

UPDATED FAQs FOR STREAMLINED PROCEDURES

Canadian Tax Highlights
March 1, 2016

Attorneys

Marla Waiss

*Originally published in Canadian Tax Highlights, Volume 24, Number 3, March 2016.
Reprinted with permission.*

Early in 2016, the IRS updated its FAQs for the streamlined filing compliance procedures that apply to US taxpayers whether residing inside or outside the United States. The IRS first introduced the streamlined procedures in 2012, and it has modified them several times in the interim. The procedures offer a US taxpayer a simple process for coming into compliance with his or her US tax-filing obligations. The procedures continue to provide relief to many US citizens living in Canada who have failed to file US tax returns or report foreign accounts.

The new FAQs clarify how to complete the narrative statement of facts on form 14653 (“Certification by U.S. Person Residing Outside of the United States for Streamlined Foreign Offshore Procedures”) and form 14654 (“Certification by U.S. Person Residing in the United States for Streamlined Domestic Offshore Procedures”). A certification on one of those forms must accompany a streamlined procedure submission. The updated FAQs also address a spouse’s refusal to sign such a certification or a joint amended tax return. The IRS notes that many certifications submitted under the streamlined procedures contain insufficient information in, or omit information from, the statement of facts and in some cases include only one signature for a certification that relates to married taxpayers who file joint tax returns.

The narrative statement of facts must now include specific reasons for a failure to report income and information and to pay tax. The new FAQs state that a taxpayer must include the whole story, including favourable and unfavourable facts. FCA 13 (for domestic procedures) and FCA 6 (for foreign procedures) specifically state that the certification must include personal background, financial background, source of funds, and information about the taxpayer’s contact with an account, including withdrawals and investment decisions. The FAQs further note that if a taxpayer or a return preparer inadvertently checks “no” on form 1040 (schedule B) regarding a financial interest or signature authority over a foreign financial account, the narrative statement of facts should provide an explanation. Commentators have suggested that the guidance still leaves some room for interpretation as to what information should be included in the statement of facts.

UPDATED FAQs FOR STREAMLINED PROCEDURES

The new FAQs add FCA 14 (for domestic procedures) and FCA 7 (for foreign procedures) to address a situation in which a spouse or former spouse will not sign an amended return or joint certification on form 14654 or form 14653. A taxpayer may now submit a joint amended return with only his or her signature, as long as the return shows a net increase in tax. If the amended return shows a net decrease in tax or an increase in credit, the spouse's signature is still required: otherwise the spouse might be unaware of a refund resulting from an amended joint return. The taxpayer must also provide an explanation of why he or she cannot obtain a spouse's signature.

The updates to the streamlined procedures do provide some clarification for a Canadian who is considering his or her US tax-compliance options, particularly if the taxpayer's spouse is not willing to sign an amended tax return or certification. However, some issues with the procedures remain unresolved, including the non-residence requirement for foreign procedures, which may preclude someone who winters in the southern United States from coming forward under those procedures.