

Coming Clean with the IRS:

A Guide to Voluntary Disclosure Programs for U.S./Canada Dual Citizens and Canadians Who Are U.S. Tax Residents

If you are a U.S. citizen living in Canada, or a Canadian citizen who has become a U.S. tax resident - whether through a green card, a work visa, or simply meeting the Substantial Presence Test - there is a good chance you didn't realize the **United States expects you to report your worldwide income and foreign (non-U.S.) financial assets every year**, even if you've never set foot in the U.S. or moved there only recently.

This single misunderstanding is one of the most common tax problems I see in my cross-border practice. This article explains why it happens, what's at stake, and which IRS voluntary disclosure program is likely to fit your situation.

Who This Article Is For

This article is written specifically for two groups:

1. **U.S. citizens (including “accidental Americans”) living in Canada** who have been filing Canadian tax returns and assumed that was enough - not realizing the U.S. taxes its citizens on worldwide income no matter where they live.
2. **Canadian citizens who have become U.S. tax residents** - through a green card, a TN/H-1B/L-1 visa, or simply by spending enough days in the U.S. to meet the Substantial Presence Test - who continued to hold RRSPs, TFSAs, RESPs, Canadian mutual funds, rental property, or business interests in Canada without reporting the income or the existence of those assets on their U.S. returns.
3. Tax implications related to Individuals who have already renounced or relinquished U.S. citizenship are not discussed in this article.

If either description fits you, and you have unreported foreign income or unfiled information returns (FBAR, Form 8938, Form 3520, Form 5471, Form 8621, etc.), the IRS has established structured paths to get compliant - often with reduced or eliminated penalties, provided your prior noncompliance was non-willful (a genuine mistake or lack of knowledge, not intentional evasion).

Why This Happens So Often

The United States is one of only a handful of countries that taxes based on citizenship, not just residency. A U.S. citizen owes U.S. tax on worldwide income regardless of where they live, and U.S. tax residents (green card holders, and anyone meeting the Substantial Presence Test) are taxed the same way as citizens for as long as that status continues.

Most people never hear this from anyone until a cross-border accountant, an immigration lawyer, an IRS notice or a bank's FATCA questionnaire brings it to their attention. By then, several years - sometimes decades - of unfiled U.S. returns and information forms have accumulated.

Common triggers that surface the problem:

- A Canadian bank asks for a U.S. tax ID under FATCA rules.

- A U.S. green card or citizenship application requires proof of tax compliance.
- An estate or inheritance matter requires disclosure of foreign accounts.
- A cross-border move, retirement, or property sale prompts a first-time consultation with a tax professional.
- An IRS notice that carries substantial penalties

What's at Stake if You Don't Fix It

Ignoring the problem is the worst option when it comes to the incomplete reporting or missed reporting of the following forms. Key exposures include:

- **FBAR penalties (FinCEN Form 114):** Non-willful penalties can reach **\$16,536** (inflation-adjusted) per unfiled form, per year. **If deemed Willful by IRS**, the penalties are far higher - the **greater of \$165,353** (inflation-adjusted) or **50% of the account balance**, per violation, per year. Furthermore, ignoring explicit notices or demonstrating objective recklessness heavily supports a legal finding of willfulness. **If a CPA, tax software, or official notice alerts a filer to foreign account rules and they ignore it or fail to correct it within a reasonable time, courts routinely treat that conduct as reckless enough to constitute a willful violation.**
- **Form 8938 (FATCA) penalties:** Up to **\$10,000** per form, with additional penalties of up to **\$50,000** for continued failure to file after IRS notice.
- **Form 3520/3520-A penalties** (foreign trusts, which the IRS may treat TFSAs): Generally, the greater of **\$10,000 or a percentage up to 35%** of the value of the trust/transaction.
- **Form 5471 penalties** (foreign corporations): **\$10,000** per form per year, with additional **\$10,000** monthly penalties for continued failure. This continuation penalty is capped at a **maximum of \$50,000** per form, meaning the total monetary penalty per form maxes out at **\$60,000 per year**. In addition to monetary fines, a failure to file can trigger a **10% reduction in the Foreign Tax Credits (FTCs)** you are allowed to claim, with an additional **5% reduction every 30 days** after the 90-day notice period expires.
- **Loss of the statute of limitations protection:** Unfiled tax returns and unfiled international information returns prevent the statute of limitations from running. Consequently, the IRS can **look back indefinitely** to assess applicable taxes, penalties, and interest.
- **Passport and immigration consequences:** Delinquent tax debt can trigger passport restrictions, and unresolved tax noncompliance can complicate immigration and citizenship applications.

