Amended IRS voluntary disclosure programs expand eligible taxpayers but create the Canadian snowbird dilemma: Part 1

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On June 18, 2014, the IRS announced significant changes to its current offshore voluntary disclosure programs to ease the tax compliance burden for both residents and nonresidents of the United States who are not compliant with their US tax filing obligations. Additionally, the IRS announced new procedures for delinquent FBAR (FinCEN Form 114) or information return (e.g., forms required to report ownership of foreign trusts, controlled foreign corporations, passive foreign investment companies, etc.) submissions. Links to all the revised procedures are accessible from here. These new changes generally clarify and expand the class of individuals eligible for the IRS's streamlined filing compliance procedures and make the current offshore voluntary disclosure program (OVDP) even more burdensome than it already is. Yet, these changes also pose many new questions and, like any new administrative program, it is uncertain how these changes will be implemented by the IRS in practice. These changes were made in response to the new Foreign Tax Compliance Act (FATCA),[1] which took effect on July 1, 2014, and were foreshadowed by IRS Commissioner John Koskinen on June 3, 2014. Although some serious uncertainties must be resolved, the IRS press release is generally good news for noncompliant taxpayers who want to become compliant before the FATCA storm begins in earnest. This blog is the first in a planned two-part series that analyzes the changes to the IRS voluntary disclosure programs, and is limited to analyzing the amended streamlined program. Part two of this blog will analyze the amended OVDP program, the procedures for delinquent FBAR or information return submissions, and the transition rules under the amended voluntary disclosure programs.

I. Streamlined program significantly expanded, although uncertainties remain

Effective July 1, 2014, the same day FATCA took effect,[2] the amendments significantly relax the eligibility criteria for Streamlined by making five changes, though they also raise serious uncertainties. Before addressing these changes and uncertainties, it is important to note the similarities between the old streamlined program (2012 streamlined) and the new one (2014 streamlined). Generally, the same filing procedures carryover from the 2012 streamlined to the 2014 streamlined except as discussed below. Notably, taxpayers must still submit all required tax returns for each of the most recent three years for which the US tax return due date (including extensions) has passed and six years of delinquent FBARs under the 2014 streamlined. There is still no criminal penalty protection under the 2014 streamlined, while civil penalty protection remains available unless (1) the original tax noncompliance (for nonresidents) or return (for residents) was fraudulent or (2) the FBAR violation (if applicable) was willful.[3]

I.1. Five Major Changes to Streamlined

The five major changes to the 2014 streamlined program are outlined below.

1. *Streamlined's scope expanded to include US residents*: US residents are now eligible for streamlined, not just nonresidents (as was the case under the 2012 streamlined). Amended returns are

now allowed under the 2014 streamlined for both residents and nonresidents, though they were generally disallowed under the 2012 streamlined or treated as high-risk returns subject to examination unless filed for the sole purpose of submitting late Forms 8891. Furthermore, there are now general streamlined procedures—applicable to both residents and nonresidents of the United States—and specific streamlined procedures that depend on the taxpayer's residency under streamlined. Residency is defined in the negative in the eligibility requirements for the nonresident version of the 2014 streamlined (nonresident streamlined), and was christened the "non-residency requirement." Notably, residency was not previously defined under the 2012 streamlined program as restrictively as it is under the 2014 streamlined program's non-residency requirement, as we shall see below.[4]

1.1. *Nonresident streamlined and the non-residency requirement.* To qualify for nonresident streamlined, taxpayers must:

1.1.1. Meet the applicable non-residency requirement (if married taxpayers want to file joint tax returns, both spouses must meet the applicable non-residency requirement);

1.1.2. Failed to report income from a foreign financial asset and pay US tax, and may have failed to file an FBAR or international information return regarding the foreign financial asset; and

1.1.3. The failure to file resulted from non-willful conduct.[5]

There are two different tests for non-residency, depending whether the taxpayer is a US citizen, lawful permanent resident (colloquially know as green card holders), or neither. Notably, residency under the 2014 streamlined procedures is independent of the general residency rules in the Code. Consequently, although taxpayers may have a green card and are US residents under the Code, they can still be nonresidents of the United States under the 2014 streamlined procedures.[6]

