Offshore Voluntary Disclosure Program Frequently Asked Questions and Answers

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Questions and Answers

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#	Questions	Answers
1.	Why did the IRS announce a new offshore voluntary disclosure program at this time?	The IRS's prior Offshore Voluntary Disclosure Program (2009 OVDP), and Offshore Voluntary Disclosure Initiative (2011 OVDI), which closed on September 9, 2011, demonstrated the value of a uniform penalty structure for taxpayers who came forward voluntarily and reported their previously undisclosed foreign accounts and assets. These initiatives enabled the IRS to centralize the civil processing of offshore voluntary disclosures and to resolve a very large number of cases without examination. Because the IRS and Department of Justice offshore enforcement efforts are expected to continue raising the risk of detection of taxpayers with undisclosed foreign assets for the foreseeable future, it has been determined that a similar program should be available to taxpayers who wish to voluntarily disclose their offshore accounts and assets to avoid prosecution and limit their exposure to civil penalties but have not yet done so. Unlike the 2009 OVDP and the 2011 OVDI, there is no set deadline for taxpayers to apply. However, the terms of this program could change at any time going forward. For example, the IRS may increase penalties or limit eligibility in the program for all or some taxpayers or defined classes of taxpayers – or decide to end the program entirely at any point. This new program, the Offshore Voluntary Disclosure Program (OVDP) will be available until further notice to taxpayers who come forward and complete certain requirements. The terms of the program will also be offered to taxpayers who made offshore voluntary disclosures after the deadline for the 2011 OVDI.
2.	What is the objective of this program?	The objective remains the same as the 2009 OVDP and 2011 OVDI – to bring taxpayers that have used undisclosed foreign accounts and undisclosed foreign entities to avoid or evade tax into compliance with United States tax laws.
3.	How does this program differ from the IRS's	The Voluntary Disclosure Practice is a

	longstanding voluntary disclosure practice or the 2009 OVDP and 2011 OVDI?	longstanding practice of IRS Criminal Investigation whereby CI takes timely, accurate, and complete voluntary disclosures into account in deciding whether to recommend to the Department of Justice that a taxpayer be criminally prosecuted. It enables noncompliant taxpayers to resolve their tax liabilities and minimize their chance of criminal prosecution. When a taxpayer truthfully, timely, and completely complies with all provisions of the voluntary disclosure practice, the IRS will not recommend criminal prosecution to the Department of Justice. This current offshore voluntary disclosure program is a counter-part to Criminal Investigation's Voluntary Disclosure Practice. Like its predecessors, the 2009 OVDP, which ran from March 23, 2009 through October 15, 2009, and the 2011 OVDI, which ran from February 8, 2011 through September 9, 2011, it addresses the civil side of a taxpayer's voluntary disclosure of foreign accounts and assets by defining the number of tax years covered and setting the civil penalties that will apply. Unlike the 2009 OVDP and the 2011 OVDI, there is no set deadline for taxpayers to apply. However, the terms of this program could change at any time going forward. For example, the IRS may increase penalties or limit eligibility in the program for all or some taxpayers or defined classes of taxpayers – or decide to end the program entirely at any point.
4.	Why should I make a voluntary disclosure?	Taxpayers with undisclosed foreign accounts or entities should make a voluntary disclosure because it enables them to become compliant, avoid substantial civil penalties and generally eliminate the risk of criminal prosecution. Making a voluntary disclosure also provides the opportunity to calculate, with a reasonable degree of certainty, the total cost of resolving all offshore tax issues. Taxpayers who do not submit a voluntary disclosure run the risk of detection by the IRS and the imposition of substantial penalties, including the fraud penalty and foreign information return penalties, and an increased risk of criminal prosecution. The IRS remains actively engaged in ferreting out the identities of those with undisclosed foreign accounts. Moreover, increasingly this information is available to the IRS under tax treaties, through submissions by whistleblowers, and will become more available under the Foreign Account Tax Compliance Act (FATCA) and Foreign Financial Asset Reporting (new IRC § 6038D).
5.	What are some of the civil penalties that might apply if I don't come in under the OVPD and the IRS examines me? How do they work?	Depending on a taxpayer's particular facts and circumstances, the following penalties could apply: • A penalty for failing to file the Form TD F 90-

22.1 (Report of Foreign Bank and Financial Accounts, commonly known as an “FBAR”). United States citizens, residents and certain other persons must annually report their direct or indirect financial interest in, or signature authority (or other authority that is comparable to signature authority) over, a financial account that is maintained with a financial institution located in a foreign country if, for any calendar year, the aggregate value of all foreign accounts exceeded $10,000 at any time during the year. Generally, the civil penalty for willfully failing to file an FBAR can be as high as the greater of $100,000 or 50 percent of the total balance of the foreign account per violation. See 31 U.S.C. § 5321(a)(5). Non-willful violations that the IRS determines were not due to reasonable cause are subject to a $10,000 penalty per violation.

- Beginning with the 2011 tax year, a penalty for failing to file form 8938 reporting the taxpayer’s interest in certain foreign financial assets, including financial accounts, certain foreign securities and interests in foreign entities, as required by I.R.C. §6038D. The penalty for failing to file each one of these information returns is $10,000, with an additional $10,000 added for each month the failure continues beginning 90 days after the taxpayer is notified of the delinquency, up to a maximum of $50,000 per return.
- A penalty for failing to file Form 3520, Annual Return to Report Transactions With Foreign Trusts and Receipt of Certain Foreign Gifts. Taxpayers must also report various transactions involving foreign trusts, including creation of a foreign trust by a United States person, transfers of property from a United States person to a foreign trust and receipt of distributions from foreign trusts under IRC § 6048.This return also reports the receipt of gifts from foreign entities under section 6039F.The penalty for failing to file each one of these information returns, or for filing an incomplete return, is the greater of $10,000 or 35 percent of the gross reportable amount, except for returns reporting gifts, where the penalty is five percent of the gift per month, up to a maximum penalty of 25 percent of the gift.
- A penalty for failing to file Form 3520-A, Information Return of Foreign Trust With a U.S. Owner. Taxpayers must also report ownership interests in foreign trusts, by United States persons with various interests in and powers over those trusts under IRC § 6048(b).The penalty for failing to file each one of these information returns or for filing an

incomplete return, is the greater of $10,000 or 5 percent of the gross value of trust assets determined to be owned by the United States person.

