AMERICAN CITIZENS ABROAD
THE VOICE OF AMERICANS OVERSEAS

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July 19, 2013

C C P

ACA[1] Proposal for a Comprehensive Compliance Program to Enable Tax Compliance by Americans Resident Overseas

Dear Ladies and Gentlemen:

American Citizens Abroad has observed with increasing alarm the ever-widening gap between the reporting and compliance burden placed upon the overseas American community and the bleak statistics reflecting the very low effective compliance rate among this population. This "compliance gap" is rooted not in dishonesty or malfeasance, but rather in practical difficulties and inherent inequities many US persons would face in attempting to put their tax affairs in order. We write to alert you to this epidemic of non-compliance, examine its causes, and suggest strategies for bringing this population into compliance.

[1]American Citizens Abroad (ACA), founded in 1978, is a non-profit, non-partisan, volunteer association whose mission is to represent the interests of Americans living overseas. With offices in Geneva, Switzerland and in Washington D.C., the association draws on more than three decades of rich experience and knowledge of laws affecting Americans living overseas. ACA is reorganizing as a US tax-exempt organization operating under section 501(c)(4) of the Internal Revenue Code. Alongside it will be American Citizens Abroad Global Foundation, a publicly-supported charity under section 501(c)(3).

Background

The number of Americans resident overseas is generally estimated to range from 5 to 7 million although the actual number is not known with any degree of accuracy either by the Department of State or by the Department of the Treasury. Based on data available, the number of tax filers is estimated at around one million, leaving 2 to 3 million non-filers. Recent voluntary disclosure programs instituted by the IRS have barely made a dent in the non-compliance group. Hence the need for a program that will truly induce overseas Americans to enter into compliance and straighten out their tax situation with the IRS! This letter presents ACA's proposed answer to this urgent need.

ACA's experience and research has shown that the majority of Americans overseas looking to become tax and FBAR compliant were unaware of their need to file FBARs, did not understand the requirement for filing accounts such as foreign tax-deferred pensions on an FBAR, or were unaware of the need to file US taxes as they were fully compliant with their foreign tax obligations. At least one-third of Americans abroad are overseas because their spouse/partner is a foreigner. Another third were either born abroad of an American parent or born in the United States of foreign parents who left the U. S. when their child was an infant; they have lived essentially all of their lives overseas. Among the final third are many more long-term residents whose professional activities have led them to work abroad. All long-term overseas residents receive government services where they reside, although not from the United States.

Three roads to compliance

In September 2012, the IRS announced the conditions of the Streamlined Filing Compliance Procedures ("Streamlined Procedures") exclusively for non-resident taxpayers who were not in compliance with their 1040 and/or FBAR filings. With this program, the IRS has recognized that Americans resident abroad need a specific program to encourage compliance. The program is a step in the right direction, but it is too restrictive, comports an excessive number of conditions and creates too many uncertainties to truly encourage most non-filers to come forth.

The only alternative promoted by the IRS is OVDP, the Overseas Voluntary Disclosure Program of 2012, which leads to an automatic penalty of 27.5% of all overseas assets. This too is viewed as excessively penalizing and confiscatory for Americans resident abroad, since the vast majority are long-term overseas residents who have earned and saved overseas most of their lives and who have most of their assets overseas. For Americans abroad, those "foreign bank accounts" are their "local bank accounts". The National Taxpayer Advocate has severely criticized the OVDP.[2] A recent article in Tax Analyst has highlighted the inappropriate application of IRS rigid rules under OVDP to cases involving Americans abroad, resulting in inefficient use of IRS administrative resources and high cost for the taxpayer in terms

[2] Taxpayer Advocate Service, Fiscal Year 2014 Objectives, "IRS Voluntary Disclosure Programs Continue to Burden Benign Actors and Damage IRS Credibility", p. 36. http://www.taxpayeradvocate.irs.gov/userfiles/file/FullReport/IRS-Offshore-Voluntary-Disclosure-Programs-Continue-to-Burden-Benign-Actors-and-Damage-IRS-Credibility.pdf

of legal fees, unwarranted penalties and emotional stress through a process dragging out over two to three years.[3]

