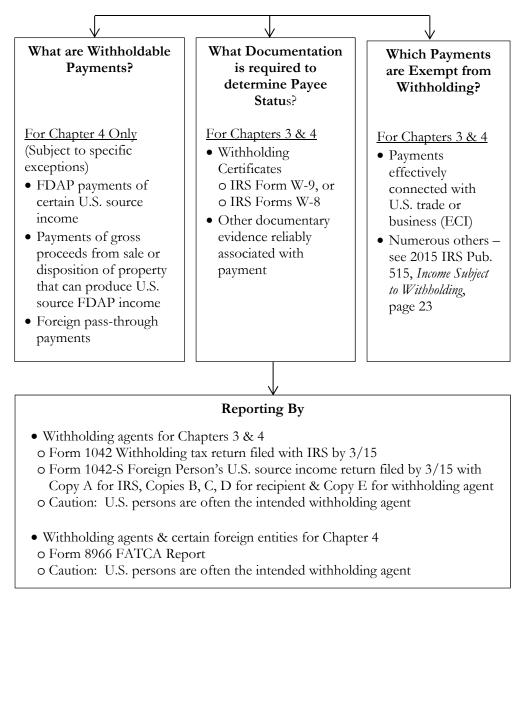


January 2016. The information contained herein is general in nature and based on authorities that are subject to change. Applicability to specific situations is to be determined through consultation with your tax advisor.

Form 3520 - Foreign Trusts & Gifts: • Form 8938 failure to file penalty • Who must file? o \$10K, unless reasonable cause U.S. Persons (& executors of U.S. exception applies decedents) with: • Statute of Limitations (SOL) for o Transfers to/obligations from tax year may remain open foreign trusts o 3 years from date of proper o Ownership of foreign trusts under reporting and filing [(6501(c)(8))]grantor trust rules of §671-679 • Extended SOL o Distributions from foreign trusts 0 6 years after filing if gross o Receipts of large gifts or bequests income omits >5K from from certain foreign persons specified foreign financial asset >\$100,000 from non-resident alien • Form 8938 does NOT relieve or foreign estate, or FBAR, Forms 3520 or 5471 filing ■ >\$15,601 from foreign requirements corporations or partnerships • Filing deadline – due date of income tax return (incl. extensions), but filed More significant penalty regime for separately from income tax return F3520, F5471, FBAR & other information returns FATCA implementation warrants raised awareness & immediate priorities for U.S. tax and information reporting obligations on non-U.S. investments 4 Options available for taxpayers with previous failures to comply with U.S. tax & information return obligations: 1) Delinquent FBAR submission procedures 2) Delinquent info return submission procedures (e.g. Forms 3520, 5471, others) 3) Streamlined filing compliance procedures 4) 2014 Offshore Voluntary Disclosure Program (OVDP) effective July 1, 2014 **Option 1: Delinquent FBARs** Replaced old FAQ #17 of 2012 OVDP Available for taxpavers who: ٠ have unfiled FBARs 0 have reported all income on 1040 Ο are not under exam or contacted by IRS 0 File: 6 years of FBARs with reasonable cause explanation No offshore penalties. No audit protection granted. ٠



Option 2: Delinquent Information Return

- Replaced old FAQ #18 of 2012 OVDP
- Available for taxpayers who:
 - o have one or more unfiled info returns
 - o even have unreported income or unpaid tax
 - o are not under exam or contacted by IRS
- File: Amended 1040s & all delinquent information returns, with reasonable cause explanation
- No offshore penalties. No audit protection granted.

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Option 3: Streamlined Filing Compliance Procedures

- Domestic & Foreign programs available for U.S. and non-U.S. residents respectively
- Taxpayers must certify, under penalties of perjury, that failure to report all income, pay tax and submit all required information returns including FBARs was due to non-willful conduct
- Only available to individuals (or estates)
- Returns will be processed by Service Center, will not be acknowledged nor result in the signing of a <u>Closing Agreement</u> with the IRS
- E.g.: Under Domestic Program:
 - Citizens and resident aliens would file 3 years of 1040Xs and Information Returns, 6 years of FBARs, Certify non-willful violation, pay tax and interest (but no tax penalties) plus a 5% offshore penalty

Option 4: 2014 OVDP (Principal Points)

- Generally 8 years of tax & information returns
- Accuracy or deficiency penalties
- Interest
- Offshore penalty 27.5% or 50%

Notable subject areas not covered by this Practice Aid include:

- Transfer Pricing Regime/BEPS
- Foreign Currency Translations
- Foreign Investment In Real Property Tax Act (FIRPTA) §1445 Withholding
- Publicly Traded Partnerships (PTP) §1446 Withholding
- Foreign Tax Credits
- Foreign Earned Income Exclusion
- Interest Charge Domestic International Sales Corporation (IC-DISC)
- Expatriation
- Non-Resident Alien (NRA) U.S. filings
- BE-10 Reporting