- A penalty for failing to file Form 5471, Information Return of U.S. Persons with Respect to Certain Foreign Corporations. Certain United States persons who are officers, directors or shareholders in certain foreign corporations (including International Business Corporations) are required to report information under IRC §§ 6035, 6038 and 6046.The penalty for failing to file each one of these information returns is $10,000, with an additional $10,000 added for each month the failure continues beginning 90 days after the taxpayer is notified of the delinquency, up to a maximum of $50,000 per return.
- A penalty for failing to file Form 5472, Information Return of a 25% Foreign-Owned U.S. Corporation or a Foreign Corporation Engaged in a U.S. Trade or Business. Taxpayers may be required to report transactions between a 25 percent foreign-owned domestic corporation or a foreign corporation engaged in a trade or business in the United States and a related party as required by IRC §§ 6038A and 6038C. The penalty for failing to file each one of these information returns, or to keep certain records regarding reportable transactions, is $10,000, with an additional $10,000 added for each month the failure continues beginning 90 days after the taxpayer is notified of the delinquency.
- A penalty for failing to file Form 926, Return by a U.S. Transferor of Property to a Foreign Corporation. Taxpayers are required to report transfers of property to foreign corporations and other information under IRC § 6038B. The penalty for failing to file each one of these information returns is ten percent of the value of the property transferred, up to a maximum of $100,000 per return, with no limit if the failure to report the transfer was intentional.
- A penalty for failing to file Form 8865, Return of U.S. Persons With Respect to Certain Foreign Partnerships. United States persons with certain interests in foreign partnerships use this form to report interests in and transactions of the foreign partnerships, transfers of property to the foreign partnerships, and acquisitions, dispositions and changes in foreign partnership interests under IRC §§ 6038, 6038B, and 6046A. Penalties include $10,000 for failure to file each return, with an additional $10,000 added for each month the failure continues beginning 90 days after the taxpayer is

		notified of the delinquency, up to a maximum of $50,000 per return, and ten percent of the value of any transferred property that is not reported, subject to a $100,000 limit. • Fraud penalties imposed under IRC §§ 6651(f) or 6663. Where an underpayment of tax, or a failure to file a tax return, is due to fraud, the taxpayer is liable for penalties that, although calculated differently, essentially amount to 75 percent of the unpaid tax. • A penalty for failing to file a tax return imposed under IRC § 6651(a)(1). Generally, taxpayers are required to file income tax returns. If a taxpayer fails to do so, a penalty of 5 percent of the balance due, plus an additional 5 percent for each month or fraction thereof during which the failure continues may be imposed. The penalty shall not exceed 25 percent. • A penalty for failing to pay the amount of tax shown on the return under IRC § 6651(a)(2). If a taxpayer fails to pay the amount of tax shown on the return, he or she may be liable for a penalty of .5 percent of the amount of tax shown on the return, plus an additional .5 percent for each additional month or fraction thereof that the amount remains unpaid, not exceeding 25 percent. • An accuracy-related penalty on underpayments imposed under IRC § 6662. Depending upon which component of the accuracy-related penalty is applicable, a taxpayer may be liable for a 20 percent or 40 percent penalty.
6.	What are some of the criminal charges I might face if I don't come in under OVDP and the IRS examines me?	Possible criminal charges related to tax returns include tax evasion (26 U.S.C. § 7201), filing a false return (26 U.S.C. § 7206(1)) and failure to file an income tax return (26 U.S.C. § 7203). Willfully failing to file an FBAR and willfully filing a false FBAR are both violations that are subject to criminal penalties under 31 U.S.C. § 5322. A person convicted of tax evasion is subject to a prison term of up to five years and a fine of up to $250,000. Filing a false return subjects a person to a prison term of up to three years and a fine of up to $250,000. A person who fails to file a tax return is subject to a prison term of up to one year and a fine of up to $100,000. Failing to file an FBAR subjects a person to a prison term of up to ten years and criminal penalties of up to $500,000.
KEY FEATURES OF PROGRAM		
7.	What are the requirements of the Offshore Voluntary Disclosure Program?	Under the terms of the Offshore Voluntary Disclosure Program, taxpayers must: • Provide copies of previously filed original (and, if applicable, previously filed amended) federal income tax returns for tax years covered by

the voluntary disclosure;

- Provide complete and accurate amended federal income tax returns (for individuals, Form 1040X, or original Form 1040 if delinquent) for all tax years covered by the voluntary disclosure, with applicable schedules detailing the amount and type of previously unreported income from the account or entity (e.g., Schedule B for interest and dividends, Schedule D for capital gains and losses, Schedule E for income from partnerships, S corporations, estates or trusts and, for years after 2010, Form 8938, Statement of Specified Foreign Financial Assets).
- File complete and accurate original or amended offshore-related information returns (see FAQ 29 for certain dissolved entities) and Form TD F 90-22.1 (Report of Foreign Bank and Financial Accounts, commonly known as an "FBAR") for tax years covered by the voluntary disclosure;
- Cooperate in the voluntary disclosure process, including providing information on offshore financial accounts, institutions and facilitators, and signing agreements to extend the period of time for assessing Title 26 liabilities and FBAR penalties;
- Pay 20% accuracy-related penalties under IRC § 6662(a) on the full amount of your offshore-related underpayments of tax for all years;
- Pay failure to file penalties under IRC § 6651(a)(1), if applicable;
- Pay failure to pay penalties under IRC § 6651(a)(2), if applicable;
- Pay, in lieu of all other penalties that may apply to your undisclosed foreign assets and entities, including FBAR and offshore-related information return penalties and tax liabilities for years prior to the voluntary disclosure period, a miscellaneous Title 26 offshore penalty, equal to 27.5% (or in limited cases 12.5% (see FAQ 53) or 5% (see FAQ 52)) of the highest aggregate balance in foreign bank accounts/entities or value of foreign assets during the period covered by the voluntary disclosure;
- Submit full payment of any Title 26 tax liabilities for years included in the offshore disclosure period and all tax, interest, accuracy-related penalties for underpayments related to offshore accounts and entities, and, if applicable, the failure to file and failure to pay penalties with the required submissions set forth in FAQ 25 or make good faith arrangements with the IRS to pay in full, the tax, interest, and these penalties (see FAQ 20 for more information regarding a taxpayer's

