

# US Voluntary Disclosure - Streamlined Filing

*(Prepared for clients and professional colleagues of Personal Wealth Strategies)*

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*This information package is designed to help you understand the voluntary disclosure program and to help us prepare your returns accurately. Our website [www.personalwealthstrategies.net](http://www.personalwealthstrategies.net) contains several newsletters on US taxation. (July 2015)*

## Voluntary Disclosure History (Streamlined Filing)

Voluntary disclosure allows American taxpayers to avoid penalties (but not taxes and interest). US tax authorities will accept 1040 tax and related returns and elections for a three year period. Taxpayers must also file six years of FBAR (FINCEN Form 114) returns.

Until September 2012 the United States had no official voluntary disclosure program to allow US citizens to come clean and get their tax returns up to date without penalties. Nevertheless, the US did accept voluntary disclosures (quiet disclosure) if you provided them with good reasons why you haven't been filing - you didn't know you had to, rules are not understandable, you complied when you first found out - and so on.

The first official US voluntary disclosure program was effective September 1, 2012 and was followed by more changes on January 2, 2014 which better defined the financial risk to the US treasury and the criteria that applied to meet program eligibility. One of those was that if you owed taxes of less than \$1,500 in any year, you would be rated as low risk and allowed to proceed as a streamlined filer.

## Current Streamlined Filing

In a memo issued by the IRS dated August 19, 2014 the streamlined filing procedures were amended again and further simplified. Under the new program, US citizens only need to show that they reside outside the United States and sign a questionnaire (Form 14653). The \$1,500 tax threshold and all of the other risk assessments have disappeared that were under previous programs. Taxpayers still must give reasons for their failure to report their income and pay the taxes owing. US citizens no matter what their income or taxes are can now join the program.

The IRS will accept three years of overdue tax and other returns and six years of the bank account reporting form (FBAR). There are no income restrictions, no penalties and the risk assessment test is now gone.

The IRS published a further memo on October 9, 2014 providing more details on Streamlined filing with respect to eligibility, scope and effect of procedures and other instructions. Following are some of the more important things to take away from the October memo:

- US citizens and green card holders are eligible for streamlined filing if:
  - **They were present in the United States for less than 36 days in at least one of the last three years**
  - They do not have a US abode (place of primary residence – social, economic and family)
- As part of the disclosure you must file:
  - Three years of delinquent or amended tax returns
  - Three years of any relevant information returns (i.e. 3520, 5471 and 8938)
  - Six years of FBAR returns (for which the filing deadline has passed)

- Failure to file, failure to pay and accuracy-related penalties will not apply unless fraud or willful neglect is involved
- Retroactive relief will be provided for failure to timely elect income deferral on certain retirement plans (RRSPs). The election must be filed with the submission
- The most common relevant information filings that are required in addition to the 1040 are as follows:

Form	Area Covered
FBAR	<ul style="list-style-type: none"> <li>• Non-US financial accounts/investments if total exceeds \$10,000</li> </ul>
8938	<ul style="list-style-type: none"> <li>• Required if total Non-US investments exceed \$200,000</li> </ul>
3520/3520A	<ul style="list-style-type: none"> <li>• RESP and TFSA</li> </ul>
8621	<ul style="list-style-type: none"> <li>• Ownership of Mutual Funds, ETFs and certain other investments outside of RRSPs and RRIFs</li> </ul>
5471	<ul style="list-style-type: none"> <li>• Ownership of a Non-US private company</li> </ul>

## Filing Compliance Procedures

Streamlined filing procedures became effective in August 2014. The IRS now calls for completion of a questionnaire which contains much of the information outlined above and some additional information. The streamlined submission can also be used to make an election to defer income from RRSPs and RRIFs.

Submission documentation:

1. Complete and accurate tax returns for the last three years.
2. Write “Streamlined” on the top of the first page of each tax return.
3. Payment of all tax due as reflected on the returns and statutory interest due and owing.
4. Submit complete and accurate delinquent FBARs (FinCEN Form 114, “*Report of Foreign Bank and Financial Accounts*”) for the last six years for which an FBAR is due. This is now done online.
5. Taxpayers should make a late election to defer income earned in their Canadian retirement plan by attaching a statement requesting an extension of time to make the election and sign the statement, under penalties and perjury,
  - a. Outlining the events that led to their failure to make the election,
  - b. The events that lead to their discovery of the failure to file, and
  - c. If the taxpayer relied on a professional advisor, the nature of the advisor’s engagement and responsibilities.