The IRS, through its press releases, has strongly discouraged quiet disclosure through normal reporting channels, even though such a procedure remains, to our understanding, perfectly legal. Apparently, many Americans resident abroad have taken the route of quiet disclosure as the number of FBAR filings has more than doubled in recent years. The GAO "Offshore Tax Evasion" report of March 2013 observed the increase in FBAR filings and recommended that the IRS increase audit review of quiet disclosures to increase penalties on past non-filing of FBARs, stating that quiet disclosures undermined the OVDP. This recommendation is disturbing. If the IRS follows the GAO advice, the only reasonable path open for many Americans abroad to enter into compliance will be closed off. This GAO recommendation is contrary to the philosophy stated in the IRS Guidance Manual which indicates that programs should be aimed at encouraging individuals to enter into compliance. The increase in quiet disclosures should be viewed as a positive outcome of the IRS campaign to encourage compliance, not a procedure that undermines the OVDP.

From its inception, the credibility of the FBAR program has suffered from its failure to distinguish between the two very different profiles of its target communities: long-term overseas residents, and United States residents attempting to secrete undeclared funds offshore. In addition, little effort was made to alert US persons of this reporting obligation and indeed many overseas residents whose tax returns were prepared by major accounting firms were never advised of the FBAR filing obligation. The application of penalties for non-filing, while facially equitable since they apply to all non-compliant persons equally, is in fact highly prejudicial to the overseas person. In the case of an overseas resident, penalties of 27.5 % may be levied on virtually all of his liquid assets, whereas this penalty will be much easier to manage for the stateside resident who has a large portion of his personal financial wealth in U.S. bank accounts.

ACA recommendation

Since OVDP is too penalizing, "Streamlined Procedures" are too restrictive and uncertain, and the path of quiet disclosure has been put into question, ACA recommends that the Department of Treasury and IRS adopt a two-prong strategy to facilitate compliance:

- transform the current "Streamlined Procedures" into a Comprehensive Compliance Program (CCP) exclusively for bona fide Americans resident abroad, with terms substantially different from the current IRS "Streamlined Procedures";
- transform the OVDP into a program essentially for Americans resident in the United States.

There would be two clearly distinct programs for two very different groups of taxpayers. Americans resident in the United States who are hiding assets and related revenues in foreign bank account are most likely evading taxes. Americans resident abroad, on the other hand, pay taxes to their country of

[3] Marie Sapirie, "The Personal Impact of Offshore Enforcement", Tax Analyst, July 16, 2013. http://www.taxanalysts.com/www/features.nsf/Articles/8E6965DFA3441ADF85257BAA0048E526?OpenDocument

residence. The non-filing of Americans abroad is not an issue of evading taxes, for in most instances Americans abroad owe no U.S. tax and the bank accounts exist for daily living needs, but rather one of non-awareness of the filing requirements of citizenship-based taxation or fear of reporting because of the excessive FBAR penalties under the OVDP.

The ACA proposal is presented in more detail starting on page 6. We wish to first provide a brief review of the current Streamlined Filing Compliance Procedures, the Questionnaire and the FAQ published February 26, 2013, followed by ACA's comments in respect of same.

Review of IRS instructions for the Streamlined Filing Compliance Procedures for Non-Resident, Non-Filer U.S. Taxpayers as specified in the IRS instructions of (9/1/2012)

The principal terms of the current Streamlined Filing Compliance Procedures for Non-resident, Non-Filer U.S. Taxpayers are outlined in **Annex 1** of this letter. The key threshold is that an individual owes less than $1,500 a year for the three back-years of tax forms filed under the program. The instructions emphasize that the program is designed for low risk taxpayers. Low risk taxpayers would apparently not be subject to FBAR penalties, but anyone entering the program considered to be higher risk could be subject to FBAR penalties. The program does not protect participants from criminal prosecution. A taxpayer who enters this program cannot subsequently enter the OVDP, which does protect against criminal prosecution. The multiple indicators of higher risk are such that, combined with the low threshold of back taxes due, few Americans abroad will see themselves as candidates for this program. The risk factors are stacked against them and the program provides no protection from criminal prosecution or from FBAR penalties.