		ability to fully pay) (the suspension of interest provisions of IRC § 6404(g) do not apply to interest due in this program); and • Execute a Closing Agreement on Final Determination Covering Specific Matters, Form 906. • Agree to cooperate with IRS offshore enforcement efforts by providing information about offshore financial institutions, offshore service providers, and other facilitators, if requested. • Provide the information listed in FAQ 54, if the taxpayer has a Canadian registered retirement savings plan (RRSP) or registered retirement income fund (RRIF), did not make a timely election pursuant to Article XVIII(7) of the U.S. – Canada income tax treaty to defer U.S. income tax on income earned by the RRSP or RRIF that has not been distributed, and would now like to make an election.
7.1	What if I have unreported income from a domestic source or some other undisclosed income tax liability that is not related to offshore accounts or assets	As was the case with the 2009 OVDP and the 2011 OVDI, the OVDP is available to taxpayers who have both offshore and domestic issues to disclose. The Voluntary Disclosure Practice requires an accurate and complete disclosure. Consequently, if there are undisclosed income tax liabilities from domestic sources in addition to those related to offshore accounts and assets, they must also be disclosed in the OVDP. (See FAQ 24.)
8.	How does the Offshore Penalty framework work? Can you give us an example?	The values of foreign accounts and other foreign assets are aggregated for each year and the penalty is calculated at 27.5 percent of the highest year's aggregate value during the period covered by the voluntary disclosure. If the taxpayer has multiple accounts or assets where the highest value of some accounts or assets is in different years, the values of accounts and other assets are aggregated for each year and a single penalty is calculated at 27.5 percent of the highest year's aggregate value. For example, assume the taxpayer has the following amounts in a foreign account over the period covered by his voluntary disclosure. **It is assumed for purposes of the example that the $1,000,000 was in the account before 2003 and was not unreported income in 2003**.

Year	Amount on Deposit	Interest Income	Account Balance
2003	$1,000,000	$50,000	$1,050,000
2004		$50,000	$1,100,000
2005		$50,000	$1,150,000
2006		$50,000	$1,200,000
2007		$50,000	$1,250,000
2008		$50,000	$1,300,000
2009		$50,000	$1,350,000

		2010 $50,000 $1,400,000 (NOTE: This example does not provide for compounded interest, and assumes the taxpayer is in the 35-percent tax bracket, does not have an investment in a Passive Foreign Investment Company (PFIC), files a return but does not include the foreign account or the interest income on the return, and the maximum applicable penalties are imposed.) If the taxpayers in the above example come forward and their voluntary disclosure is accepted by the IRS, they face this potential scenario: They would pay $518,000 plus interest. This includes: • Tax of $140,000 (8 years at $17,500) plus interest, • An accuracy-related penalty of $28,000 (i.e., $140,000 x 20%), and • An additional penalty, in lieu of the FBAR and other potential penalties that may apply, of $385,000 (i.e., $1,400,000 x 27.5%). If the taxpayers didn't come forward, when the IRS discovered their offshore activities, they would face up to $4,543,000 in tax, accuracy-related penalty, and FBAR penalty. The taxpayers would also be liable for interest and possibly additional penalties, and an examination could lead to criminal prosecution. The civil liabilities outside the Offshore Voluntary Disclosure Program potentially include: • The tax, accuracy-related penalties, and, if applicable, the failure to file and failure to pay penalties, plus interest, as described above, • FBAR penalties totaling up to $3,825,000 for willful failures to file complete and correct FBARs (2005 - $575,000, 2006 - $600,000, 2007 - $625,000, 2008 - $650,000, and 2009 - $675,000, and 2010 - $700,000), • The potential of having the fraud penalty (75 percent) apply, and • The potential of substantial additional information return penalties if the foreign account or assets is held through a foreign entity such as a trust or corporation and required information returns were not filed. Note that if the foreign activity started before 2003, the Service may examine tax years prior to 2003 if the taxpayer is not part of the OVDP.
9.	What years are included in the OVDP disclosure period?	For calendar year taxpayers the voluntary disclosure period is the most recent eight tax years for which the due date has already passed. The eight year period does not include current years for which there has not yet been non-compliance. Thus, for taxpayers who submit a voluntary disclosure prior to April 15, 2012 (or other 2011 due date under extension), the

		disclosure must include each of the years 2003 through 2010 in which they have undisclosed foreign accounts and/or undisclosed foreign entities. Fiscal year taxpayers must include fiscal years ending in calendar years 2003 through 2010. For taxpayers who disclose after the due date (or extended due date) for 2011, the disclosure must include 2004 through 2011. For disclosures made in successive years, any additional years for which the due date has passed must be included, but a corresponding number of years at the beginning of the period will be excluded, so that each disclosure includes an eight year period. For taxpayers who establish that they began filing timely, original, compliant returns that fully reported previously undisclosed offshore accounts or assets before making the voluntary disclosure, the voluntary disclosure period will begin with the eighth year preceding the most recent year for which the return filing due date has not yet passed, but will not include the compliant years. For example, a taxpayer who had historically filed income tax returns omitting the income from a securities account in Country A, who began reporting that income on his timely, original tax and information reporting returns for 2009 and 2010 without making a voluntary disclosure, and who files a voluntary disclosure in January 2012, the voluntary disclosure period will be 2003 through 2008.
10.	What are my options if my account involves passive foreign investment company (PFIC) issues?	To date, a significant number of cases submitted under the 2009 OVDP and 2011 OVDI involve PFIC investments. A lack of historical information on the cost basis and holding period of many PFIC investments makes it difficult for taxpayers to prepare statutory PFIC computations and for the Service to verify them. As a result, resolution of voluntary disclosure cases could be unduly delayed. Therefore, for purposes of this program, the Service is offering taxpayers an alternative to the statutory PFIC computation that will resolve PFIC issues on a basis that is consistent with the Mark to Market (MTM) methodology authorized in Internal Revenue Code § 1296 but will not require complete reconstruction of historical data. The terms of this alternative resolution are: • If elected, the alternative resolution will apply to all PFIC investments in cases that have been accepted into this program. The initial MTM computation of gain or loss under this methodology will be for the first year of the OVDP application, but could be made after that year depending on when the first PFIC investment was made. For example, for the earliest disclosures under this program, the first year of the OVDP application will be the

calendar year ending December 31, 2003. This will require a determination of the basis for every PFIC investment, which should be agreed between the taxpayer and the Service based on the best available evidence.