*The 2014 memo also required the submission of form 8891, but it was discontinued retroactively in January 2015.*

## Obtaining a Social Security Number (SSN)

You need a SSN in order to file US tax returns. To get a SSN you will need to complete Form SS-5 and provide supporting documentation to verify to the IRS your age, your identity, and confirm that you are a US citizen. The name on your social security card must match your current name. If it does not match you will need to get a new card.

The supporting documentation must be original documents. Here are some examples of acceptable documents:

- 1) *Age*: hospital record of your birth or passport
- 2) *Identity*: driver’s license, passport, long form of marriage certificate and divorce decree
- 3) *Citizenship*: any documents that show that you were born in the United States

You can get a long form (certified) marriage certificate by going to [www.ontario.ca/government/marriage-certificate](http://www.ontario.ca/government/marriage-certificate) and clicking on “order a marriage certificate online” and then clicking “begin application.” The cost is \$22.00 and takes about 15 business days to receive it in the mail. If your name changed because of marriage, the long-form marriage certificate is vital.

The nearest SSN office for Waterloo Region is Niagara Falls, NY. It can take up to 2 months to process your application. If you need to contact the SSN office about a new or replacement Social Security Number card, call 410-965-9334.

The SSN office will also require the following information:

1. Name and day phone number of a person that they could verify the length of time living in Canada - can be family, but not children born after the move to Canada. They call right away, so the person needs to be available.
2. Proof of residence - such as a copy of a utility bill showing address.
3. Legal proof of any name change.

## **Penalties for Delinquent Returns**

If you are a US citizen, green card holder or deemed citizen of the United States and you have not filed US tax and other information returns you should do so as soon as possible. The following penalties could apply for failing to file certain tax or information returns:

- ☐ FBAR (FinCEN Form 114)
  - \$10,000 for each non-willful violation
  - Greater of \$100,000 or 50% of non-willful violation if a willful violation
- ☐ 8938 (non-US investments – similar but not identical to the FBAR)
  - \$10,000 – additional penalties for continued non-compliance of \$10,000 per 30 days to a maximum of \$50,000
- ☐ 3520/3520A (TFSA and RESP and gifts/bequests over \$100,000)
  - \$10,000
- ☐ 8621 (non-US mutual funds and other similar securities)
  - If market to market election or QEF is not made penalties will apply when the security is sold
- ☐ 5471 (ownership of a foreign corporation)
  - \$10,000 for not filing or for filing forms that do not include complete and accurate information
  - 10% reduction of the foreign taxes available for credit can be applied in addition to the \$10,000

## *Client Information*

Client \_\_\_\_\_ **A**

Birthplace \_\_\_\_\_ Birthdate \_\_\_\_\_ SSN \_\_\_\_\_

Client \_\_\_\_\_ **B**

Birthplace \_\_\_\_\_ Birthdate \_\_\_\_\_ SSN \_\_\_\_\_

Email address \_\_\_\_\_ Telephone \_\_\_\_\_

### **Important Details**

1. Do you have a US social insurance number? Yes or no \_\_\_\_\_ Number \_\_\_\_\_
2. Did you ever file US tax returns? Yes or no \_\_\_\_\_ If yes, for what years \_\_\_\_\_
3. Filing Status (i.e. married, single, widowed) \_\_\_\_\_
4. Name of Spouse: \_\_\_\_\_
5. When did you become a Canadian Citizen? \_\_\_\_\_ Landed immigrant \_\_\_\_\_
6. When did you become a US citizen? At birth \_\_\_\_\_ Later year \_\_\_\_\_
7. Date residence began in Canada? \_\_\_\_\_
8. Do you own or rent your home? \_\_\_\_\_
9. Name and address of employer? \_\_\_\_\_
10. Position title at place of employment? \_\_\_\_\_

### **Explanation of your situation:**

*Briefly explain how you became a US citizen and how you discovered your requirement to file a US tax return.*

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**Explanations which will help prepare your streamlined submission:****Y/N**

- Your Canadian filing compliance has always been met \_\_\_\_\_
- You filed US returns as soon as you were aware of your obligation \_\_\_\_\_
- Never been penalized by the IRS \_\_\_\_\_
- Not aware of US tax law and compliance forms \_\_\_\_\_
- US tax complexity is beyond your grasp \_\_\_\_\_
- Unaware of the filing law requirements but made a reasonable effort to do so on finding out \_\_\_\_\_
- Details of why you haven't filed US returns \_\_\_\_\_
  - Didn't know I needed to \_\_\_\_\_
  - Didn't think I had to since I don't live there \_\_\_\_\_
  - Didn't know I was a US citizen until recently \_\_\_\_\_
  - Don't have any US income \_\_\_\_\_
  - Just found out in a discussion with others \_\_\_\_\_