The questionnaire which applicants of the "Streamlined Procedures" must complete is daunting. The twenty questions address the eligibility of the candidate and the various issues relating to high risk in the IRS perspective. These questions are drafted in such a way that they raise significant questions and doubts in the mind of the taxpayer and discourage entry into the program. Moodys Tax Advisors LLP of Canada analyzed each question in their article by Roy A. Berg, JD, LLM, published September 12, 2012, entitled *Do you qualify for the IRSs New Streamlined Procedure to Bring US Tax Returns Current?*[4] The article highlights the ambiguous and recondite nature of these questions and the attendant risk for individuals who simply want to become compliant. Any small trip wire can put one in a high risk category, often without the underlying reality justifying such relegation.. Moodys' analysis speaks for itself. Apart from professional tax advisors, no one who completes the questionnaire does so with complete awareness of the ramifications of one response over another.

ACA would like to highlight a specific issue related to question No 5, namely financial interest in accounts located outside the country of residence. The IRS considers having an account outside the country of residence to be an indicator of high risk. In the European context, the IRS perception is misleading. Mobility of individuals between countries is as open in Europe as the mobility of Americans between states within the United States. An American may move from one European country to another and

[4] Moody's article can be found at:http://www.moodystax.com/do-you-qualify-for-irss-new-streamlined-procedure-to-bring-us-tax-returns-current/

maintain bank accounts in both countries. An American may acquire a vacation house in another country and therefore have an account outside the country of residence. Cross-border workers – and there are hundreds of thousands of them throughout Europe - will generally have bank accounts in two countries. Among those cross-border workers are Americans. Furthermore, Americans abroad may have bank accounts in the United States.

The FAQ published February 26, 2013 reinforces concerns about entering the "Streamlined Procedures" program by stating: "Submissions determined to be higher risk due to tax amounts over $1,500 or the presence of other risk factors may be subject to applicable penalties. Submissions determined to be higher risk may also be subject to an examination. If you have a submission presenting higher risk, you may consider filing under the Offshore Voluntary Disclosure Program." It is hard to think of a better way to discourage use of the program.

The FAQ also indicate that individuals who qualify for the "Streamlined Procedures" but who have entered an Overseas Voluntary Disclosure Program (OVDP) may opt out of the OVDP in order to enter the "Streamlined Procedures". Even when the case has been closed under an OVDP with a filing of Form 906, a taxpayer can have her case reconsidered under the "Streamlined Procedures" framework. The IRS provides a specific address and instructions on how to proceed to have a case reconsidered.

By providing the possibility to opt out of the OVDP to enter the "Streamlined Procedures", the IRS confirms two points. First, the IRS recognizes that Americans resident overseas need a separate program. Second, the OVDP is excessively penalizing and not appropriate for Americans resident abroad.

ACA Comments

"Streamlined Procedures" is too restrictive. The instructions and questionnaire relating to "higher risk" factors as well as the FAQ create enormous uncertainty with regard to potential penalties, in particular FBAR penalties. These penalties can be confiscatory. For example, under the IRS Normal FBAR Penalty Mitigation Guidelines for Violations Occurring after October 22, 2004 (4.26.16-2 dated 07.01.2008), the penalties even for non-willful non-filing of the FBAR for modest accounts ranging from $50,000 to $250,000 can amount to up to 10% of an account for each year, which can total 60% over the 6 year statute of limitations for FBAR non-filing. The schedule of penalties under the IRS Normal FBAR Penalty Mitigation Guideline is reproduced in **Annex 2**. Bear in mind that essentially every overseas American has one or more overseas bank accounts and is thus required to file the FBAR. In fact, FBAR and FATCA filing requirements specifically discriminate against a sub-group of U.S. taxpayers – overseas Americans – because by necessity they have foreign bank accounts.

