

September 10, 2012
2012-165

flash International Executive Alert

A Publication for Global Mobility and Tax Professionals by KPMG's International Executive Services Practice

United States – Compliance Procedures for Certain Delinquent Nonresident Taxpayers

by KPMG LLP's Washington
National Tax practice,
Washington, D.C. (KPMG LLP
in the United States is a KPMG
International member firm)

On August 31, 2012, the U.S. Internal Revenue Service (IRS) released instructions and a questionnaire to help U.S. citizens living overseas, including dual citizens, catch up on their filing obligations without facing penalties or additional enforcement action.¹ These instructions come a little over a month after the IRS first announced² the new streamlined filing compliance procedures for nonresident U.S. taxpayers which went into effect on September 1, 2012.

Under the streamlined submission process, qualifying taxpayers are required to file U.S. federal income tax returns for the past three years, including any appropriate related information returns (e.g., Form 3520, *Annual Return to Report Transactions with Foreign Trusts and Receipt of Certain Foreign Gifts*), and "FBAR" forms (Form TD F 90-22.1, *Report of Foreign Bank and Financial Accounts*) for the past six years. This program will also help those who have not made timely treaty elections relating to certain foreign retirement plans (such as Canadian Registered Retirement Savings Plans). The proper deferral elections must be made with this streamlined submission process.

Eligibility

Nonresident U.S. taxpayers who have resided outside the U.S. since January 1, 2009, and who have not filed a U.S. tax return during this same period are eligible if they present a low level of compliance risk (see below for Compliance Risk Determination).

All tax returns submitted must have a valid Taxpayer Identification Number (TIN), which for U.S. citizens is the Social Security Number (SSN). For those not eligible for a SSN, an Individual Taxpayer Identification Number (ITIN) should be used. Tax returns without a valid TIN will not be processed; however, a Form W-7, *Application for IRS Individual Taxpayer Identification Number*, can be submitted with the tax returns.

Compliance Risk Determination

The IRS will determine the level of compliance risk based on the information in the tax return submitted through this process, but also through a Questionnaire created for this purpose (see: http://www.irs.gov/pub/irs-utl/non-resident_questionnaire.pdf).

Simple returns with no high-risk factors and that show a balance due of less than \$1,500 will generally be treated as low risk.

The risk level could rise if:

- A refund is shown on any of the returns submitted;
- There is material economic activity in the U.S.;
- All income has not been declared in the country of residence;

- The taxpayer is under audit or investigation by the IRS;
- FBAR penalties have been previously assessed or an FBAR warning letter issued;
- The taxpayer has a financial interest in or authority over a financial account outside his/her country of residence;
- The taxpayer has a financial interest in an entity outside his/her country of residence;
- There is U.S. source income;
- There are indications of sophisticated tax planning or avoidance.

Original Returns Only

Amended returns submitted through this process will be treated as high risk, except for those filed solely to submit late-filed Forms 8891 (*U.S. Information Return for Beneficiaries of Certain Canadian Registered Retirement Plans*) requesting relief for failure to timely elect treaty relief for certain retirement or savings plans.

Instructions for Submission

Taxpayers wishing to use these streamlined procedures must follow the detailed instructions provided on the IRS Web site. Taxpayers using these procedures should file delinquent tax returns along with appropriate related information returns for the past three years, and file delinquent FBARs for the past six years. All the returns and FBARs should be filed together at the address provided in the submission instructions³.

Footnotes:

1 See: <http://www.irs.gov/uac/Instructions-for-New-Streamlined-Filing-Compliance-Procedures-for-Non-Resident-Non-Filer-US-Taxpayers> .

2 See: <http://www.irs.gov/uac/IRS-Announces-Efforts-to-Help-U.-S.-Citizens-Overseas-Including-Dual-Citizens-and-Those-with-Foreign-Retirement-Plans> .

3 For the instructions, see: <http://www.irs.gov/uac/Instructions-for-New-Streamlined-Filing-Compliance-Procedures-for-Non-Resident-Non-Filer-US-Taxpayers> .

* * * *

The information contained in this newsletter was submitted by KPMG LLP's Washington National Tax practice. The information contained herein is of a general nature and based on authorities that are subject to change. Applicability of the information to specific situations should be determined through consultation with your tax adviser.

Flash International Executive Alert is an IES publication of KPMG LLP's Washington National Tax practice. To view this publication or recent prior issues online, please click [here](#). To learn more about our IES practice, please visit us on the Internet: click [here](#) or go to <http://www.kpmg.com> .

ANY TAX ADVICE IN THIS COMMUNICATION IS NOT INTENDED OR WRITTEN BY KPMG TO BE USED, AND CANNOT BE USED, BY A CLIENT OR ANY OTHER PERSON OR ENTITY FOR THE PURPOSE OF (i) AVOIDING PENALTIES THAT MAY BE IMPOSED ON ANY TAXPAYER OR (ii) PROMOTING, MARKETING OR RECOMMENDING TO ANOTHER PARTY ANY MATTERS ADDRESSED HEREIN.