- A tax rate of 20% will be applied to the MTM gain(s), MTM net gain(s) and gains from all PFIC dispositions during the voluntary disclosure period under the OVDP, in lieu of the rate contained in IRC § 1291(a)(1)(B) for the amount allocable to the current year and IRC §1291(c)(2) for the deferred tax amount(s) allocable to any other taxable year.
- A rate of 7% of the tax computed for PFIC investments marked to market in the first year of the OVDP application will be added to the tax for that year, in lieu of the interest charge mechanism described in IRC §§ 1291(c) and 1296(j).
- MTM losses will be limited to unreversed inclusions (generally, previously reported MTM gains less allowed MTM losses) on an investment-by-investment basis in the same manner as IRC § 1296. During the voluntary disclosure period under the OVDP, these MTM losses will be treated as ordinary losses (IRC 1296(c)(1)(B)) and the tax benefit is limited to the tax rate applicable to the MTM gains derived during the voluntary disclosure period (20%). MTM and/or disposition losses in any subsequent year on PFIC assets with basis that was adjusted upward as a result of the alternate resolution in voluntary disclosure years, will be treated as capital losses. Any unreversed inclusions at the end of the voluntary disclosure period will be reduced to zero and the MTM method will be applied to all subsequent years in accordance with IRC § 1296 as if the taxpayer had acquired the PFIC stock on the last day of the last year of the voluntary disclosure period at its MTM value and made an IRC § 1296 election for the first year beginning after the voluntary disclosure period. Thus, any subsequent year losses on disposition of PFIC stock assets in excess of unreversed inclusions arising after the end of the voluntary disclosure period will be treated as capital losses.
- Regular and Alternative Minimum Tax are both to be computed without the PFIC dispositions or MTM gains and losses. The tax from the PFIC transactions (20% plus the 7% for the first year, if applicable) is added to (or subtracted from) the applicable total tax (either regular or AMT, whichever is higher). The tax and interest (i.e., the 7% for the first year of the voluntary disclosure) computed under the OVDP alternative MTM can be

		added to the applicable total tax (either regular or AMT, whichever is higher) and placed on the amended return in the margin, with a supporting schedule. • Underpayment interest and penalties on the deficiency are computed in accordance with the Internal Revenue Code and the terms of the OVDP. • For any PFIC investment retained beyond the voluntary disclosure period, the taxpayer must continue using the MTM method, but will apply the normal statutory rules of section 1296 as well as the provisions of IRC §§ 1291-1298, as applicable. Before electing the alternative PFIC resolution, taxpayers with PFIC investments should consult their tax advisors to ensure that the issue is material in their cases and that the alternative is in fact preferable to the statutory computation in their situation. If the taxpayer does not elect to use the alternative PFIC computation, the PFIC provisions of §§ 1291-1298 apply.
ELIGIBILITY FOR THIS PROGRAM		
12.	Who is eligible to make a voluntary disclosure under this program?	Taxpayers who have undisclosed offshore accounts or assets and meet the requirements of IRM 9.5.11.9 are eligible to apply for IRS Criminal Investigation's Voluntary Disclosure Practice and the OVDP penalty regime. But see FAQ 21 for ways in which a taxpayer may be rendered ineligible.
13.	Are entities, such as corporations, partnerships and trusts eligible to make voluntary disclosures?	Yes, entities are eligible to participate in the OVDP.
14.	I'm currently under examination. Can I come in under voluntary disclosure?	No. If the IRS has initiated a civil examination, regardless of whether it relates to undisclosed foreign accounts or undisclosed foreign entities, the taxpayer will not be eligible to come in under the OVDP. Taxpayers under criminal investigation by CI are also ineligible. The taxpayer or the taxpayer's representative should discuss the offshore accounts with the agent.
15.	What if the taxpayer has already filed amended returns reporting the additional unreported offshore income, without making a voluntary disclosure (i.e. quiet disclosure)?	The IRS is aware that some taxpayers have attempted so-called "quiet" disclosures by filing amended returns and paying any related tax and interest for previously unreported offshore income without otherwise notifying the IRS. Taxpayers who have already made "quiet" disclosures are eligible to take advantage of the penalty framework applicable to this program by submitting an application, along with copies of their previously filed returns (original and amended) to the IRS's Voluntary Disclosure Coordinator (see FAQ 24). Taxpayers are strongly encouraged to come forward under the OVDP to make timely, accurate, and complete disclosures. Those taxpayers making "quiet" disclosures should be

		aware of the risk of being examined and potentially criminally prosecuted for all applicable years.
16.	Some taxpayers have made quiet disclosures by filing amended returns. Will the IRS audit these taxpayers? If so, will they be eligible for the 27.5 percent offshore penalty? Is the IRS really going to prosecute someone who filed an amended return and correctly reported all their income?	The IRS is reviewing amended returns and could select any amended return for examination. The IRS has identified, and will continue to identify, amended tax returns reporting increases in income. The IRS will closely review these returns to determine whether enforcement action is appropriate. If a return is selected for examination, the 27.5 percent offshore penalty would not be available. When criminal behavior is evident and the disclosure does not meet the requirements of a voluntary disclosure under IRM 9.5.11.9, the IRS may recommend criminal prosecution to the Department of Justice.
17.	I have properly reported all my taxable income but I only recently learned that I should have been filing FBARs in prior years to report my personal foreign bank account or to report the fact that I have signature authority over bank accounts owned by my employer. May I come forward under this new program to correct this?	The purpose for the voluntary disclosure practice is to provide a way for taxpayers who did not report taxable income in the past to come forward voluntarily and resolve their tax matters. Thus, if you reported, and paid tax on, all taxable income but did not file FBARs, do not use the voluntary disclosure process. For taxpayers who reported, and paid tax on, all their taxable income for prior years but did not file FBARs, you should file the delinquent FBAR reports according to the instructions (send to Department of Treasury, Post Office Box 32621, Detroit, MI 48232-0621) and attach a statement explaining why the reports are filed late. The IRS will not impose a penalty for the failure to file the delinquent FBARs if there are no underreported tax liabilities and you have not previously been contacted regarding an income tax examination or a request for delinquent returns. Non-resident taxpayers should also review the Filing Compliance Procedures for Non-Resident U.S. Taxpayers if they do not qualify for the procedures described in this FAQ.
18.	Question 17 states that a taxpayer who only failed to file an FBAR should not use this process. What about a taxpayer who only has delinquent Form 5471s or Form 3520s but no tax due? Does that taxpayer fall outside this voluntary disclosure process?	A taxpayer who has failed to file tax information returns, such as Form 5471 for controlled foreign corporations (CFCs) or Form 3520 for foreign trusts but who has reported, and paid tax on, all their taxable income with respect to all transactions related to the CFCs or foreign trusts, should file delinquent information returns with the appropriate service center according to the instructions for the form and attach a statement explaining why the information returns are filed late. (The Form 5471 should be submitted with an amended return showing no change to income or tax liability.) Include at the top of the first page of each information return "OVDI - FAQ #18" to indicate that the returns are being submitted under this procedure. This is very important to ensure your returns are processed through this procedure.