First, U.S. citizens and green card holders meet the non-residency requirement if — in at least one year during the three-year period that tax returns must be submitted under streamlined — they both (A) had a non-U.S. "abode" and (B) were physically outside the United States for at least 330 full days.[7] The 330-day prong means that taxpayers can spend up to 35 days (36 days in a leap year) in the United States and still qualify for nonresident streamlined, and will be discussed more extensively below. The non-residency requirement for US citizens and green card holders piggybacks off of the rules in I.R.C. § 911, commonly known as the "foreign earned income exclusion," and accordingly, raises the question whether the 35-day rule can be supplemented by the disjunctive clause in § 911(d)(1)(A) for "bona fide" foreign (i.e., non-US) residents who are US citizens. Streamlined is silent on the applicability of the bona fide foreign residence test, but explicitly defer to the rules in I.R.C. § 911 for purposes of the non-residency requirement. For example, "abode" has the same meaning for streamlined's non-residency requirement as it does in I.R.C. § 911(d)(3), where an abode is generally a dwelling.[8] Determining whether a taxpayer has a US abode is a facts and circumstances inquiry. Although an abode is generally a dwelling, the mere maintenance of a dwelling in the United States, even if used by the taxpayer's spouse and dependents, does not necessarily mean that the taxpayer's abode is in the United States.[9] Thus, the mere ownership and maintenance of a US vacation home does not equate to a dwelling under the non-residency requirement.

Second, taxpayers who are not US citizens or green card holders meet the non-residency requirement if—in at least one year during the three-year period that tax returns must be submitted under streamlined—they did not meet the substantial presence test in I.R.C. §

7701(b)(3). This particular version of the non-residency requirement will also be elaborated on below.

1.1. *Resident streamlined.* To qualify for resident streamlined, taxpayers must:

1.1.1. Fail to meet the non-residency requirement (at least one spouse must fail the non-residency requirement for joint filers);

1.1.2. Have previously filed a US tax return (if required) for each year during the three-year period that tax returns must be submitted under streamlined;

1.1.3. Have failed to report income from a foreign financial asset and pay US tax, and may have failed to file an FBAR or international information return regarding the foreign financial asset; and

1.1.4. The failure to file resulted from non-willful conduct.[10]

2. *Compliance risk questionnaire and assessment process obsolete*: the compliance risk questionnaire, which was previously required as part of a taxpayer's 2012 streamlined submission, and the risk assessment process that precipitated the questionnaire are now obsolete. The level of scrutiny a taxpayer's streamlined submission was subject to under the 2012 streamlined depended on the IRS's compliance risk determination. Taxpayers will no longer be subject to different levels of scrutiny based on compliance risk, but will generally be processed under the procedures applicable to any US tax return. Nevertheless, the IRS warns that streamlined submissions may also be subject to verification procedures for accuracy and completeness using information obtained from banks, financial advisors, and other sources (e.g., information from FATCA, IRS investigations of foreign banks, whistleblowers, etc.).[11]

3. *$1500 tax liability threshold completely eliminated*: although the IRS issued previous guidance clarifying that tax liability of $1500 or more would not, by itself, disqualify a taxpayer from the 2012 streamlined program,[12] the new streamlined program has no tax liability threshold of any kind.

