

Outline of Issues for Streamlined Disclosure

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I. Background

- A. Create a timeline (dates on the left side and written description to the right of the dates) with:
1. Your date of birth, city and country, describe your family and what your parents did for a living.
 2. Where you lived growing up.
 3. The beginning and graduating dates of college.
 4. The college name and degree.
 5. Your job history before coming to the U.S. (dates, companies and positions).
 6. When you came to the U.S.
 7. Your visa status when you came to the U.S. and your subsequent visa/immigration status (including the month and year for each change).
 - a) If you came as a student, the type of visa, the years, college and your degree.
 - b) If you came on a work visa, the type(s) of visas the years, the companies you worked for and your job descriptions.

II. Foreign assets, income and accounts

- A. Foreign financial accounts – for each foreign account supply the following information:
1. The opening date.
 2. The bank's name and country where it is located.
 3. The circumstances for the account, for example:
 - a) Joint account with a family member.
 - b) You were living and working in the city and country where the account was opened.
 - c) You used the account for business transactions in the country where the account is located.
- B. Describe what happened to the account when you came to the U.S.
1. Did you or someone else add money to the account from U.S. sources?
 2. Did you or someone else withdraw funds from the account? If so, how? – ATM, debit card?
 3. Were funds in the account used for a one-time purchase, such as the purchase

of a home or rental property?

4. Were funds in the account used to support a parent or relative?
5. Did someone else have a power of attorney over the account?

C. Foreign Income

1. Describe whether you earned income from overseas accounts, investments, rents, royalties or assets?
 - a) If so, provide the year and dollar amounts of the foreign income earned.
 - b) Did you report the income on your U.S. tax returns?
2. Did you file tax returns and paid taxes in the country where the money was earned? If so, describe the years and the country in which taxes were paid and how they were paid, for instance, by direct withholding or by filing tax returns and paying the taxes pursuant to the return.

D. Foreign Gift of Inheritance

1. If you received an inheritance or gift from a foreign person, describe the year, the asset (cash, real property, gold) and the approximate amount of each gift or inherited item. The term "person" includes corporations, trusts or other non-individual entities.

III. U.S. Taxpayer

A. Failure to File FBARS or Report Income

1. Describe when you became a U.S. taxpayer and, if applicable why you failed to file foreign bank account reports (FBARS).
2. Describe why you failed to report your foreign income on U.S. tax returns.

B. Willful vs. non-willful conduct:

1. In the Certification, you must state under federal laws of perjury that:
 - a) your failure to report all income, pay all tax, and submit all required information returns, including FBARS, was due to non-willful conduct.
 - b) you understand that non-willful conduct is conduct that is due to negligence, inadvertence, or mistake or conduct that is the result of a good faith misunderstanding of the requirements of the law.

C. Examples of Willful Conduct

1. Obviously, if you deliberately failed to report income or file foreign bank account reports, or were advised to do so and refused, your conduct is willful.
2. Hiding assets in secret accounts or using sham entities, such as companies or trusts to hide your identity is willful conduct.
3. Having multiple passports and opening accounts with the foreign passport to avoid U.S. detection can also be viewed as willful behavior.

4. If you were using the accounts on a frequent basis and depositing and withdrawing funds or were engaged with an advisor regarding investing the funds – this also tends to show willful conduct.
5. If you received cash payments in a foreign country and carried them to another country (including the U.S.) either depositing them into an undisclosed foreign bank or your U.S. bank, but not reporting the income on your returns, this would be an example of willful conduct.
6. But what about failing to find out your responsibilities, i.e., were your "willfully blind" to your obligations?
 - a) To establish willful blindness in the context of FBAR actions IRS will have to prove, at a minimum, that you subjectively believed that there was at least some requirement to report bank accounts and that you affirmatively avoided knowing the details of that requirement.
 - b) Merely showing that you had knowledge that the income needed to be reported, or that there are generally reporting rules for certain overseas items, should not be sufficient.
 - c) Failure to inquire simply does not equate with willful blindness. Furthermore, the IRS will have to prove that deliberate actions were taken by you to avoid gaining confirmation of that subjective belief.
 - d) In short, not knowing about the FBAR or foreign income reporting requirements and not taking actions to find out about them is not considered willful blindness. There must be deliberate or evasive action to bring conduct within the willful blindness rules.

D. Examples of Non-Willful Conduct and Potential Reasons for Failing to Comply

The following are several potential reasons why you did not comply with the filing requirements:

1. Your tax preparer told you it was not necessary.
2. Your tax preparer never asked about foreign accounts; never asked about foreign income or assets, even though he/she was told that had had foreign income/business/assets.
3. Your tax preparer failed to advise you about the requirement.
4. Your tax preparer told you that only U.S. source income is reported and that if income is reported and taxed in a foreign country, it is not reported on U.S. returns.
5. You told you tax preparer (or provided him/her with foreign account statements), whom you relied on as your tax expert, and he/she negligently failed to advise you about your foreign tax and reporting requirements and negligently failed to include the proper schedules with your tax returns.
6. You prepared your own returns and were never prompted about foreign accounts.

7. You did not attach Schedule B to Form 1040, so you were unaware of the foreign account requirement.
 8. You prepared your own returns using software (such as TurboTax), and mistakenly checked the box "no" as to foreign accounts on Schedule B to Form 1040. Explain your mistake.
 9. You prepared your returns but did not understand that you needed to report the foreign income/accounts.
 10. You mistakenly thought that the U.S. was concerned with taxpayers forming foreign accounts with U.S. income and not all foreign bank accounts.
 11. You did not really have ownership over the accounts (the accounts were held jointly with a family member; or a family member had power of attorney over the accounts and used the account to support himself/herself).
 12. You were confused about the requirements since income was reported in the foreign country.
 13. You misunderstood that your foreign income and assets, reported and taxed by the foreign country, were to be included on a U.S. tax return as well.
 14. You were confused because the bank accounts were not related to U.S. income or assets.
 15. You were confused about reporting world-wide income as opposed to just U.S. source-income and assets, when the foreign assets were acquired long before taxpayer became subject to U.S. taxes.
 16. It never occurred to you that assets and income from your foreign country, which has been reported and taxed by your foreign country, would be subject to U.S. tax filing and reporting obligations as well.
- E. You need to clearly explain what happened. This is critical to the Certification process.
1. When (the date) did you first learned about the requirement to file FBARS and report your foreign income?
 2. How did you learn about it (a notice from a bank; something you read on the internet or in print; discussion with a friend or tax advisor).
 3. Describe what steps you took to come into compliance, such as reading about the subject or consulting with a tax expert.