		The IRS will not impose a penalty for the failure to file the delinquent Forms 5471 and 3520 if there are no underreported tax liabilities and you have not previously been contacted regarding an income tax examination or a request for delinquent returns. Non-resident taxpayers should also review the **New Filing Compliance Procedures for Non-Resident U.S. Taxpayers** if they do not qualify for the procedures described in this FAQ.
19.	Is a taxpayer who previously sought relief under the IRS's traditional Voluntary Disclosure Practice before the OVDP was announced eligible for the terms of the OVDP?	A taxpayer who made a voluntary disclosure after September 9, 2011 but before January 9, 2012 is eligible for the OVDP, provided that he or she otherwise meets the requirements of IRM 9.5.11.9.
20.	If I don't have the ability to full pay can I still participate in this program?	Yes. The terms of this program require the taxpayer to pay the tax, interest, and accuracy-related penalty, and, if applicable the failure to file and failure to pay penalties with their submission. However, it is possible for a taxpayer who is unable to make full payment of these amounts to request the IRS to consider other payment arrangements (see FAQ 25). The burden will be on the taxpayer to establish inability to pay, to the satisfaction of the IRS, based on full disclosure of all assets and income sources, domestic and offshore, under the taxpayer's control. Assuming that the IRS determines that the inability to fully pay is genuine, the taxpayer must work out other financial arrangements, acceptable to the IRS, to resolve all outstanding liabilities, in order to be entitled to the penalty relief under this program.
21.	If the IRS has served a John Doe summons or made a treaty request seeking information that may identify a taxpayer as holding an undisclosed foreign account or undisclosed foreign entity, does that make the taxpayer ineligible to make a voluntary disclosure under this program?	No. The mere fact that the Service served a John Doe summons, made a treaty request or has taken similar action does not make every member of the Joe Doe class or group identified in the treaty request or other action ineligible to participate. However, once the Service or the Department of Justice obtains information under a John Doe summons, treaty request or other similar action that provides evidence of a specific taxpayer's noncompliance with the tax laws or Title 31 reporting requirements, that particular taxpayer will become ineligible for OVDP and Criminal Investigation's Voluntary Disclosure Practice. For this reason, a taxpayer concerned that a party subject to a John Doe summons, treaty request or similar action will provide information about him to the Service should apply to make a voluntary disclosure as soon as possible. Furthermore, there are two other ways in which a taxpayer will become ineligible. First, if a taxpayer appeals a foreign tax administrator's decision authorizing the providing of account information to the IRS and fails to serve the notice as required under existing law, see 18

		U.S.C. 3506, of any such appeal and/or other documents relating to the appeal on the Attorney General of the United States at the time such notice of appeal or other document is submitted, the taxpayer will be ineligible to participate. Second, the IRS may announce that certain taxpayer groups that have or had accounts at specific financial institutions will be ineligible due to U.S. government actions in connection with the specific financial institution. Such announcements will provide notice of the prospective date upon which eligibility for specific taxpayer groups will be posted to the IRS website.
OVDP PROCESS		
22.	Can my representative talk to the IRS without revealing my identity?	Yes, but hypothetical situations present a potential for misunderstanding that exists when there is no assurance that the hypothetical contains all relevant facts. In addition, posing a situation as a hypothetical does not satisfy the requirements for making a voluntary disclosure. If the IRS receives information relating specifically to the taxpayer's undisclosed foreign accounts or undisclosed foreign entities while the hypothetical question is pending, the taxpayer may become ineligible to make a voluntary disclosure. If practitioners have questions about the terms of the voluntary disclosure program, they should contact the IRS OVDP Hotline at (267) 941-0020 or find more information on the 2012 Offshore Voluntary Disclosure Program page.
23.	How do I request pre-clearance before I submit my offshore voluntary disclosure?	For the OVDP, pre-clearance may be requested as follows: 1. Taxpayers or representatives send a facsimile to the IRS – Criminal Investigation Lead Development Center (LDC) with: (a) identifying information (name, date of birth, social security number and address) and (b) an executed power of attorney (if represented) at (267) 941-1115 to request pre-clearance before making an offshore voluntary disclosure. In the case of jointly filed returns, if each spouse intends to apply for OVDP, each spouse should request pre-clearance. 2. Criminal Investigation will then notify taxpayers or their representatives via fax whether or not they are cleared to make an offshore voluntary disclosure. 3. Taxpayers deemed cleared should follow the steps outlined below (FAQ 24) within 45 days from receipt of the fax notification to make an offshore voluntary disclosure.