4. *Non-willful conduct certification required*: taxpayers using streamlined must now certify that their failure to properly report income, pay tax, and submit information returns was due to "non-willful conduct." This certification seemingly replaces the reasonable cause arguments that were sometimes necessary for taxpayers under the 2012 streamlined, and may be viewed as quasi-reasonable cause arguments.[13] Non-willful conduct is defined in the 2014 streamlined procedures as "conduct that is due to negligence, inadvertence, or mistake or conduct that is the result of a good faith misunderstanding of the requirements of the law."[14] Willfulness is a well-established concept under US tax law, albeit its meaning changes depending on the circumstances, and generally means an "intentional violation of a known legal duty."[15] The definition of willful under streamlined is a significant relaxation of this common definition. Moreover, streamlined does not directly address the doctrine of willful blindness, which is intentional inadvertence of the facts and is analogous to playing the ostrich by sticking one's head in the sand.[16] Critically, the initial certification forms—which differ for residents and nonresidents—could subject taxpayers to criminal prosecution if falsely made, since they require taxpayers to make the necessary

certifications under penalty of perjury.[17] The certification for nonresidents is still in draft form.[18] The non-willful certification must be attached to every tax return and information return, excepting FBARs (since they must be electronically filed), which is a tad excessive. Furthermore, civil penalty protection applies unless the original tax noncompliance (for nonresidents) or return (for residents) was fraudulent or the FBAR violation was willful, while regular audit procedures applicable to any US tax return are equally applicable to returns submitted under streamlined and the accuracy and completeness of submissions may be checked against information obtained from banks, financial advisors, and other sources.

5. *5% penalty for US residents and penalty protection*: US residents using streamlined are subject to a 5% penalty in exchange for civil penalty protection. Nonresidents, however, are not subject to civil penalties. Specifically, nonresidents have civil penalty protection for failure-to-file, failure-to-pay, accuracy-related penalties, information return penalties, and FBAR penalties; and residents are protected from accuracy-related return penalties, information return penalties, and FBAR penalties. Both residents and nonresidents lose civil penalty protection if they were fraudulent or their FBAR violation (if any) was willful.

I.2. Uncertainties and the Canadian snowbird dilemma

Although the new changes to the 2014 streamlined are generally positive, some uncertainties remain. First, and most importantly, the non-residency requirement for US citizens and green card holders may cause serious (and perhaps, unintended) negative consequences for noncompliant taxpayers that spent too much time in the United States during the three-year period that tax returns must be submitted under the 2014 streamlined. Moreover, it is uncertain whether the closer connection exception applies under the non-residency requirement for non-US citizens and non-green card holders. Second, the term “US tax return” is not defined under streamlined, the meaning of which is critical to determine a taxpayer’s eligibility for resident streamlined. Third, it is unclear how the civil examination or criminal investigation disqualifications from streamlined will work in practice. Fourth, it is uncertain whether the 5% penalty computation for US residents will apply to assets held indirectly, as well as those held directly.

I.2.1. *The non-residency requirement and the Canadian snowbird dilemma*

Under the 2014 streamlined, noncompliant taxpayers must have spent 35 days at most in the United States for at least one tax year during the relevant three-year streamlined period to qualify for the amnesty program and meet the non-US abode requirement. This makes day-counts even more important than they previously were.[19] For example, take the typical Canadian snowbird, Mr. Snowbird, who is physically present in Canada for 10 months and in the United States for 2 months at his vacation home (or “cottage,” as some Canadians prefer) every year during the relevant three-year streamlined period. Mr. Snowbird is a dual citizen of Canada and the United States, conducts all of his business in Canada, has no significant US investments other than the vacation home, and has never filed US tax returns. Unfortunately, Mr. Snowbird is disqualified from both nonresident streamlined because he spent over 35 days every year during the relevant three-year streamlined period and therefore, fails the non-residency requirement, and resident streamlined because he has never filed a US tax return. According to the new rules, Mr. Snowbird’s only recourse for voluntary disclosure and the applicable amnesty that accompanies voluntary disclosure is under the new 2014 OVDP, where he must pay a 27.5% penalty on his foreign assets, would be a very bitter pill to swallow, and is a very impractical result. Yet, under the old 2012 streamlined rules, although was unclear what residency meant, it was generally understood that taxpayers like Mr. Snowbird would be permitted to submit his returns under streamlined since he did not meet the substantial presence test and would qualify as a Canadian resident under the US-Canada tax treaty.[20]

