

## **IRM PROCEDURAL UPDATE**

**DATE: 08/13/2014**

**NUMBER: WI-21-0814-1244**

**SUBJECT: Streamline Filing Compliance Procedures for Accounts Management International IMF**

**AFFECTED IRM(s)/SUBSECTION(s): 21.8.1.27**

**CHANGE(s):**

**IRM 21.8.1.27 Added new IRM section and sub sections for the Streamline Filing Compliance Initiative.**

1. The implementation of the Foreign Account Tax Compliance Act (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.
2. Because the circumstances of taxpayers with non-U.S. investments vary widely, the IRS offers Streamlined Filing Compliance Procedures (SFC).
3. These procedures have been in existence since September 2012. However, due to the increase in global economics, the streamlined filing compliance procedures have been expanded and modified to accommodate a broader group of U.S. taxpayers. For further information refer to Streamline Filing Compliance Procedures on [irs.gov](http://irs.gov).
4. Previously, the procedures were only available to filers outside the United States. The Streamlined Filing Compliance procedures have been expanded to provide a means for U.S. taxpayers living in the United States to correct tax non-compliance with respect to non-U.S. investments resulting from non-willful conduct.
5. If the IRS has initiated a civil examination for any year covered by the submission, regardless of whether it relates to undisclosed foreign financial accounts, the taxpayer will not be eligible to use these procedures. See specific instructions in the sections below for taxpayers with open audits. Similarly, a taxpayer under criminal investigation by IRS Criminal Investigation (CI) is also ineligible to use these procedures. See specific instructions in the sections below for tax accounts with CI activity.
6. The SFC cannot be used for reasonable cause purposes for previously filed returns. Therefore, penalty assessments made on previously filed returns will not be abated based solely on the filing of SFC original or amended returns. Normal reasonable cause procedures would still apply to previously filed returns; Example - A taxpayer late-filed a tax year 2011 Form 1040 and received a failure to file and failure to pay tax penalty. The filing of an

amended return for tax year 2011 under SFC procedures is not reasonable cause for abatement of the previously assessed penalties.

7. Taxpayers filing under SFC must include a certification, signed under penalty of perjury, which includes all of the required elements. There are two separate certifications. One is titled: "Certification by U.S. Person Residing Outside of the United States for Streamlined Foreign Offshore Procedures" and the other is titled: "Certification by U.S. Person Residing in the United States for Streamlined Domestic Offshore Procedures".
8. The following sections provide procedural guidance for Accounts Management assistants to process amended returns filed under Streamlined Filing Compliance.

### **IRM 21.8.1.27.1 Streamlined Filing Compliance – U.S. Taxpayers Residing Outside the United States**

1. Individual U.S. citizens or green card holders (Form 1040 filers), or estates of U.S. citizens or green card holders filing income tax returns on behalf of the decedent (Form 1041 filers) qualify to use the Streamline Filing Compliance (SFC) procedure if:
  - o In any one or more of the most recent three years for which the U.S. tax return due date (or properly applied for extended due date) is past, the individual did not have a U.S. abode and
  - o The individual was physically outside the United States for at least 330 full days.
2. Individuals, or estates of individuals, who are not U.S. citizens or green card holders may use this procedure if, in any one or more of the last three years for which the U.S. tax return due date (or properly applied for extended due date) is past, the individual did not meet the substantial presence test of IRC section 7701(b)(3). For more information on the substantial presence test, see Pub 519, *U.S. Tax Guide for Aliens*.

#



#

3. Under the SFC described in this section, U.S. taxpayers eligible to use these procedures who have not reported gross income or paid tax as required by U.S. law for any of the 3 years in the covered period will file delinquent or amended tax returns, together with all required information returns (Forms 3520, 3520-A, 5471, 5472, 8938, 926, and 8621), for the past three years and will file delinquent Report Of Foreign Bank & Financial Accounts (FBARs) (FinCEN Form 114, previously Form TD F 90-22.1) for the past six years. Payment of the tax and interest due in connection with these filings must be remitted with the delinquent original or amended returns.

