

September 15, 2012



tax & business Alert

LEVI & SINCLAIR, SENCRL
LLP

1303 Greene Avenue, Suite 400
Montreal, Quebec H3Z 2A7
Tel: (514) 931-7600 Fax:(514) 931-3600
alert@levifca.com

A member firm of Integra International with offices worldwide

For U.S. taxpayers living abroad who have failed to timely file U.S. federal income tax returns or Reports of Foreign Bank and Financial Accounts (FBARs)

New Streamlined Filing Compliance Procedures for Non-Resident, Non-Filer U.S. Taxpayers

On June 26, 2012, the IRS announced new streamlined filing compliance procedures for non-resident U.S. taxpayers to go into effect on September 1, 2012. These procedures are being implemented in recognition that some U.S. taxpayers living abroad have failed to timely file U.S. federal income tax returns or Reports of Foreign Bank and Financial Accounts (FBARs), Form TD F 90-22.1, but have recently become aware of their filing obligations and now seek to come into compliance with the law. These new procedures are for non-residents including, but not limited to, dual citizens who have not filed U.S. income tax and information returns.

DESCRIPTION OF THE NEW STREAMLINED PROCEDURE

This streamlined procedure is designed for taxpayers that present a low compliance risk. All submissions will be reviewed, but the intensity of review will vary according to the level of compliance risk presented by the submission. 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.

For those taxpayers presenting low compliance risk, the review will be expedited and the IRS will not assert penalties or pursue follow-up actions.

(Continued from page 1)

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.

ELIGIBILITY

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. These taxpayers must present a low level of compliance risk as described below

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.

COMPLIANCE RISK DETERMINATION

The IRS will determine the level of compliance risk presented by the submission based on information provided on the returns filed and based on additional information provided in response to a Questionnaire required as part of the submission.

Low risk will be predicated on simple returns with little or no U.S. tax due. Absent any high risk factors, 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.

tax & business ALERT has been prepared by LEVI & SINCLAIR, LLP for the general information of our clients, staff and other interested parties.

The enclosed comments are of a general nature and are not intended to cover all aspects of the subject matter. Prior to implementing any planning based upon information in this publication, the specific facts pertaining to any particular situation should be carefully considered. We will be pleased to assist in this regard and to provide further details pertaining to the matters discussed herein.

If you know of someone who should be added to our mailing list or if you require additional copies, please contact us at (514) 931-7600

ABOUT LEVI & SINCLAIR

LEVI & SINCLAIR is a firm of chartered professional accountants that traces its origin in Montreal to 1970. We pride ourselves on being more than just an accounting firm. We offer an effective blend of personalized service, experience and technological leadership, coupled with a steadfast commitment to consistently deliver excellence. Our Chartered Professional Accountants and Business Consultants provide advisory services on a broad range of issues to both our individual and corporate clients. The members of our firm possess unique talents, expertise and experience, giving our clients access to a knowledge base of considerable breadth and depth. Together with our support personnel, we share a commitment to developing practical solutions for the business challenges of today, and to devising strategies for tomorrow.

OUR SERVICES

Our firm takes pride in adding value to every client that we serve through our extensive expertise and proactive approach to your financial needs. We match our dedication to adding value with experience and expertise: we have experience in servicing virtually every type of industry and professional practice.

TAXATION

Our office has a strong basis in federal and provincial tax issues. Our tax group has been in existence for 50+ years and is highly qualified and experienced. Our accountants work hard to minimize your taxes, yet make sure that you fulfill your tax requirements ethically while working to add value. We can fill a variety of tax needs, both domestic and international as well as corporate and personal. Our specialties lie in tax reporting and representation, tax planning (business, personal, divorce and litigation), tax structuring of entities and transactions and tax research.

FINANCIAL

LEVI & SINCLAIR can meet all of your basic financial needs with our exemplary Accounting Services Group that can truly add value whether it's your business or your personal finances that we are reviewing. We work with business entities as well as non-profits and foundations. Our accounting services include; auditing and compilation review of financial statements, budgets and forecasts, and government reporting. We won't simply process your financial statements, our mission is to add value. We will go the extra mile to help you forecast or locate opportunities that you may be missing.

BUSINESS CONSULTING

LEVI & SINCLAIR's Business Consulting unit has proven itself as a valuable resource to businesses of all kinds. We can help you plan your future, whether you see it coming or not. We can help you bring seminal business events to life; like mergers and acquisitions, business valuation, leases and contracts, or business development plans, all of which take a huge amount of planning and attention to detail. If there are no big events on your horizon, we can still be of service by helping you to anticipate the unexpected through our forecasting, real estate projections, risk management assessments, or our feasibility studies. We look at your business and all of its many facets, to find both issues and opportunities and bring that valuable insight to you.

LITIGATION SUPPORT AND DISPUTE RESOLUTION SERVICE AREAS

- **Civil and criminal Fraud Investigation**
- **Management and employee fraud and theft**
- **Identification of secret commissions and kickbacks**
- **Sarbanes-Oxley compliance audits**
- **Sarbanes-Oxley 404 audits**
- **Intellectual Property Litigation Support**
- **Training on fraud awareness and prevention**
- **Due Diligence Audits**
- **Business valuation**
- **Fairness opinions**
- **Insurance claim assistance**
- **Retail sales audits**
- **Contract dispute resolution**
- **Professional negligence litigation support**
- **Fraud prevention program design, implementation and evaluation**
- **Bank due diligence audits**
- **Employee background audits**
- **Financial discrepancy analysis**
- **Divorce litigation support**
- **Insurance claim quantification**
- **Breach of contract quantification**
- **Electronic Discovery and Data Recovery**
- **Computer forensics**

CONTACT INFORMATION

LEVI & SINCLAIR SENCRL
LLP

1303 Greene Avenue, Suite 400
Montreal, Quebec H3Z 2A7

Tel: (514) 931-7600 Fax: (514) 931-3600

Philip C. Levi, CFE, FCPA, CPA, CPA/CFF, CA•IFA
plevi@levifca.com

WITH OFFICES WORLDWIDE THROUGH MEMBERSHIP IN

INTEGRA  **INTERNATIONAL**[®]

YOUR GLOBAL ADVANTAGE