It is also helpful to ponder the purpose behind the 35-day rule under the nonresident streamlined procedures and the tax return requirement under the resident streamlined procedures. What does 35 days of presence in the United States have to do with it, anyway? Does someone spending more than 35 days really avail themselves of US roads, police, and other governmental infrastructure (as much as that is a valid rationale for imposing taxation, albeit a weak rationale to begin with) more than someone who spends 35 days or less? More importantly, does physical presence exceeding 35 days justify the disqualification of noncompliant taxpayers who have spent that amount of time in the United States from the 2014 streamlined—both the resident and nonresident flavors of the program—and the imposition of a 27.5% or worse, 50%, penalty under the new 2014 OVDP? This result certainly will not encourage compliance and is inconsistent with IRS Commissioner Koskinen's rationale for expanding the 2014 streamlined program and the significant tightening of the 2014 OVDP.[21]

Recall that nonresident taxpayers must certify under penalties of perjury that they meet the eligibility requirements for nonresident streamlined—which include the non-residency requirement—in the draft certification form. Consequently, Mr. Snowbird would be ill-advised if he chooses to misrepresent his residency on his certification form since he could face criminal prosecution for doing so.[22] Our firm notified IRS officials of this possibility and they have informally assured us that they would give the issue further consideration. Yet, when addressing the question at New York University's Tax Controversy Forum in New York on June 20, 2014, Jennifer Best, senior adviser, IRS Large Business and International Division, stated "if you're spending a substantial amount of time in the United States . . . you need to be responsible with respect to your tax obligations."[23] Hopefully, the IRS will clarify the streamlined procedures shortly to explicitly qualify nonresident, noncompliant taxpayers like Mr. Snowbird for streamlined. One way of doing so is to explicitly grant taxpayers the ability to use the bona fide foreign residence test as an alternative to the 35-day rule for purposes of streamlined's non-residency requirement, although this test is arguably already available under the streamlined procedures as currently written.

To qualify for the foreign earned income exclusion under I.R.C. § 911, US citizens must, in addition to meeting the foreign "tax home" requirement, either be bona fide foreign residents for at least one entire taxable year or meet the 35-day rule (the latter is essentially a safe harbor).[24] The non-residency requirement's non-US abode prong originates from I.R.C. § 911(d)(3)'s foreign tax home requirement, which provides that taxpayers cannot have a foreign tax home for any period they have a US abode. Notably, the bona fide foreign residence test is generally limited to US citizens, US residents—i.e., green card holders or taxpayers that meet the substantial presence test—must meet the 35-day rule unless they are eligible for treaty benefits under certain US income tax treaties (including the US-Canada treaty) as provided in Rev. Rul. 91-58.[25] Accordingly, if the bona fide foreign residence test applies for streamlined's non-residency requirement, it would presumably be disallowed for green card holders under streamlined except as provided in Rev. Rul. 91-58. Perhaps future IRS guidance on the streamlined procedures will explicitly clarify whether the bona fide foreign residence test is available for determining a taxpayer's eligibility under the non-residency requirement, although arguably it already is based on streamlined's explicit reliance on I.R.C. § 911 "for purposes of these procedures."[26]

I.2.2. *The non-residency requirement and the closer connection exception*

Speaking of residency, it is also uncertain whether nonresidents who are not US citizens or green card holders can use the closer connection exception to meet the non-residency requirement for streamlined. Non-US citizens and taxpayers without green cards meet the non-residency requirement if they were not substantially present in the United States under I.R.C. § 7701(b)(3) for at least one year during the applicable three-year streamlined period. For instance, what if Ms. X in Example 3 of the nonresident streamlined procedures spends 100 days in the United States and has a non-US abode for 2014, and

spent 184 days in both 2012 and 2013.[27] She would meet the substantial presence test for 2014 because she spent 192.3 days in the United States under the substantial presence test, calculated as follows:

2014	100 days * 1 =	100
2013	184 days * 1/3 =	61.3
2012	184 days * 1/6 =	31
Total		**192.3**[28]

Thus, although Ms. X only spent 100 days physically present in the United States in 2014, she would still be treated as substantially present — and taxed as a US resident on her worldwide income, except if she qualifies for a treaty-tie she does, the question is whether that exception is available for purposes of streamlined's new non-residency requirement. Arguably the closer connection exception should be available for Ms. X since the 2014 streamlined requirements specifically reference the substantial presence test of I.R.C. § 7701(b)(3), that exception is in § 7701(b)(3)(B), and that exception is not specifically disallowed for purposes of the non-residency requirement under the 2014 streamlined procedures.