***Delinquent FBAR Returns***

Severe penalties apply for not filing the FBAR (FinCEN Form 114) (both for willful and non-willful reasons) but may be waived if the taxpayer had reasonable grounds for not filing – providing 6 years of delinquent returns are filed along with an explanation (attached to each return) for not filing. The explanation should cover the following:

**Y/N**

- ☐ All of the income from the accounts was reported on US tax returns. \_\_\_\_\_
- ☐ The taxpayer was unaware of the requirement to file the FBAR. \_\_\_\_\_
- ☐ The taxpayer promptly filed the return when they became aware of their obligation. \_\_\_\_\_
- ☐ The taxpayer relied on tax advice from a 1040 tax preparer and no such advice was provided. \_\_\_\_\_
- ☐ All of the accounts exist for legitimate purposes. \_\_\_\_\_
- ☐ No intended efforts were made to subvert the reporting of income or assets. \_\_\_\_\_
- ☐ The income tax has been fully reported and paid for all prior years. \_\_\_\_\_
- ☐ The taxpayer did not intentionally withhold the existence of financial accounts to the 1040 tax preparer. \_\_\_\_\_

## *Voluntary Disclosure Questionnaire*

To assist us in helping you with these filings, we require the following initial information for the past three years. If you are married to a US citizen, we need the information for each of you.

	<b>A</b>	<b>B</b>
• Do/Did you own any of the following:		
RRSP/RRIF		
TFSA		
RESP		
• Do you have non US investment Funds:		
(Including RRSPs or TFSAs)		
In excess of \$10,000		
In excess of \$200,000		
• Do you own mutual funds in any of the following accounts:		
Investment Portfolio		
TFSA		
RESP		
• Provide your ownership percent in the following:		
Private Canadian investment company		
Private Canadian company carrying on a business		
Partnerships		
• Do you own any income producing real estate		
• Do you own property in the United States		
Vacation Property		
Rental Property		
Other Property (please specify)		
• In at least one of the past three years were you physically present in the United States for more than 35 days		
• Do you have any US sources of income? (i.e. US social security, US pension, dividend/interest income) Please specify _____		
• Do you plan to give up your US citizenship in the near future		

## ***Required Information***

To help us in the preparation of your US returns please provide us with the following:

- US Social Insurance Number \_\_\_\_\_
- Copy of complete Canadian tax returns and tax assessments for the past three years \_\_\_\_\_
- Purchase and sale dates for capital gains shown on Schedule 3 of your Canadian tax returns for the last 3 years \_\_\_\_\_
- Dates you were present in the US during the last three years \_\_\_\_\_

<i>Year</i>	<i>Dates Present in the US</i>	<i>Reason for visit</i>
_____	_____	_____
_____	_____	_____
_____	_____	_____

If visits were for business purposes, did you earn income while in the US? \_\_\_\_\_

***For the following see detailed schedules below:***

- Information on non US financial accounts (including RRSP/RRIF accounts) for the last 6 years for the FBAR report \_\_\_\_\_
- TFSA and/or RESP annual statements for the last six years \_\_\_\_\_
- Non US Mutual fund and ETF annual statements for the last three years \_\_\_\_\_

We attach worksheets to help you compile the information we need to complete the various information returns required:

	<b>Related Form</b>
Financial Accounts (include RRSP/RRIF accounts)	<b><i>FBAR</i></b>
Foreign Assets	<b><i>8938</i></b>
TFSA and RESP	<b><i>3520/3520A</i></b>
Non-US Mutual Funds and ETFs	<b><i>8621</i></b>
Ownership of a non-US corporation (foreign corporation)	<b><i>5471</i></b>

*Note: Details regarding form 5471 are not provided in this questionnaire.*

*If the form applies we will supply you with an additional worksheet.*

## **INFORMATION ABOUT FORMS WITH SCHEDULES**

### ***FBAR –Financial Accounts Outside the United States***

You must report non-US financial accounts including sole or joint ownership accounts, signature authority accounts and accounts closed in the year where the total of all accounts at any time during the year exceeds \$10,000.