		Pre-clearance does not guarantee a taxpayer acceptance into the OVDP. Taxpayers must truthfully, timely, and completely comply with all provisions of the OVDP. Taxpayers or representatives with questions regarding pre-clearance may call the IRS-CI OVDP hotline at (267) 941-1607. For all other offshore voluntary disclosure questions call the IRS OVDP Hotline at (267) 941-0020.
24.	How do I make an offshore voluntary disclosure and where should I submit my offshore voluntary disclosure to determine whether I am preliminarily accepted under this program?	For the OVDP, an offshore voluntary disclosure is submitted as follows: 1. Taxpayers or their representatives should mail their Offshore Voluntary Disclosure Letter and attachment to the following address: Internal Revenue Service Voluntary Disclosure Coordinator 1-D04-100 2970 Market Street Philadelphia, PA 19104 2. Criminal Investigation will review the Offshore Voluntary Disclosures letter received and notify taxpayers or representatives by mail or facsimile whether their offshore voluntary disclosure have been preliminarily accepted or declined. It is intended that Criminal Investigation will complete its work within 45 days of receipt of a complete Offshore Voluntary Disclosures letter. Preliminary acceptance into the OVDP is conditioned upon the information provided by the taxpayer being, and remaining, truthful, timely, and complete. All non-offshore voluntary disclosures not covered under this program should follow the domestic voluntary disclosure instructions at the bottom of the How to make an Offshore Voluntary Disclosure page. Taxpayers who are making both an offshore voluntary disclosure and a domesitc voluntary disclosure should follow the process for offshore voluntary disclosures, but indicate on the Offshore Voluntary Disclosure Letter that they are also making a domestic voluntary disclosure.
24.1	What should I do if my spouse also wishes to make a voluntary disclosure under OVDP?	In situations where spouses both desire to participate in OVDP, they may do so jointly or separately. If the joint approach is chosen, the spouses should be sure to include all required information and documents for each spouse and clearly indicate the intention to disclose jointly. If the separate approach is chosen, each spouse should separately complete and submit all required information and documents. See FAQs 22 through 25.
25.	After I am notified by CI that my disclosure is preliminarily accepted, what other	The letter from CI will instruct the taxpayer or their representative to submit the full voluntary

information will I have to provide?	disclosure submission to the Austin Campus within 90 days of the date of the letter. The voluntary disclosure submission must be sent in two separate parts. 1. A check payable to the Department of Treasury in the total amount of tax, interest, accuracy-related penalty, and, if applicable, the failure to file and failure to pay penalties, for the voluntary disclosure period must be sent along with information identifying the taxpayer name, taxpayer identification number, and years to which the payment relates to: Internal Revenue Service 3651 S. I H 35 Stop 1919 AUSC Austin, TX 78741 ATTN: Offshore Voluntary Disclosure Program 2. All other required items listed below must be sent to: Internal Revenue Service 3651 S. I H 35 Stop 4301 AUSC Austin, TX 78741 ATTN: Offshore Voluntary Disclosure Program • Copies of previously filed original (and, if applicable, previously filed amended) federal income tax returns for tax years covered by the voluntary disclosure; • For taxpayers who began filing timely, original, compliant returns that fully reported previously undisclosed offshore accounts or assets before making the voluntary disclosure for certain years of the offshore disclosure period, copies of the previously filed returns for the compliant years. • Complete and accurate amended federal income tax returns (for individuals, Form 1040X, or original Form 1040 if delinquent) for all tax years covered by the voluntary disclosure, with applicable schedules detailing the amount and type of previously unreported income from the offshore account or entity or domestic source (e.g., Schedule B for interest and dividends, Schedule D for capital gains and losses, Schedule E for income from partnerships, S corporations, estates or trusts and, for years after 2010, Form 8938, Statement of Specified Foreign Financial Assets). • A completed Foreign Account or Asset Statement for each previously undisclosed foreign account or asset during the voluntary disclosure period, available on our 2012

		Offshore Voluntary Disclosure Program page. Properly completed and signed Taxpayer Account Summary With Penalty Calculation, also available at the previous link. • A check payable to the Department of Treasury in the total amount of tax, interest, accuracy-related penalty, and, if applicable, the failure to file and failure to pay penalties, for the voluntary disclosure period. If you cannot pay the total amount of tax, interest, and penalties as described above, submit your proposed payment arrangement and a completed Collection Information Statement (Form 433-A, Collection Information Statement for Wage Earners and Self-employed Individuals, or Form 433-B, Collection Information Statement for Businesses, as appropriate) (see FAQ 20). • For those applicants disclosing offshore financial accounts with an aggregate highest account balance in any year of $500,000 or more, copies of offshore financial account statements reflecting all account activity for each of the tax years covered by your voluntary disclosure. For those applicants disclosing offshore financial accounts with an aggregate highest account balance of less than $500,000, copies of offshore financial account statements reflecting all account activity for each of the tax years covered by your voluntary disclosure must be readily available upon request. • Properly completed and signed agreements to extend the period of time to assess tax (including tax penalties) and to assess FBAR penalties. Please see the submission requirements on the 2012 Offshore Voluntary Disclosure Program, for a complete description of the forms and other information that must be submitted. You may also be contacted by an examiner with a request for specific additional information if needed to process your voluntary disclosure. The examiner will certify that your voluntary disclosure is correct, accurate, and complete by reviewing your records along with your amended or delinquent income tax returns. The examiner will also verify the tax, interest, and civil penalties you owe. A full and complete submission is required for acceptance into the program.
25.1	What if I cannot make a complete submission by the date specified in the letter from Criminal Investigation?	A taxpayer may request an extension of the deadline to complete his or her submission. A taxpayer requesting an extension must submit his name, address, date of birth, and social security number and should submit as much of the information described in FAQ 25 as possible with his written request for extension, including