The emphasis on potential FBAR penalties is ever-present in the instructions. The referenced IRS Fact Sheet on FBAR filing requirements and penalties (FS-2011-13) reinforces the uncertainty and fear of FBAR penalties with the discussion of "reasonable cause". The Fact Sheet continues the statement: "The IRS has established mitigated penalty guidelines but the examiners may determine that a penalty is not appropriate or that a lesser (or greater) penalty amount than the guidelines would otherwise provide is appropriate." This leaves filers with little certainty as to whether filing will ultimately operate to their benefit or detriment.

The taxpayer is entering into undefined territory with no idea of, or control over, the outcome. It is viewed as particularly hazardous since individuals considering the "Streamlined Procedures" are often aware of the rigid, non-negotiable approach of the OVDP leading to substantial FBAR penalties. The fear that the IRS can arbitrarily extract FBAR penalties is reinforced by FS-2011-13 links to other IRS documents concerning FBAR filing procedures and penalties. The link to IRM4.26.6 (issued 07.01.2008), the Report of Foreign Bank and Financial Accounts (FBAR) (for information about reasonable cause exception to the FBAR penalty), outlines the wide scope of the examiner's discretion in handling cases. The penalties can vary enormously depending on the examiner's judgment of multiple factors. For instance, there are civil penalties for negligence, pattern of negligence, non-willful and willful violations. FBAR penalties are determined per account, not per unified FBAR, for each person required to file. Penalties apply for each year and each violation. There may be multiple civil penalty assessments arising from one account. FBAR penalties can apply to each person with a financial interest in, or signature or other authority over, the foreign financial account. Each person can be liable for the full amount of the penalty. FBAR penalties have varying upper limits, but no floor.

"Streamlined Procedures" ostensibly created to encourage individuals to enter into compliance, thus defeats its own purpose. The IRS Manual states that "Penalties should be asserted only to promote compliance with the FBAR reporting and recordkeeping requirements". Yet, it is precisely the emphasis in the instructions on FBAR penalties that discourages compliance.

The IRS has much more to gain by attracting many more individuals into the system than by intimidating Americans abroad and collecting heavy penalties from the few coming forth under the OVDP and "Streamlined Procedures".

ACA Recommendation for a Comprehensive Compliance Program ("CCP")

In order to encourage more Americans resident abroad to enter into compliance, ACA recommends an entirely new program, a **Comprehensive Compliance Program (CCP)** that is all-inclusive in scope and easy to administer.

Eligibility for CCP

1. The CCP would be open to all non-resident taxpayers who have resided abroad for three years or more, as bona fide overseas residents defined in Section 911 of the Tax Code, and who meet one or more of the following four conditions:
    a. who have not filed tax returns and FBARs;
    b. who have filed incomplete or complete tax returns but have not filed FBAR or have filed an incomplete FBAR;
    c. who have filed FBAR forms, but have not filed tax returns;
    d. who do not need to file a tax return because total income is below the threshold for reporting but who meet the FBAR filing requirement and have not filed an FBAR.

    Both first-time filings and amended returns would be permitted under the CCP for both the tax return and the FBAR.
2. Amended returns may also be filed for the sole purpose of submitting late-filed Forms 8891 to seek relief for failure to timely elect deferral of income from certain retirement or savings plans

in Canada where deferral is permitted by relevant treaty. This amended filing is already permitted under the current IRS Streamlined Program.