Non-US accounts include or exclude the following:

#### **Include**

- Bank accounts
- Securities and brokerage accounts
- Trust accounts
- RRSPs, RRIAs, RESPs, LIRAS, RDSPs, TFSAS
- Mutual funds
- Life insurance with a cash surrender value
- Prepaid credit cards and debit cards
- Bank activated power of attorney

#### **Exclude**

- Certain pension plans
- Non prepaid credit cards
- Specific stocks and bonds (non public)
- United States mutual funds
- United States brokerage accounts

***This form must be received by June 30 and no filing extension is available.***

### **Other Reportable Accounts**

These are some accounts that must be reported even though the United States taxpayer is not the owner of account and/or does not have signing authority. In this case the US taxpayer has an interest in the account and the owner of record is described as follows:

- An agent, nominee or attorney who is a United States taxpayer
- A corporation where the United States taxpayer owns directly or indirectly more than 50% of the shares or 50% of the vote.
- A partnership in which the United States taxpayer owns more than a 50% interest
- A trust where the grantor is a United States taxpayer and meets certain other qualifications
- Any other entity in which the United States taxpayer owns more than 50% of voting power, total value of assets or profits

### ***Form 8938 – Statement of Specified Foreign Financial Assets***

This new reporting form is in addition to the FBAR (FinCEN Form 114). It must be completed by ***US taxpayers*** living in Canada who have financial investment balances over \$200,000 at year end or balances at any time in the year over \$300,000. The exemptions are doubled for taxpayers filing a joint return. Generally the value of *Financial Accounts* reported on Form 8938 is their maximum value during the year but the value of *Other Foreign Assets* can be the value on the last day of the tax year.

The assets to be reported are those reported on the FBAR as well as stocks, securities and any interest in non-US estates and trusts. Exceptions are that you do not have to report signature authority accounts, TFSA, RESP, RRSP and mutual fund accounts as they are reported on a separate report. However, the value of these accounts is included in the amount to determine the \$200,000/\$300,000 threshold.



*If taxpayers file a joint 1040 return they will also file a joint 8938 return and include both spouses' assets.* There are many complicated rules for completion of this form and it is quite likely we will have to contact you after reviewing your initial information.

### ***Forms 3520, 3520-A – Ownership of RESPs and TFSAs – Receipt of Gifts and Bequests***

RESPs and TFSAs are considered to be foreign trusts for US tax purposes and as such require reporting to the IRS on forms 3520 and 3520-A – *Transactions with Foreign Trusts if there is at least one US owner*. If you have either of these accounts please send us your year end (December 31) statements as soon as possible. Form 3520-A is due by March 15 and significant penalties apply for late filing if not for reasonable cause or because of willful neglect. The income is taxable in the United States.

If you receive gifts or bequests over \$100,000 in total from non-US persons or estates you must report them on Form 3520. You report the date received, description of property received and fair market value.

### ***Form 8621 – Passive Foreign Investment Company***

The US taxes investors on unrealized and realized gains/losses within mutual funds and other Canadian investments (see below). These investments are known as PFICs. There are two ways to report PFICs – under a market-to-market election or under an election to treat the PFIC as a QEF. Some fund companies are now providing US clients with statements to report using the QEF method. If you do not receive these statements we will report using the market-to-market method.

If you have any of the following investments you will be required to file form 8621 for each investment.

- ☐ Canadian mutual funds
- ☐ Canadian exchange traded funds
- ☐ Money market funds
- ☐ Hedge funds
- ☐ Pooled investments

#### ***Note:***

- PFICs owned by RRSPs/RRIFs do not need to be reported on form 8621.
- We also understand that segregated funds are not considered to be PFICs.

### ***Form 5471 – Ownership of a Foreign Corporation***

Form 5471 is an information return and is required in certain situations in addition to any tax return that might be required for the corporation itself.

Generally, the form is not required if ownership by the US person does not exceed 50%. However, it is required if share ownership changes during the year.

Form 8621 may also be required if the private company is a passive foreign investment company – meaning 75% or more of its income is passive income and at least 50% of its assets provide passive income. If the company is a PFIC then there is a look through and the US citizen would be taxed personally on the passive income of the company.

If dividends are paid by the company than the US citizen is taxed on any distribution that comes from earnings and profits of the corporation.

Form 5471 is used by the IRS to determine the taxpayer's liability for tax on any undistributed income of a closely-held non-US company that earns passive income. Similar reporting is in place for foreign partnerships by filing form 8865.