		at a minimum the properly completed and signed agreements to extend the period of time to assess tax (including tax penalties) and to assess FBAR penalties. Requests for up to a 90 day extension must include a statement of those items that are missing, the reasons why they are not included, and the steps taken to secure them. Requests for extensions must be made in writing and sent to the Austin Campus on or before the date specified in the letter from Criminal Investigation for completing the voluntary disclosure: Internal Revenue Service 3651 S. I H 35 Stop 4301 AUSC Austin, TX 78741 ATTN: Offshore Voluntary Disclosure Program
26.	Who will process my voluntary disclosure after I have submitted the information described in FAQ 25?	After you send in your full and complete submission as described in FAQ 25, your case will be assigned to a civil examiner to complete the certification of your tax returns for accuracy, completeness and correctness. If you have also made a domestic voluntary disclosure as part of your offshore voluntary disclosure, the domestic disclosure will be treated as a disclosure under the Voluntary Disclosure Practice and may be assigned to a different examiner.
27.	Will my voluntary disclosure be subject to an examination?	Normally, no examination will be conducted with respect to an offshore voluntary disclosure made under this initiative, although the Service reserves the right to conduct an examination. The normal process is to assign the voluntary disclosure to an examiner to certify the accuracy and completeness of the voluntary disclosure. The certification process is less formal than an examination and does not carry with it all the rights and legal consequences of an examination. For example, the examiner will not send the usual taxpayer notices, the certification process will not constitute a “second examination” if one or more years in the voluntary disclosure has previously been examined, and the taxpayer will not have appeal rights with respect to the Service’s determination. However, the examiner has the right to ask any relevant questions, request any relevant documents, and even make third party contacts, if necessary to certify the accuracy of the amended returns, without converting the certification to an examination. If you have also made a domestic voluntary disclosuer as part of your offshore voluntary disclosure, the domestic disclosure will be treated as a disclosure under the Voluntary disclosure Practice and an examination may be opened for that part of the disclosure.
28.	How long should the process take before it is completed?	Because every case is different, there is no way to predict how long the process will take for you. However, the IRS has taken certain steps to improve our efficiency in processing cases.

		Moreover, there are certain steps you can take to expedite matters. If you have not already done so, you should have delinquent or amended tax returns prepared now because they must be submitted with your package by the date specified in the letter from Criminal Investigation for completing the voluntary disclosure. You should also start gathering all of your foreign account statements and other documentation for all of the years covered by your voluntary disclosure. You may view a description of the submission requirements necessary to process your voluntary disclosure at irs.gov. Once the examiner has all the information needed to certify your voluntary disclosure, most cases should be completed expeditiously. The OVDP will operate on a first-come, first-served basis. As a result, complete submissions are likely to close much faster.
29.	My offshore assets were held in the name of a foreign entity that I controlled. However, the sole purpose of the entity was to conceal my ownership of the assets, and I intend to dissolve the entity now that I am making a voluntary disclosure. Do I still have to file the delinquent information returns for the entity?	A taxpayer who holds assets through a foreign entity he or she controls, such as a corporation or a trust, is required to file information returns for that entity (e.g., Form 5471 for a foreign corporation and Forms 3520 and 3520-A for a foreign trust), regardless of whether the taxpayer honored the form of the entity in his or her dealings with the assets. However, in cases where the taxpayer certifies under penalty of perjury that the entity had no purpose other than to conceal the taxpayer's ownership of assets, and where the taxpayer dissolves the entity, the Service may agree to waive the requirement that delinquent information returns be filed if it concludes it is in the Service's interest to do so. Taxpayers wishing to request the Service to disregard a foreign entity should submit a Statement on Dissolved Entities.
30.	What should I do if I am having difficulty obtaining my records from overseas?	If you are having difficulty, speak with your agent or if your case is not yet assigned, contact the IRS OVDP Hotline at (267) 941-0020. Our experience with offshore cases in recent years has shown that taxpayers are ultimately successful in retrieving copies of statements and other records from foreign banks.
CALCULATING THE OFFSHORE PENALTY		
31.	When determining the highest amount in each undisclosed foreign account for each year or the highest asset balance of all undisclosed foreign entities for each year, what exchange rate should be used?	Convert foreign currency by using the foreign currency exchange rate at the end of the year regardless of when during the year the highest account balance was reached. In valuing currency of a country that uses multiple exchange rates, use the rate that would apply if the currency in the account were converted into United States dollars at the close of the calendar year. Each account is to be valued separately.
32.	If a taxpayer's violation includes unreported foreign individual accounts and business accounts (for an active business), does the 27.5 percent offshore penalty include the	Yes. Assuming that there is unreported income with respect to all the accounts, they all will be included in the penalty base. No distinction is drawn based on whether the account is a

	business accounts?	business account or a savings or investment account.
33.	Is there a de minimis unreported income exception to the 27.5 percent penalty?	No. No amount of unreported income is considered de minimis for purposes of determining whether there has been tax non-compliance with respect to an account or asset and whether the account or asset should be included in the base for the 27.5 percent penalty.
34.	If the look back period is eight years, what does the taxpayer do if the taxpayer held foreign real estate, sold it before the voluntary disclosure period, and did not report the gain on his return for the year of sale? Does the taxpayer compute the 27.5 percent on the highest aggregate balance in the voluntary disclosure period? What, if anything, does IRS expect the taxpayer to do with respect to the prior year of sale?	Gain realized on a foreign transaction occurring before the voluntary disclosure period does not need to be included as part of the voluntary disclosure. If the proceeds of the transaction were repatriated and were not offshore during the voluntary disclosure period, they will not be included in the base for the 27.5 percent offshore penalty. On the other hand, if the proceeds remained offshore during any part of the voluntary disclosure period, they will be included in the base for the penalty.
35.	What kinds of assets does the 27.5 percent offshore penalty apply to?	The offshore penalty is intended to apply to all of the taxpayer's offshore holdings that are related in any way to tax non-compliance, regardless of the form of the taxpayer's ownership or the character of the asset. The penalty applies to all assets directly owned by the taxpayer, including financial accounts holding cash, securities or other custodial assets; tangible assets such as real estate or art; and intangible assets such as patents or stock or other interests in a U.S. or foreign business. If such assets are indirectly held or controlled by the taxpayer through an entity, the penalty may be applied to the taxpayer's interest in the entity or, if the Service determines that the entity is an alter ego or nominee of the taxpayer, to the taxpayer's interest in the underlying assets. Tax noncompliance includes failure to report income from the assets, as well as failure to pay U.S. tax that was due with respect to the funds used to acquire the asset. See FAQ 52, category 3, for a limited exception to this rule.
36.	A taxpayer owns valuable land and artwork located in a foreign jurisdiction. This property produces no income and there were no reporting requirements regarding this property. Must the taxpayer report the land and artwork and pay a 27.5 percent penalty? What if the property produced income that the taxpayer did not report?	The answer to the first question depends on whether the non-income producing assets were acquired with funds improperly non-taxed. The offshore penalty is intended to apply to offshore assets that are related to tax non-compliance. Thus, if offshore assets were acquired with funds that were subject to U.S. tax but on which no such tax was paid, the offshore penalty would apply regardless of whether the assets are producing current income. Assuming that the assets were acquired with after tax funds or from funds that were not subject to U.S. taxation, if the assets have not yet produced any income, there has been no U.S. taxable event and no reporting obligation to disclose. The taxpayer will be required to report any current income from the property or gain from its sale or other disposition