The good news: the IRS's voluntary disclosure programs exist precisely because the IRS recognizes that most of these people are not tax cheats - they simply didn't know. The penalty structures for non-willful taxpayers are designed to be proportionate, not punitive.

The Main Voluntary Disclosure Programs

There is no single “amnesty program.” Instead, the IRS offers several distinct paths, and choosing the right one depends on where you live, why you fell behind, and whether your conduct was willful or non-willful.

1. Streamlined Foreign Offshore Procedures (SFOP)

Best fit: U.S. citizens living in Canada (or Canadians who became U.S. tax residents but currently reside outside the U.S.) who meet a non-residency test - generally, in at least one of the most recent three years, they did not have a U.S. abode and were physically outside the U.S. for at least 330 full days.

What it requires:

- 3 years of amended or delinquent U.S. income tax returns, including all required international information returns (8938, 3520, 5471, 8621, etc.)
- 6 years of FBARs
- A signed non-willfulness certification (Form 14653)

The benefit: No FBAR or offshore penalty whatsoever. This is the most favorable program available, and it is exactly the program most U.S. citizens permanently residing in Canada will qualify for.

2. Streamlined Domestic Offshore Procedures (SDOP)

Best fit: Canadian citizens who have become U.S. tax residents and now live inside the United States (so they don't meet the non-residency test above), and whose prior non-reporting was non-willful.

What it requires:

- 3 years of amended U.S. income tax returns, including international information returns
- 6 years of FBARs
- A signed non-willfulness certification (Form 14654)
- A miscellaneous offshore penalty **of 5%** is assessed the total combined (aggregate) value of all covered assets on December 31st for each separate year. The 5% penalty is then assessed against the single highest *aggregate* annual total out of those six years.

The benefit: Even though a penalty applies, it is dramatically lower than penalties available outside these programs, and it resolves multiple years of exposure in one filing.

3. Delinquent FBAR Submission Procedures

Best fit: Someone who properly reported and paid tax on all their foreign income, but simply never filed the FBAR (FinCEN 114) disclosing the existence of foreign accounts (a common scenario for someone who reported RRSP or bank interest correctly but didn't realize a separate FBAR filing was required).

What it requires: File the delinquent FBARs electronically, with a brief explanation for the late filing. No amended tax returns are needed if income was already correctly reported.

The benefit: If the IRS is satisfied that all income was properly reported, no penalty is typically assessed.

4. Delinquent International Information Return Submission Procedures (DIIRSP)

Best fit: Someone who reported and paid tax on all income correctly but missed a specific information return - for example, a Form 3520, or a Form 5471 for a Canadian corporation - where there is no unreported tax due.

What it requires: File the delinquent information returns with a reasonable cause statement attached. Depending upon the international form missed, amending applicable income tax return may also be required,

The benefit: If reasonable cause is accepted, those severe penalties are typically abated. This program carries more uncertainty than the Streamlined Procedures because reasonable cause is evaluated case-by-case, but it is the appropriate route when income tax itself was never at issue.

5. IRS Voluntary Disclosure Practice (VDP)

Best fit: Taxpayers whose past noncompliance may be considered willful, or who have exposure that could be viewed as criminal (**for example, knowingly hiding income or foreign assets**). This is not the typical situation for someone who simply didn't know the rules, but it is the appropriate program when willfulness cannot be ruled out. **Any written or verbal communication** you have with a **CPA or tax preparer** can be summoned by the IRS and used as the primary evidence to prove you acted willfully.

What it requires: A more involved, multi-step process starting with a pre-clearance request to IRS Criminal Investigation, followed by a full disclosure of the conduct and up to 6 years of returns.

The benefit: Protection from criminal prosecution, with civil penalties negotiated (though generally **higher** than the streamlined penalty of 5%, often calculated on a percentage of the highest account balance across the disclosure period).

Comparing the Programs at a Glance

Program	Who It's For	Look-Back Period	Penalty
Streamlined Foreign Offshore (SFOP)	Non-resident U.S. citizens/tax residents (e.g., living in Canada)	3 yrs return, 6 yrs FBAR	None
Streamlined Domestic Offshore (SDOP)	U.S.-resident taxpayers, non-willful	3 yrs return, 6 yrs FBAR	5% of highest foreign asset value
Delinquent FBAR Procedures	Income properly reported, only FBAR missing	FBARs only	Generally, none
Delinquent International Information Return Procedures	Income properly reported, only information returns missing	Missing forms only	Generally, none (reasonable cause)
IRS Voluntary Disclosure Practice (VDP)	Possible willful conduct or criminal exposure	Up to 6 yrs	Negotiated, higher than SDOP