I.2.3. *"US tax return" is not explicitly defined in streamlined*

One of the requirements under resident streamlined is that taxpayers must have previously filed a "US tax return" (if required) for each year during the relevant three-year period.29 Unfortunately, US tax return is not directly defined in the 2014 streamlined, though when examining the context in which this term is used, some further clarification can be gleaned. When using the term US tax return, streamlined often explicitly distinguishes between extensions, information returns, FBARs, and US tax returns. Accordingly, the term US tax return appears to be restricted to Form 1040 or, perhaps, Form 1040NR. breaker provision[29] — for 2014 and would be ineligible for streamlined unless the closer connection exception applies. Given that Ms. X has a non-US abode for 2014, it is likely she meets the closer connection exception, and assuming that she does, the question is whether that exception is available for purposes of streamlined's new non-residency requirement. Arguably the closer connection exception should be available for Ms. X since the 2014 streamlined requirements specifically reference the substantial presence test of I.R.C. § 7701(b)(3), that exception is in § 7701(b)(3)(B), and that exception is not specifically disallowed for purposes of the non-residency requirement under the 2014 streamlined procedures.

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I.2.4. *Disqualification for taxpayers Under civil examination or criminal investigation*

Another uncertainty stems from the requirement that taxpayers who wish to make submissions under streamlined cannot be under civil examination or criminal investigation. The meaning of these terms is critical given that FATCA will provide the IRS with information on nearly every US person[31] — including

US citizens and green card holders—holding foreign (i.e., non-US) financial assets in the world.[32] Specifically, taxpayers are ineligible for streamlined if either:

1. The IRS has "initiated a civil examination" of their returns for any taxable year, regardless of whether the examination is regarding undisclosed foreign financial assets; or

2. They are under criminal investigation by the IRS.[33]

It is uncertain what "initiated a civil examination" means. For example, if an IRS agent learns about a taxpayer's 2012 OVDP submission and starts investigating the information returns of the taxpayer's nephew to verify the taxpayer's submission, would the nephew be disqualified from streamlined if the nephew subsequently determines that those prior information returns were incomplete or that a required information return was not submitted? Is that ancillary, indirect investigation of the nephew mean that the IRS has "initiated a civil examination" of the nephew's returns (or lack thereof)? Moreover, taxpayers are disqualified from streamlined if the IRS has initiated a civil examination of their returns for any taxable year. What if the taxpayer did not submit tax returns that the IRS could examine? Does this mean that non-filers can never be disqualified from streamlined under the civil examination preclusion? Perhaps the civil examination preclusion is best viewed as a means of encouraging taxpayers who made "quiet disclosures" to come forward under streamlined before the IRS figures out what they did.

It is also uncertain how taxpayers can verify whether they are under civil examination or criminal investigation. Some sort of preclearance, similar to the preclearance certification for OVDP, would encourage disclosure and help put taxpayers' minds at ease.

I.2.5. *5% Penalty computation for US residents*

A final notable uncertainty arises from streamlined's 5% penalty for US residents. US residents who submit returns under streamlined must pay the "Title 26 miscellaneous offshore penalty." This penalty is equal to 5% of the highest aggregate balance or value "of the taxpayer's foreign financial assets" subject to the penalty during the years in the "covered tax return period" and the "covered FBAR period."[34]