Distributions of a corporation come out of 1) earnings and profit 2) out of a tax free return of capital until exhausted and 3) then as a capital gain.

## FBAR RETURN

*Report amounts in Canadian dollars. If it is a US dollar account, please indicate if you have provided the information in Canadian or US dollars.*

<b>YEAR</b>		
Type of Account		
Sole or Joint?		
Opened or Closed During the Year?		
Account as Signing Officer Only **		
Account Number		
Name of Financial Institution		
Address of Financial Institution		
Maximum Value During Year		

<b>YEAR</b>		
Type of Account		
Sole or Joint?		
Opened or Closed During the Year?		
Account as Signing Officer Only **		
Account Number		
Name of Financial Institution		
Address of Financial Institution		
Maximum Value During Year		

**\*\*Additional information for each account with signing authority only:**

Name of Account Holder: \_\_\_\_\_

**FORM 8938**  
**FOREIGN DEPOSIT AND CUSTODIAL ASSETS**  
**(MAXIMUM VALUE DURING YEAR)**

**FOREIGN DEPOSIT AND CUSTODIAL ACCOUNTS**

We will take deposit and custodial account information from your FBAR.

Note: for the 8938 year end balances are acceptable if maximum balance is unknown.

**OTHER FOREIGN ASSETS – NOW INCLUDES RRSPs**

*(RRSPs, foreign stocks, securities, instruments & any interest in foreign estates, trusts, pension plans)*

	<i>Asset #1</i>	<i>Asset #2</i>
Description of asset		
Identifying number Or other designation		
Maximum Value During Year		
Income for year		
<b>OTHER INFORMATION</b>	<i>If Applicable</i>	
Date asset acquired during year		
Date asset sold during year		
Asset jointly held with spouse	<input type="checkbox"/> Yes <input type="checkbox"/> No	<input type="checkbox"/> Yes <input type="checkbox"/> No

- *Please report amounts in Canadian dollars and we will convert them to US dollars.*
- *Form 8938 excludes TFSA, RESP, mutual funds and signature only accounts.*
- *RRSP plan details are now reported in Part II and Part VI of form 8938. Form 8891 is obsolete.*
- *Signature only accounts are not included.*
- *Form 8938 is required if investment balances exceed \$200,000 at year end or \$300,000 at any time during the year if you are single or married filing separately.*

**FORMS 3520 AND 3520A**  
**TFSA, RESP AND GIFTS/BEQUESTS OVER \$100,000**  
**(YEAR END BALANCES)**

*Please report amounts in Canadian dollars and we will convert them to US dollars*

<b>TAXPAYER</b>			
TFSA or RESP			
Account Number			
Name of Financial Institution			
Address of Financial Institution			
Type of Funds in Account (Cash, Mutual Funds, Other Investments)			
Date Account was Opened			
Withdrawals During Year (\$)			
Date of Withdrawals			
Contributions During Year			
Income Earned (Interest and Dividends)			
Balance at Year End			
Capital Gains/Loss			
Proceeds			
Cost			
Date of Purchase			
Date of Sale			
<b>Gift or Bequest</b> over \$100,000 in total			
Date Received			
Description of Property Received			
Fair Market Value of Gift or Bequest			

**FORM 8621**  
**PASSIVE FOREIGN INVESTMENT COMPANY (PFIC)**  
**NON-US MUTUAL FUNDS, ETFS, MONEY MARKET FUNDS, HEDGE FUNDS, POOLED**  
**INVESTMENTS**

(PLEASE PROVIDE FUND STATEMENTS FOR THE CALENDAR YEAR IF AVAILABLE)

<b>FUND COMPANY:</b>		
<b>FUND NAME</b>		
<b>OPENING BALANCE</b>		
Number of Units (A)		
Market Value		
<b>PURCHASES</b>		
Total Cost of purchases during the year		
Number of Units (B)		
Date of Purchase(s)		
<b>EARNED UNITS REINVESTED (IF AVAILABLE)</b>		
Dollar Value		
Number of Units (C)		
<b>SALES</b>		
Proceeds of Investment		
Number of Units (D)		
Cost of Units Sold		
<b>CLOSING</b>		
Market Value at Year-End		
Closing Units (E)		
<b>UNIT RECONCILIATION CHECK</b>		
Opening Units (A)		
Units Purchased (B)		
Units Earned (C)		
Units Sold (D)		
Closing Units (E)		

- Reporting is not required for funds held in RRSPs and RRIFs.
- segregated funds are not regarded as PFICs.