4. Amended returns submitted through these procedures will not be subject to the failure-to-file and failure-to-pay penalties if the taxpayer meets the eligibility requirements below:

**NOTE:** Original delinquent returns will be processed similarly in Submission Processing.

If	And	Then
<p>For each of the most recent 3 years for which the U.S. tax return due date (or properly applied for extended due date) is past and the statute of limitations is still open</p>	<p>A U.S. tax return has been filed previously</p>	<p>1) Submit a complete and accurate amended tax return using Form 1040X, <i>Amended U.S. Individual Income Tax Return</i>, together with the required information returns (Forms 3520, 3520-A, 5471, 5472, 8938, 926, or 8621) even if these information returns would normally not be submitted with the Form 1040X had the taxpayer filed a complete and accurate original return.</p> <p><b>NOTE:</b> Filers are instructed to write, "Streamlined Foreign Offshore" in red at the top of the first page of each amended return and at the top of each attached information return.</p> <p>2) Taxpayers will also complete, sign, and attach a "Certification by U.S. Person Residing Outside of the United States for Streamlined Foreign Offshore Procedures" to each amended return certifying that the taxpayer (or taxpayers) are eligible for the streamlined filing compliance procedures; and that all required FBARs have been filed. The certification is available to the taxpayer on IRS.gov. See Certification by U.S. Person Residing Outside of the United States for Streamlined Foreign Offshore Procedures</p> <p>3) Filers must pay all tax due as reflected on the certification and all applicable statutory interest with respect to each of the late payment amounts.</p>

5. Filers seeking relief for failure to timely elect deferral of income from certain retirement or savings plans where deferral is permitted by an applicable

treaty, will submit a signed statement requesting an extension of time to make an election to defer income tax that identifies the applicable treaty provision along with:

- the events that led to the failure to make the election,
- the events that led to the discovery of the failure,
- whether or not they relied on a professional advisor, the nature of the advisor’s engagement and responsibilities, and
- if relevant, a Form 8891 for each tax year and each plan and a description of the type of plan covered by the submission.

**NOTE:** There are no actions for AM to take regarding this paragraph. This is information only.

**IRM 21.8.1.27.2 Streamlined Filing Compliance – U.S. Taxpayers Residing in the United States**

1. As noted in 21.8.1.27(4) above, individual U.S. taxpayers, or estates of individual U.S. taxpayers are eligible to use the Streamlined Filing program if:
  - They are a U.S. Resident. For joint return filers, one or both of the spouses must be a U.S. resident.

#

[Redacted]

#

- They have previously filed a U.S. tax return (if required) for each of the most recent 3 years for which the U.S. tax return due date (or properly applied for extended due date) has passed
- They have failed to report gross income from a foreign financial asset and pay tax as required by U.S. law, and may have failed to file an FBAR (FinCEN Form 114, previously Form TD F 90-22.1) and/or one or more international information returns (e.g., Forms 3520, 3520-A, 5471, 5472, 8938, 926, and 8621) with respect to the foreign financial asset.
- The failures above resulted from non-willful conduct

#

[Redacted]

#

2. Under the SFC described in this section, U.S. taxpayers eligible to use these procedures who have not reported income or paid tax as required by U.S. law for any of the 3 years in the covered period will file amended tax returns together with all required information returns (Forms 3520, 3520-A, 5471, 5472, 8938, 926, or 8621), for the past three years and will file delinquent Report Of Foreign Bank & Financial Accounts (FBARs) (FinCEN Form 114, previously Form TD F 90-22.1) for the past six years. Eligible filers will also calculate a Title 26 miscellaneous offshore penalty equal to 5 percent of the highest aggregate balance/value of the taxpayer's foreign financial assets that are subject to the miscellaneous offshore penalty during the years in the covered tax return period and the covered FBAR period. Payment of the tax, penalty, and interest due in connection with these filings must be remitted with the amended returns. For further information refer to Streamline Filing Compliance Procedures on [irs.gov](http://irs.gov).
3. Amended returns submitted through these procedures will not be subject to the failure-to-file and failure-to-pay penalties if the taxpayer meets the eligibility requirements below:

<b>If</b>	<b>And</b>	<b>Then</b>
For each of the most recent 3 years for which the U.S. tax return due date (or properly applied for extended due date) is past and the statute of limitations is still open	A U.S. tax return has been filed previously	<p>1) Submit a complete and accurate amended tax return using Form 1040X, <i>Amended U.S. Individual Income Tax Return</i>, together with the required information returns (Forms 3520, 3520-A, 5471, 5472, 8938, 926, or 8621) even if these information returns would normally not be submitted with the Form 1040X had the taxpayer filed a complete and accurate original return.</p> <p><b>NOTE:</b> Filers are instructed to write, "Streamlined Domestic Offshore" in red at the top of the first page of each amended return and at the top of each attached information return.</p> <p>2) Taxpayers will also complete, sign, and attach a "Certification by U.S. Person Residing in the United States for Streamlined Domestic Offshore Procedures " to each amended return certifying that the taxpayer (or taxpayers) are eligible for the streamlined filing compliance procedures; and</p>

		<p>that all required FBARs have been filed. The certification is available to the taxpayer on IRS.gov. See Certification by U.S. Person Residing in the United States for Streamlined Domestic Offshore Procedures</p> <p>3) Filers must pay all tax and penalties due as reflected on the certification and all applicable statutory interest with respect to each of the late payment amounts.</p>
--	--	------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------

4. Filers seeking relief for failure to timely elect deferral of income from certain retirement or savings plans where deferral is permitted by an applicable treaty, will submit a signed statement requesting an extension of time to make an election to defer income tax that identifies the applicable treaty provision along with:
  - o the events that led to the failure to make the election,
  - o the events that led to the discovery of the failure,
  - o whether or not they relied on a professional advisor, the nature of the advisor’s engagement and responsibilities, and
  - o if relevant, a Form 8891 for each tax year and each plan and a description of the type of plan covered by the submission.