3. Americans overseas who have already entered under the current "Streamlined Procedures" or the OVDP will automatically have their files transferred to the CCP. Even when the case has been closed under an OVDP with a filing of Form 906 a taxpayer can have his/her case reconsidered under the CCP, as is currently allowed under the IRS "Streamlined Procedures".
4. The CCP is applicable and available not only when the individual comes forth to enter the program, but also when the IRS discovers the non-compliant American resident abroad before the individual has entered the CCP voluntarily. The IRS will allow the overseas taxpayer the opportunity to enter the CCP, but under these circumstances, the taxpayer may more likely be subject to an IRS audit for the three years reported and, if any U.S. tax is due, a specific penalty for not entering the CCP voluntarily will relate to the tax due.

Terms of CCP

5. The CCP requires filing three back years of tax returns - 1040s and any relevant schedules and related forms (e.g. Form 3520 or 5471) - and three years of FBARs. If one or another form had already been filed in an incomplete or inaccurate way, the 1040 should be clearly labeled "amended" and include all 1040 schedules and related forms. Similarly if an FBAR had already been filed in an incomplete way, it should be labeled "amended".
6. FBAR filing requirements under this program include **only** foreign accounts in which the American citizen abroad has a financial interest. It does not include accounts over which the American abroad has signatory authority but no financial interest.[5] If the taxpayer has already filed FBAR for the prior three years, the new FBARs excluding accounts with only signatory authority should carry "amended" in the title.
7. Taxpayers filing under CCP will fall into one of two groups.
    a. **Group 1:** Taxpayers voluntarily entering CCP must file their income tax returns and FBARs, pay income tax due, if any, and pay interest owed on tax due, if any. No penalty is assessed.
    b. **Group 2:** Taxpayers "discovered" by the IRS prior to their voluntary entry into CCP, file their income tax returns and FBARs, pay income tax due, if any, pay interest owed on tax due and pay a penalty equivalent to 5% of the tax due. However, if the American has resided his/her entire life overseas or since the age of 16 years old, the penalty for being "discovered" will not be applicable.

    The terms for Group 1 are similar to the program run by IRS regional offices for many years until around five years ago. Terms of Group 2 will incite Americans overseas to voluntarily enter CCP.
8. No high risk considerations or questionnaires are required in the CCP.
9. No attempt is made in the CCP to determine willful and non-willful non-filing or to apply different levels of penalties according to such criteria.
10. Entering and completing the CCP, including cooperating with the IRS and paying any taxes due with interest and any eventual penalty on taxes due, eliminates any risk of criminal prosecution

[5] Americans abroad employed by foreign corporations and who have signatory authority on company accounts should not be required to report those accounts. The Bank Secrecy Act creates an impossible situation for Americans abroad in responsible positions with signatory authority related to their jobs over accounts in which they have no personal financial interest. The employers refuse, and rightly so, that the company accounts be sent to the Treasury Department. An individual managing investment accounts for third parties is bound by privacy laws not to transmit any information related to the accounts. Americans overseas today are losing jobs or are being refused jobs overseas because of FBAR reporting requirements. In order to maintain jobs, some Americans are forced to renounce their U.S. citizenship to eliminate this reporting requirement.

and any risk of FBAR non-filing penalties, Form 8938 non-filing penalties and any other non-filing penalties for other forms. The IRS procedure is limited to the requirements for the individual to enter into compliance and does not include interviews with the IRS concerning why the individual was non-compliant or the identities of those who might have recommended non-compliance.

