**Tax Obligations of US Taxpayers Residing Outside of the United States**

It is estimated that over 10 million Americans are living abroad – that includes persons born in the US or born of US parents. Many of these individuals have dual citizenship or nationality in other countries and are unaware of their US tax obligations. The US tax laws require that US citizens or lawful permanent residents report and pay taxes on their worldwide income. In order to help and encourage these persons to comply with their US tax obligations the IRS has instituted a Streamlined Foreign Offshore Program for taxpayers to present their delinquent tax returns and certain information disclosures. The information below explains who and how US citizens, lawful permanent residents and tax residents may qualify for the Streamlined Foreign Offshore Program.

**Eligibility for the Streamlined Foreign Offshore Procedures**

In addition to having to meet the general eligibility criteria, individual US taxpayers, or estates of individual US taxpayers, seeking to use the Streamlined Foreign Offshore Procedures described in this section must: 1. Meet the applicable non-residency requirement described below (for joint return filers, both spouses must meet the applicable non-residency requirement described below) and 2. Have failed to report the income from a foreign financial asset and pay tax as required by US law, and may have failed to file an FBAR (FinCEN Form 114, previously Form TD F 90-22.1) with respect to a foreign financial account, and such failures resulted from non-willful conduct. Non-willful conduct is conduct that is due to negligence, inadvertence, a mistake or conduct that is the result of a good faith misunderstanding of the requirements of the law.

**Non-residency Requirement Applicable to Individuals who are US Citizens or Lawful Permanent Residents (i.e. Green Card Holders)**

Individual US citizens or lawful permanent residents, or estates of US citizens or lawful permanent residents, meet the applicable non-residency requirement if, in any one or more of the most recent three years for which the US tax return due date (or properly applied for extended due date) has passed, the individual did not have a US abode and the individual was physically outside the United States for at least 330 full days. Under IRC section 911 and its regulations, which apply for purposes of these procedures, neither temporary presence of the individual in the United States nor maintenance of a dwelling in the United States by an individual necessarily mean that the individual’s abode is in the United States. Example: Mr W was born in the United States but moved to Germany with his parents when he was five years old, lived there ever since, and does not have a US abode. Mr W meets the non-residency requirement applicable to individuals who are US citizens or lawful permanent residents.

**Non-Residency Requirement Applicable to Individuals who are not US Citizens or Lawful Permanent Residents**

Individuals who are not US citizens or lawful permanent residents, or estates of individuals who were not US citizens or lawful permanent residents, meet the applicable non-residency requirement if, in any one or more of the last three years for which the US tax return due date (or properly applied for extended due date) has passed, the individual did not meet the substantial presence test of IRC section 7701(b)(3). Example: Ms X is not a US citizen or lawful permanent resident, was born in France, and resided in France until May 1, 2012, when her employer transferred her to the United States. Ms X was physically present in the US for more than 183 days in both 2012 and 2013. The most recent 3 years for which Ms X’s US tax return due date (or properly applied for extended due date) has passed are 2013, 2012, and 2011. While Ms X met the substantial presence test for 2012 and 2013, she did not meet the substantial presence test for 2011. Ms X meets the non-residency requirement applicable to individuals who are not US citizens or lawful permanent residents.

**Description of Scope and Effect of Procedures**

US taxpayers (US citizens, lawful permanent residents, and those meeting the substantial presence test of IRC section 7701(b)(3) eligible to use the Streamlined Foreign Offshore Procedures must: 1. For each of the most recent 3 years for which the US tax return due date (or properly applied for extended due date) has passed, file delinquent or amended tax returns, together with all required information returns (e.g., Forms 3520, 5471, and 8938) and 2. For each of the most recent 6 years for which the FBAR due date has passed, file any delinquent FBARs (FinCEN Form 114, previously Form TD F 90-22.1). The full amount of the tax and interest due in connection with these filings must be remitted with the delinquent or amended returns. A taxpayer who is eligible to use these Streamlined Foreign Offshore Procedures and who complies with all of the instructions will not be subject to failure-to-file and failure-to-pay penalties, accuracy-related penalties, information return penalties, or FBAR penalties. Even if returns properly filed under these procedures are subsequently selected for audit under

existing audit selection processes, the taxpayer will not be subject to failure-to-file and failure-to-pay penalties or accuracy-related penalties with respect to amounts reported on those returns, or to information return penalties or FBAR penalties, unless the examination results in a determination that the original tax noncompliance was fraudulent and/or that the FBAR violation was willful. Any previously assessed penalties with respect to those years, however, will not be abated. Further, as with any US tax return filed in the normal course, if the IRS determines an additional tax deficiency for a return submitted under these procedures, the IRS may assert applicable additions to tax and penalties relating to that additional deficiency. For returns filed under these procedures, retroactive relief will be provided for failure to timely elect income deferral on certain retirement and savings plans where deferral is permitted by the applicable treaty. The proper deferral elections with respect to such plans must be made with the submission.

**Conclusion**

US citizens, lawful permanent residents and certain individuals with substantial presence in the US are required to report and pay tax on their worldwide income. Those individuals that have not complied with their tax obligations should take advantage of the Streamlined Program as soon as possible to avoid or reduce significant penalties and fines. The Flores Group can evaluate your case and help you through this complex process. This information is a presentation of the general rules and should not be used or relied upon for any particular investment or transaction. We recommend you consult your tax attorney or advisor for your specific situation. If you would like more information on these matters we would be glad to visit with you. As required by United States Treasury Regulations, you should be aware that this communication is not intended or written by the sender to be used, and it cannot be used, by any recipient for the purpose of avoiding penalties that may be imposed on the recipient under United States federal tax laws.

**The Flores Group**

The Flores Group provides international corporate and tax services to international investors and business persons. We have over 30 years of experience dealing with complex business and international structures and transactions. We have experienced bilingual Attorneys and CPA's to assist you with your legal, tax, and business projects.