**NOTE:** There are no actions for AM to take regarding this paragraph. This is information only.

**IRM 21.8.1.27.2.1 Adjusting Streamlined Filing Compliance Domestic Accounts - (Streamlined Domestic Offshore - SDO)**

1. Filers from within the United States will submit a package to a specific mailbox in Submission Processing in Austin. The filing package containing complete and accurate amended returns using Form 1040X , *Amended U.S. Individual Income Tax Return* for each of the most recent 3 years for which the U.S. tax return due date (or properly applied for extended due date) has passed together with any required information returns (e.g., Forms 3520, 3520-A, 5471, 5472, 8938, 926, and 8621) even if these information returns would normally not be submitted with the Form 1040 had the taxpayer filed a complete and accurate original return. Taxpayers may NOT file delinquent original returns under these procedures.

**NOTE:** Filers are instructed to write, "Streamlined Domestic Offshore" in red at the top of the first page of each amended return and at the top of each attached information return.

2. In addition to the 1040X returns, domestic streamline filers must also submit a statement on the *Certification by U.S. Person Residing in the United States for Streamlined Domestic Offshore Procedures* attesting:
  - o The taxpayer or taxpayers are eligible for the SDO procedures
  - o The tax years and amounts owed for each year including interest (payment must be made).
  - o All required FBARs have now been filed
  - o The failure to report all income, pay all tax, and submit all required information returns, including FBARs, resulted from non-willful conduct

#



#

- o The miscellaneous offshore penalty amount is accurate.
3. LB&I will review the submissions for statute considerations. LB&I will complete the "AM Streamline Coversheet" and attach it to the package notating their statute recommendations regarding open statutes and statute extensions.
  4. Form 1040X cases will be scanned into CIS for Accounts Management processing and assigned to a designated IDRS number for subsequent assignment to CSR's.
  5. One CSR must work all related cases.
  6. Accounts Management will be responsible for reviewing the packages to ensure the necessary certifications are attached and complete. If they are incomplete AM will correspond with the taxpayer to perfect the submissions.
  7. Use the table below to determine if the required certification is complete:

**NOTE:** If the taxpayer completes the certification for only one or two tax years, and submits the same number of amended returns, do not question whether additional years should have been submitted. As long as the tax years listed on the certification are filed, accept that the number is correct.

If	Then
<p><b>The certification is attached, and:</b></p> <ol style="list-style-type: none"> <li><b>1. The amounts owed for each tax year, including interest, are calculated, and</b></li> <li><b>2. The amounts owed,</b></li> </ol>	<p><b>The certification is complete. Follow the instructions in Paragraph 8 below.</b></p>

<p>including interest have been paid, and</p> <p>3. The amounts paid equal the taxpayer's calculations, and</p> <p>4. The taxpayer has completed the section stating the specific reasons for failure to report all income, pay all tax, and submit all required information returns,</p> <p>#</p> <p>[REDACTED]</p> <p># [REDACTED]</p> <p>[REDACTED]</p> <p>#</p> <p>[REDACTED]</p> <p>#</p> <p>6. The taxpayer(s) have signed the certification under penalties of perjury</p>	
<p>There is no certification attached or, the certification is attached but:</p> <ol style="list-style-type: none"> <li>1. The amounts owed for each tax year, including interest, are not calculated, or</li> <li>2. The amounts owed, including interest, are</li> </ol>	<p>Call or correspond with the taxpayer. If corresponding, issue 178C, using the appropriate paragraph(s) to address the specific items missing from the certification. Suspend the case for 40 days.</p> <ul style="list-style-type: none"> <li>o If the taxpayer responds with the necessary information, send the CIS case number to a</li> </ul>