Organization of CCP

11. As proposed by ACA, the CCP should be organized in such a way as to simplify and accelerate processing at the IRS. For all taxpayers, filings would be open for review and challenge by the IRS for a period of three months only. At the end of this period, unchallenged returns would be accepted and final. For the taxpayer coming into compliance, this would avoid substantial legal expense and undue personal stress.
12. Individuals qualifying for the CCP can file using a specific address provided by the IRS for the CCP or can come into the CCP through one of the overseas Tax Attachés who will transfer the file to the designated CCP examination office. The IRS will aim to simplify the filing procedure to the extent possible. If the cost and complexity of entering into compliance is too high, some Americans abroad will be discouraged or unable to enter the program even if they owe no U.S. tax.
13. IRS Criminal Division would review the files only to ensure that none of the candidates are already in the middle of an audit or are "real-live" criminals, for example, where the filer is under criminal investigation for non-tax violations such as money laundering or other felony offenses.
14. The CCP filing requires a Social Security number. Americans born overseas 30 or 40 years ago who have never worked in the United States usually do not have a Social Security number. The instructions for the CCP should carry the same message that the IRS has provided for international filers to facilitate obtaining a Social Security number.[6] The IRS may also want to recommend that Americans abroad contact the American Citizens Services office at the closest American Embassy for information on applying for a SSN. If an individual has applied for a SSN, but has not yet received it, he or she can say "applied for", and start the CCP process. The IRS can then issue an identification number strictly for keeping track of this paperwork. When the Social Security Number comes through, it can be provided by the taxpayer.
15. The IRS will systematically issue a warning letter to the taxpayer in the CCP about the requirement to file the 1040 and FBAR form in the future. This letter should include mention of deadline dates for filing the 1040 and the FBAR on a timely basis and provide links to filing procedures, including links to instructions for electronic filing requirements, for future returns.
16. The IRS will make significant efforts to reach out to the community of Americans abroad to make citizens aware of the filing requirements and the advantages of participation in the Comprehensive Compliance Program. Media assets should be leveraged to ensure maximum coverage of program introduction in both professional and non-professional publications, broadcast channels and websites. The program must be announced with great fanfare so that the general press spreads the information. The IRS should consider using both English and non-English speaking media in countries with large populations of Americans. The IRS should have flyers available in all U.S. Consular offices abroad so that citizens renewing their U.S. passport

[6] "Each taxpayer who files, or is claimed as a dependent on, a U.S. tax return, will need a social security number (SSN) or individual taxpayer identification number (ITIN). To obtain a SSN, use form SS-5, Application for a Social Security Card. To get form SS-5, or to find out if you are eligible for a social security card, contact a Social Security Office or visit Social Security International Operations (http://www.socialsecurity.gov/foreign/). If you, or your spouse, is not eligible for a SSN, you can obtain an ITIN by filing form W-7 along with appropriate documentation."

will be informed of tax filing obligations and the CCP. Information on qualified U.S. tax preparers overseas should also be made available.

The key to the ACA proposal is that Americans resident overseas entering CCP will know exactly the amount due to the IRS, including the tax due, interest and penalty, if any. They will not fear that their life savings are at risk. They will not be treated as criminals and will come into compliance.

This straightforward system will greatly simplify, automate and accelerate IRS administration, allowing the IRS to deploy its limited resources to other important areas.

The IRS may question whether the CCP is too lenient for the few very wealthy Americans abroad with significant back taxes over three years. ACA's reply to this issue is that most of those individuals have probably already entered OVDP, knowing that the upcoming of FATCA would catch them, or they have already found ways to eliminate or reduce their overseas investments. Even if some wealthy overseas Americans benefit from the CCP, the IRS has all the more to gain since those individuals will pay back taxes and interest over the three prior years and will subsequently be "in the system".

The ACA proposal extends the CCP framework to those instances where foreign financial institutions report to the IRS on bank accounts owned by Americans abroad prior to the American abroad initiating voluntary entry into the CCP. This may occur either under specific IRS agreements with a foreign country or under the modalities of FATCA reporting. FATCA will have achieved its purpose in helping the IRS discover Americans resident overseas not in compliance; Americans will be informed by the IRS of the need to enter the CCP and the terms applicable to them as "discovered" overseas taxpayers. With FATCA reporting soon becoming a reality, the penalty of 5% of the amount of tax due attached to being "discovered" will incite non-compliant Americans to rapidly enter the CCP voluntarily. There is no need or justification for financially destroying these "discovered" individuals with excessive, arbitrary FBAR penalties. Most are simply not aware of the filing requirement. Once the individuals have been "discovered", these Americans abroad will be "in the system". The objective is to obtain compliance.