The highest aggregate balance or value is determined by aggregating the year-end account balances and asset values of all the foreign financial assets subject to the 5% penalty for every year in the covered tax return period and the covered FBAR period, and picking the highest balance or value from those years. The term "foreign financial asset" has the same meaning under streamlined as it does on Form 8938 and the FBAR. The "covered tax return period" means the three-year period that tax returns must be submitted under streamlined, and the "covered FBAR period" means the six-year period that FBARs must be submitted under streamlined. A foreign financial asset is subject to the 5% penalty if it:

1. Should have been, but was not, reported on an FBAR during the six-year covered FBAR period;

2. Should have been, but was not, reported on a Form 8938 during the three-year covered tax return period; or

3. Was properly reported, but gross income on it was not reported, during the three-year covered

tax return period.[35]

The language used to define the Title 26 miscellaneous offshore penalty suggests that the penalty only applies to assets held directly by the taxpayer, not assets held indirectly such as accounts that the taxpayer has signatory authority over but no financial interest in, given the possessive "of the taxpayer's" qualifier. Yet, the list of foreign financial assets subject to the 5% penalty contains no similar limiting language. Consequently, it is unclear whether the assets subject to the penalty include indirect assets that should have been, but were not, reported on a Form 8938 or an FBAR.

I.3. Conclusion

In summary, the recently amended IRS voluntary disclosure programs are positive for most taxpayers. Yet, significant uncertainty remains, particularly for Canadian snowbirds, which forces them to use the new 2014 OVDP if they wish to voluntarily disclose and, thus, provides a disincentive for them to disclose. The second part of this two-part blog will be posted shortly, stay tuned.