Canadian-Specific Traps to Know About

Cross-border compliance for this population is complicated by the fact that everyday Canadian savings and investment vehicles often carry unexpected U.S. reporting consequences:

- **RRSPs and RRIFs:** Since 2014, these generally no longer require a separate election or annual Form 8891 filing (that form was eliminated) and are treated favorably under the Canada-U.S. tax treaty, but historical years may still need review. These accounts are still reportable on the FBAR and Form 8938 (FATCA).
- **TFSAs:** The IRS does not recognize the tax-free character of a TFSA. It is often treated as a foreign grantor trust, potentially triggering Form 3520 and 3520-A filing obligations, and all income inside it is taxable on the U.S. return.

- **Canadian mutual funds and ETFs:** These are frequently classified as Passive Foreign Investment Companies (PFICs), triggering onerous Form 8621 reporting and, without a proper election, punitive default tax treatment.
- **Principal residence:** Canada's principal residence exemption has no exact U.S. equivalent; the U.S. capital gain exclusion on a home sale has different dollar limits and eligibility rules, so a Canadian home sale can create unexpected U.S. tax.
- **Canadian corporations:** Ownership of a Canadian-controlled private corporation can trigger Form 5471 filings and, depending on structure, exposure to GILTI (Global Intangible Low-Taxed Income) rules. Form 5471 is among the most demanding IRS forms. The process requires technical cross-border data analysis. Most of the time is spent creating foundational workpapers before form preparation even begins.

Compliance costs for a simpler Form 5471 easily range between \$1,000 - \$2,000+ per form depending upon the condition of the foreign financial statements, GILTI calculations, applicable international tax elections available to reduce US taxes, and structural complexity. In contrast, a dormant entity with no activity can be filed for a baseline fee of \$500.

Two Illustrative Scenarios

Scenario A: A U.S.-born citizen has lived in Toronto her entire adult life, filing Canadian returns and paying Canadian tax, but never filed a U.S. return because she didn't know she had to. She has an RRSP, a TFSA, and a Canadian brokerage account. Because she lives outside the U.S. and meets the physical presence requirement, she is a strong candidate for the Streamlined Foreign Offshore Procedures - 3 years of returns, 6 years of FBARs, and no penalty.

Scenario B: A Canadian citizen moved to the U.S., eventually became a US resident for tax purposes or otherwise, and kept a Canadian bank account and a mutual fund account, none of which were ever reported on his U.S. returns. Because he now lives in the U.S., he doesn't meet the non-residency test, so the Streamlined Domestic Offshore Procedures would apply - the same 3/6-year filing requirement, but with a 5% penalty on the highest combined balance of the unreported foreign assets.

Steps to Take

4. **Get a complete picture first.** Before filing anything, gather account statements, RRSP/TFSA/RESP records, and prior Canadian and U.S. filings (if any) for the relevant look-back period.
5. **Assess willfulness honestly.** This determination drives which program applies and should be made with a qualified cross-border professional, not assumed.
6. **Determine residency status for U.S. purposes.** Whether you meet the non-residency test for SFOP versus SDOP depends on facts and circumstances, not just where your passport says you live.
7. **Prepare returns and information forms together.** Because these programs require multiple years filed simultaneously, they should be prepared as a coordinated package, not one year at a time.
8. **File once, correctly.** Streamlined submissions cannot generally be undone or resubmitted if done incorrectly, so accuracy on the first submission matters.
9. **Consider state tax exposure too,** if you have ties to a U.S. state, since state voluntary disclosure programs are separate from the federal ones described here.

Final Word

The IRS's voluntary disclosure programs exist because Congress and the IRS understand that most Americans abroad and new U.S. tax residents from Canada are not trying to hide anything - they simply never learned the rules of US tax system that is unusual by global standards. Coming forward proactively, before the IRS identifies you through FATCA data matching or another trigger, is almost always the better outcome: it generally means lower penalties, a defined scope, and a clean slate going forward. The statement is largely accurate. The IRS provides specific paths like the Streamlined Filing Compliance Procedures for non-willful expats, and these programs **become completely unavailable once you receive an audit or contact notice from the IRS**

This article is intended for general informational purposes only and does not constitute individualized tax, legal, or accounting advice. Eligibility for each program depends on the specific facts of your situation, including residency history, willfulness, and asset composition. If you believe you may have unreported foreign income or unfiled U.S. information returns, consult a CPA or tax attorney experienced in U.S./Canada cross-border tax compliance before taking action.