Conclusion

There are several reasons for initiating a genuine Comprehensive Compliance Program for overseas taxpayers. Much of the current non-filing among Americans abroad results from longstanding insufficient outreach by the IRS and the fundamental impracticability of citizenship-based taxation. FBAR was not even mentioned in the general instructions for overseas filers of 1040's until very recently; the only mention of FBAR was a footnote on Schedule B.

Over the last four years, following the IRS's 180 degree change in policy regarding quiet disclosures, the IRS's threatening approach has created extreme anxiety and furor among the American community abroad. The heavy FBAR penalties under the OVDP linked to overseas assets are considered confiscatory and unjust, particularly since Americans abroad need foreign bank accounts at their local banks for daily living and the FBAR is not even a tax form, but only an informational form. It is all the more unjust in that most Americans abroad pay taxes to the country of residence, apply foreign tax credits for those taxes paid against the U.S. tax liability on their 1040 and/or apply the foreign earned income exclusion, and consequently owe little or no tax to the United States. The resulting ill will creates significant hostility and noncompliance among a community normally well- disposed to U.S. laws and policies. Many Americans are simply dropping off the radar and live their lives with a non-U.S. passport.

CCP will greatly improve relations between the United States Government and the overseas citizens' community. Americans abroad already suffer major prejudice and discrimination under the combination of citizenship-based taxation and FATCA. Citizenship-based taxation leads to double filing, double taxation, taxation on phantom capital gains, taxation of contributions to pension funds and savings vehicles for retirement and overwhelming reporting requirements for self-employed entrepreneurs. FATCA shuts off access to foreign financial institutions, overseas employment opportunities, and entrepreneurial activities. The combination is devastating for Americans abroad. Unfortunately, increasing numbers of Americans abroad are being forced by U.S. law to renounce their U.S. citizenship just to survive where they live.

ACA is working with Congress to encourage changes in the law so that Americans abroad can be competitive and enhance the presence of the United States' products and services in the global economy. ACA has proposed residence-based taxation (RBT) as a long-term solution. In the interim, ACA expects the help of the IRS to sustain the community of Americans abroad by adopting ACA's proposal for a Comprehensive Compliance Program, implementation of which is within the authority of the Department of the Treasury and IRS.

Thank you for your consideration.

Sincerely yours,

Marylouise Serrato	Jackie Bugnion
Executive Director	Director

CC: The Honorable Senator Max Baucus, Chairman, Senate Finance Committee
The Honorable Senator Orrin Hatch, Ranking Member, Senate Finance Committee
The Honorable David Camp, Chairman, House Ways and Means Committee
The Honorable Sandy Levin, Ranking Member, House Ways and Means Committee
The Honorable Carolyn Maloney, Chair of the Americans Abroad Caucus
The Honorable Brett York, Office of the International Tax Counsel, Department of the Treasury

Annex 1

Review of IRS instructions for the Streamlined Filing Compliance Procedures for Non-Resident, Non-Filer U.S. Taxpayers as specified in the IRS instructions of (9/1/2012)

- The streamlined program is for non-residents who have recently become aware of their filing obligations and now seek to come into compliance with the law.
- The streamlined procedure is designed for taxpayers that present a low compliance risk.
- For those taxpayers presenting low compliance risk, the review will be expedited and the IRS will not assert penalties or pursue follow-up actions.
- Submissions that present higher compliance risk are not eligible for the streamlined processing procedures and will be subject to a more thorough review and possibly a full examination, which in some cases may include more than three years, in a manner similar to opting out of the Offshore Voluntary Disclosure Program.
- Taxpayers utilizing this procedure will be required to file delinquent tax returns, with appropriate related information returns (e.g. Form 3520 or 5471), for the past three years and to file delinquent FBARs (Form TD F 90-22.1) for the past six years.
- Payment for the tax and interest, if applicable, must be remitted along with delinquent tax returns.
- In addition, retroactive relief for failure to timely elect income deferral on certain retirement and savings plans where deferral is permitted by relevant treaty is available through this process. The proper deferral elections with respect to such arrangements must be made with the submission.