[1]I.R.C. §§ 1471-1474. *See generally* Paul Barba and Kim G G Moody, *Report on Legislative Proposals Relating to Canada – United States Enhanced Tax Information Exchange Agreement*, 2014 TaxAnalysts T.N.T. 47-33 (Mar. 9, 2014), *available at* https://www.moodysgartner.com/report-on-legislative-proposals-relating-to-canada-united-states-enhanced-tax-information-exchange-agreement/; Moodys Gartner Tax Law and Paul Barba, *Leaked and Buried – Canada Puts FATCA Deal at Risk,* 2014 TAX ANALYSTS W.T.D. 63-3 (Apr. 2, 2014).
[2]Notice 2013-43, 2013-31 I.R.B. 113 (July 12, 2013).
[3]IRS, *Streamlined Filing Compliance Procedures* (June 18, 2014), *available at* https://www.irs.gov/Individuals/International-Taxpayers/Streamlined-Filing-Compliance-Procedures [hereinafter General Streamlined]; IRS, *U.S. Taxpayers Residing Outside the United States* (June 18, 2014), *available at* https://www.irs.gov/Individuals/International-Taxpayers/U-S-Taxpayers-Residing-Outside-the-United-States (discussed under the Description of Scope and Effect of Procedures heading) [hereinafter Nonresident Streamlined]; IRS, *U.S. Taxpayers Residing in the United States* (June 18, 2014), *available at* https://www.irs.gov/Individuals/International-Taxpayers/U-S-Taxpayers-Residing-in-the-United-States (discussed under the Description of Scope and Effect of Procedures heading) [hereinafter Resident Streamlined].
[4]IRS, *Instructions for New Streamlined Filing Compliance Procedures for Non-Resident, Non-Filer U.S. Taxpayers* (Jan. 2, 2014), *available at* https://www.irs.gov/uac/Instructions-for-New-Streamlined-Filing-Compliance-Procedures-for-Non-Resident-Non-Filer-US-Taxpayers [hereinafter 2012 Streamlined Instructions].
[5]Nonresident Streamlined, *supra* note 3 (discussed under the "Eligibility for the Streamlined Foreign Offshore Procedures" heading).
[6]*Id.*; I.R.C. § 7701(b)(1)(A)(i), (b)(6).
[7]Nonresident Streamlined, *supra* note 3 (discussed under the "Eligibility for the Streamlined Foreign Offshore Procedures" heading); I.R.C. § 911(d)(3) (last sentence); Treas. Reg. § 1.911-2(b); IRS Publication 54 (Dec. 3, 2013), chapter 4, *available* at https://www.irs.gov/pub/irs-pdf/p54.pdf. *See also* I.R.C. § 911(d)(1).
[8]Treas. Reg. § 1.911-2(b).
[9]*Id.*
[10]Resident Streamlined, *supra* note 3 (discussed under the "Eligibility for the Streamlined Domestic Offshore Procedures" heading).
[11]General Streamlined, *supra* note 3 (discussed under the "General treatment under the streamlined procedures" heading).
[12]IRS, *Frequently Asked Questions Regarding the Streamlined Filing Compliance Procedures for Non-Resident, Non-Filer Taxpayers* (Dec. 10, 2013), *available at* https://www.irs.gov/Individuals/International-Taxpayers/FAQReStreamlinedFilingComplianceProceduresNRNFTPs. *See also* Paul Barba, *Three Important Changes to IRS Streamlined Filing Procedures for US Taxpayers Resident in Canada* (Apr. 1, 2013), *available at* https://www.moodysgartner.com/three-important-changes-to-irs-streamlined-filing-procedures-for-us-taxpayers-resident-in-canada/ (last visited June 19, 2014).
[13]2012 Streamlined Instructions, *supra* note 4
[14]Resident Streamlined, *supra* note 3; Nonresident Streamlined, *supra* note 3.
[15]*United States v. Bishop*, 412 U.S. 346, 360 (1973); Cheek v. United States, 498 U.S. 192, 201 (1991).
[16]*E.g., Cheek, supra* note 15
[17]*E.g.*, I.R.C. § 7206(1); 18 U.S.C. § 1001.
[18]IRS, *Draft Certification by U.S. Person Residing Outside of the United States for Streamlined Foreign Offshore Procedures* (June 18, 2014), *available at* https://www.irs.gov/pub/irs-utl/CertNonResidents.pdf.
[19]*See e.g.*, Moodys Gartner Tax Law, *Canadian Snowbirds Beware! Border Crossing Rules for 2014 Increase Stakes for "Day Count"* (Nov. 25, 2013), https://www.moodysgartner.com/canadian-snowbirds-beware-2014-border-crossing-rules-increase-stakes-for-day-count/.
[20]I.R.C. § 7701(b)(3); Convention Between the United States of America and Canada with Respect to Taxes on Income and on Capital, U.S.-Can., Article IV(2), Sept. 26, 1980, T.I.A.S. 11087 [hereinafter U.S.-Canada Treaty].
[21]Statement of IRS Commissioner John Koskinen (June 18, 2014), at p.2, *available at* https://www.irs.gov/uac/Newsroom/Statement-of-IRS-Commissioner-John-Koskinen.
[22]*E.g.*, I.R.C. § 7206(1); 18 U.S.C. § 1001
[23]Amy S. Elliott, *IRS Answers Questions on Updated OVDP and Streamlined Filing*, 2014 TAX ANALYSTS W.T.D. 120-3 (June 23, 2014).

[24]I.R.C. § 911(a), (d)(1).
[25]*Id.* § 911(d)(1)(B); Rev. Rul. 91-58, 1991-2 C.B. 340 (the IRS ruled that U.S. residents are allowed to use the bona fide foreign residence test under the nondiscrimination artless of certain U.S. income tax treaties, including the U.S.-Canada treaty).
[26]Nonresident Streamlined, *supra* note 3 (discussed under the "Eligibility for the Streamlined Foreign Offshore Procedures" heading).
[27]*Id.*
[28]I.R.C. § 7701(b)(3)(A)(ii).
[29]E.g., U.S.-Canada Treaty, *supra* note 20, at Article IV(2).
[30]Resident Streamlined, *supra* note 3 (discussed under the "Eligibility for the Streamlined Domestic Procedures" heading).
[31]I.R.C. § 7701(a)(30).
[32]*Id.* §§ 1471, 1472.
[33]General Streamlined, *supra* note 3
[34]Resident Streamlined, *supra* note 3 (discussed under the "Description of Scope and Effect of Procedures" heading).
[35]*Id.*