<p>not paid or,</p> <p>3. The amounts paid do not equal the taxpayers calculations or,</p> <p>4. The taxpayer does not complete the section stating the specific reasons for failure to report all income, pay all tax, and submit all required information returns, including FBAR's, or</p> <p>5. The taxpayer does not calculate and or pay the miscellaneous offshore penalty, or</p> <p>6. The taxpayer does not sign the certification under penalties of perjury</p>	<p>designated mailbox: "*LB&amp;I OVDP Compliance" with an explanation the case is being sent post assessment and is a Certification Reply. Enter CIS case notes saying referred to LB&amp;I as a "Certification Reply". Then follow paragraph 8 below.</p> <ul style="list-style-type: none"> <li>○ If the taxpayer does not respond, treat the case like a normal 1040X case. Do not restrict the failure to file or failure to pay penalties and do not input TC 971 with Action Code (AC) 178.</li> </ul> <p><b>NOTE:</b> The 178C letter includes language advising the taxpayer if they do not respond, the case(s) will be closed using normal procedures, so no closing letter is necessary for "No Reply" cases.</p> <ul style="list-style-type: none"> <li>○ After making the assessment on no response cases, e-mail the CIS case Identification Number to a designated mailbox: "*LB&amp;I OVDP Compliance" with an explanation the case is being sent post assessment and is a "No Reply." Enter CIS notes indicating the case was referred to *LB&amp;I OVDP Compliance "No Reply".</li> </ul>
-----------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------	--------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------

8. Accounts Management will perform the following actions prior to adjusting accounts under the SDO:
- Review the account for a -Z freeze. If there is a -Z freeze on the account, contact CI to determine whether an amended return filed using the Streamlined Foreign Domestic Compliance Procedures can be processed. Follow CI's direction. See -Z freeze instructions at IRM 21.5.6.4.52 *-Z Freeze*.
  - Review each tax year for statute consideration. Refer to Statutes for clearance or assessment when necessary. See IRM 25.6 *Statute of Limitations*.

- Review Command Code AMDIS for examination involvement. Follow the table below if any of the affected accounts are found on Command Code AMDIS.

If	Then
All affected tax years are in AMDIS Status less than 12	<p>Process all related amended returns as streamline. Follow paragraph 9 below</p> <p><b>NOTE:</b> Forward the case to Exam, based on the AIMS data (after processing as Streamlined) when AMDIS status is 09 or greater and less than 90.</p>
Any affected tax year is in AMDIS status 12 or greater	<ul style="list-style-type: none"> <li>○ Process all related amended returns as <u>normal</u> 1040X adjustments. Do not restrict penalties. Do not input TC 971 AC 178. Allow the adjustment notice(s) to generate.</li> <li>○ Send Letter 916C with the following language using two open paragraph(s): "Our records show that the IRS already has an open examination for one or more of the years covered by your submission. For this reason, you are not eligible for the penalty relief provided under the Streamlined Procedures." "You should contact the examiner assigned to your pending examination to discuss the applicability of penalties and any defenses you may have for the years covered by your submission."</li> <li>○ Notate CIS case notes, "Streamline case worked as normal due to open examination."</li> <li>○ Forward the case to Exam, per the AIMS data, after processing.</li> </ul>

9. To complete adjustments on Form 1040X filed under the SDO:

1. Input a Transaction Code (TC) 971 Action Code (AC) 178, using the amended return received date as the transaction date, to each affected tax year. TC 971 AC 178 denotes Streamlined Filing Compliance. The xClaim tool has been programmed to allow AC 178.
2. Ensure the payments are allocated correctly among the affected tax years (including the MFT 55 civil penalty module) according to the calculations made on the taxpayer certification. If not, follow normal credit transfer procedures using appropriate credit freeze codes to ensure no erroneous refunds occur.
3. Use all normal adjustment procedures, including the use of IAT tools, when making the tax assessment to each tax year, with the following

exception: Restrict the failure to file and failure to pay penalties on each tax year by inputting TC 160 and TC 270 for zero dollars.

**NOTE:** If any payments were transferred, use appropriate posting delay codes on the adjustment(s) to ensure the adjustment does not post before the payments are posted correctly

4. Assess the 5 percent miscellaneous penalty on MFT 55 based on the taxpayers calculation. Input TC 240 with blocking series 52 and penalty reason code 708
5. Allow the adjustment notices to generate. (Taxpayers are advised on IRS.gov that they may owe more interest or may receive a refund.)
6. **After making the assessment, refer any case with 5 or more foreign information returns (Forms 3520, 3520-A, 5471, 5472, 8938, 926, or 8621) by e-mailing the CIS ID number to "\*LB&I OVDP Compliance"** with an explanation that the case is being forwarded due to 5 or more foreign information returns. Enter CIS notes indicating the case was referred to \*LB&I OVDP Compliance "5 or more foreign income statements".

**NOTE:** The total of 5 forms is a combination of all years filed. For example submissions containing 3 Forms 5471 for 2011 and 3 Forms 5471 for 2012 would be referred since the total is 6. Submissions with a combination totaling less than 5 would not be referred.