This procedure is available for non-resident U.S. taxpayers who have resided outside of the U.S. since January 1, 2009 and who have not filed a U.S. tax return during the same period.

Amended returns submitted through this program will be treated as high risk returns and subject to examination, except for those filed for the sole purpose of submitting late-filed Forms 8891 to seek relief for failure to timely elect deferral of income from certain retirement or savings plans where deferral is permitted by relevant treaty. It should be noted that this relief is also available under the Offshore Voluntary Disclosure Program.

If a taxpayer needs to file an amended return to correct previously reported or unreported income, deductions, credits, tax etc., he should not use this streamlined procedure.

All tax returns submitted under this procedure must have a valid Taxpayer Identification Number (TIN). For U.S. citizens, a TIN is a Social Security Number (SSN). For individuals that are not eligible for an SSN, an Individual Taxpayer Identification Number (ITIN) is a valid TIN.

If the submitted returns and application show less than $1,500 in tax due in each of the years, they will be treated as low risk and processed in a streamlined manner.

The risk level may rise if any of the following are present:

- If any of the returns submitted through this program claim a refund;
- If there is material economic activity in the United States;
- If the taxpayer has not declared all of his/her income in his/her country of residence;

- If the taxpayer is under audit or investigation by the IRS;
- If FBAR penalties have been previously assessed against the taxpayer or if the taxpayer has
- previously received an FBAR warning letter;
- If the taxpayer has a financial interest or authority over a financial account(s) located outside his/her country of residence;
- If the taxpayer has a financial interest in an entity or entities located outside his/her country of residence;
- If there is U.S. source income; or
- If there are indications of sophisticated tax planning or avoidance.

For returns determined to be high risk, failure to file and failure to pay penalties may be imposed in accordance with U.S. federal tax laws and FBAR penalties may be imposed in accordance with U.S. law. Reasonable cause statements may be requested during review or examination of the returns determined to be high risk.

Taxpayers who are concerned about the risk of criminal prosecution should be advised that this new procedure does not provide protection from criminal prosecution if the IRS and Department of Justice determine that the taxpayer's particular circumstances warrant such prosecution. Taxpayers concerned about criminal prosecution because of their particular circumstances should be aware of and consult their legal advisers about the Offshore Voluntary Disclosure Program (OVDP), announced on January 9, 2012, which offers another means by which taxpayers with undisclosed offshore accounts may become compliant.

Once a taxpayer makes a submission under the new procedure described in this document, OVDP is no longer available.

Annex 2: Summary of IRS Normal FBAR Penalty Mitigation Guidelines for Violations Occurring after October 22, 2004 (4.26.16-2 dated 07.01.2008)

The penalty is for each violation (one violation for every year of non-reporting) and for each person (in case of joint ownership of an account).

Non-willful penalties

Maximum amount of total of foreign bank accounts	FBAR penalty
Up to $50,000	$500 for each violation, maximum $5,000
From $50,000 to $250,000	$5,000 for each violation, not to exceed 10% of balance in the account for the year
More than $250,000	$10,000 for each violation, the statutory maximum for non-willful violations

Willful penalties

Maximum amount of total of foreign bank accounts	FBAR penalty
Up to $50,000	The greater of $1,000 per violation or 5% of the maximum balance for each violation
From $50,000 to $250,000	The greater of $5,000 per violation or 10% of the maximum balance for each violation
From $250,000to $1,000,000	The greater of a) 10% of the maximum value of the account for each violation or b) 50% of the closing balance in the account as of the last day of the FBAR filing.
Over $1,000,000	The statutory maximum applies. The greater of a) $100,000 or b) 50% of the closing balance of the account on the last day of the FBAR filing