Non-Filer U.S. Taxpayers](#).



(Image credit: AFP via @daylife)

Who? You must be a U.S. citizen (including dual citizens) who has resided outside the U.S. since January 1, 2009 and has **not filed** a U.S. tax return during that period, **and you must be low risk**. You can go into the Offshore Voluntary Disclosure Program ([OVDP](#)) of course, but if you are “low risk,” this deal is easier and cheaper with no penalties.

Low Risk? Take a look at this [Questionnaire](#) to evaluate your risk. If you owe less than \$1,500 in tax each year and don’t have high risk factors you should be fine. What’s high risk? Any of these:

- If 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.

It's not clear (at least to me) if you could have one of these and still be judged low risk. But if you make a submission but are judged to be high risk, you don't qualify and will be examined. That could include **more** than three years, like opting out of the OVDP.

Filings Due? Taxpayers utilizing this procedure will be required to file three years of tax returns and information returns (like Forms 3520 and 5471), plus six years of FBARs. Any taxes and interest you owe must accompany the returns. For a summary see [IRS Fact Sheet FS-2011-13](#).

No Amended Returns! 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.

Prosecution? Curiously, there's no amnesty from criminal prosecution **if** the IRS and Department of Justice determine your particular circumstances warrant it. Consult your legal adviser, as the OVDP may be safer. See [OVDP page](#). But once you submit under this new streamlined program, the OVDP is no longer available.

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