		at such time in the future as the income is realized. Because there has not been tax noncompliance, the 27.5 percent offshore penalty would not apply to those assets. In answer to the second question, if the assets produced income subject to U.S. tax during the voluntary disclosure period which was not reported, the assets will be included in the penalty computation regardless of the source of the funds used to acquire the assets. If the foreign assets were held in the name of an entity such as a trust or corporation, there would also have been an information return filing obligation that may need to be disclosed. See FAQ 5.
37.	If a taxpayer transferred funds from one unreported foreign account to another during the voluntary disclosure period, will he have to pay a 27.5 percent offshore penalty on both accounts?	No. If the taxpayer can establish that funds were transferred from one account to another, any duplication will be removed before calculating the 27.5 percent penalty. However, the burden will be on the taxpayer to establish the extent of the duplication.
38.	If, in addition to other noncompliance, a taxpayer has failed to file an FBAR to report an account over which the taxpayer has signature authority but no beneficial interest (e.g., an account owned by his employer), will that foreign account be included in the base for calculating the taxpayer's 27.5 percent offshore penalty?	No. The account the taxpayer has mere signature authority over will be treated as unrelated to the tax noncompliance the taxpayer is voluntarily disclosing. The taxpayer may cure the FBAR delinquency for the account the taxpayer does not own by filing the FBAR with an explanatory statement before being contacted regarding an income tax examination or a request for delinquent returns. The answer might be different if: (1) the account over which the taxpayer has signature authority is held in the name of a related person, such as a family member or a corporation controlled by the taxpayer; (2) the account is held in the name of a foreign corporation or trust for which the taxpayer had a Title 26 reporting obligation; or (3) the account was related in some other way to the taxpayer's tax noncompliance. In these cases, if the taxpayer is determined to have a direct or indirect beneficial interest in the account(s), the taxpayer will be liable for the 27.5 percent offshore penalty if there is unreported income on the account. On the other hand, if there is no unreported income with respect to the account, no penalty will be imposed.
39.	If parents have a jointly owned foreign account on which they have made their children signatories, the children have an FBAR filing requirement but no income. Should the children just file delinquent FBARs and have the parents submit a voluntary disclosure? Will both parents be penalized 27.5 percent each? Will each parent have a 27.5 percent penalty on 50 percent of the balance?	For those signatories with no ownership interest in the account, such as the children in these facts, they should file delinquent FBARs as previously described in FAQ 17. As for the parents, only one 27.5 percent offshore penalty will be applied with respect to voluntary disclosures relating to the same account. In the example, the parents will be jointly required to pay a single 27.5 percent penalty on the account. This can be through one parent paying the total penalty or through each paying a portion, at the taxpayers' option. However, any joint account owner who does not make a

		voluntary disclosure may be examined and subject to all appropriate penalties.
40.	If multiple taxpayers are co-owners of an offshore account, who will be liable for the offshore penalty?	In the case of co-owners, each taxpayer who makes a voluntary disclosure will be liable for the penalty on his percentage of the highest aggregate balance in the account. The burden will be on the disclosing taxpayer claiming ownership of less than 100 percent of the account to establish the extent of his ownership. His voluntary disclosure is effective as to his tax liability only. It does not cover the other co-owners. The IRS may examine any co-owner who does not make a voluntary disclosure. Co-owners examined by the IRS will be subject to all appropriate penalties.
41.	If there are multiple individuals with signature authority over a trust account, does everyone involved need to file delinquent FBARs? If so, could everyone be subject to a 27.5 percent offshore penalty?	Only one 27.5 percent offshore penalty will be applied with respect to voluntary disclosures relating to the same account. The penalty may be allocated among the taxpayers with beneficial ownership making the voluntary disclosures in any way they choose. The reporting requirements for filing an FBAR, however, do not change. Therefore, every individual who is required to file an FBAR must file one.
STATUTE OF LIMITATIONS		
42.	How can the IRS propose adjustments to tax for more than three years without either an agreement from the taxpayer or a statutory exception to the normal three-year statute of limitations for making those adjustments?	Agreeing to assessment of tax and penalties for all voluntary disclosure years is part of the resolution offered by the IRS for resolving offshore voluntary disclosures. The taxpayer must agree to assessment of the liabilities for those years in order to get the benefit of the reduced penalty framework. If the taxpayer does not agree to the tax, interest and penalty proposed by the voluntary disclosure examiner, the case will be referred to the field for a complete examination of all issues. In that examination, normal statute of limitations rules will apply. If no exception to the normal three-year statute applies, the IRS will only be able to assess tax, penalty and interest for three years. However, if the period of limitations was open because, for example, the IRS can prove a substantial omission of gross income, six years of liability may be assessed. Similarly, if there was a failure to file certain information returns, such as Form 3520, Form 5471, or Form 8938, the statute of limitations will not have begun to run. If the IRS can prove fraud, there is no statute of limitations for assessing tax. In addition, the statute of limitations for asserting FBAR penalties is six years from the date of the violation, which would be the date that an unfiled FBAR was due to have been filed. 31 U.S.C. § 5321(b)(1).
43.	Will I be required to complete and sign agreements to extend the period of time to assess tax (including tax penalties) and to assess FBAR penalties for any years that	Yes. Properly completed and signed agreements to extend the period of time to assess tax (including tax penalties) and to assess FBAR penalties are required to be submitted as part of

	are otherwise set to expire while my application is being processed by the IRS?	the voluntary disclosure package (see FAQ 25).
FBAR QUESTIONS		
44.	If I had an FBAR reporting obligation for years covered by the voluntary disclosure, what version of the Form TD F 90-22.1 should I use to report my interests in foreign accounts?	Taxpayers should use the most current version of Form TD F 90-22.1, for filing delinquent FBARs to report foreign accounts maintained in prior years. At this time, the most current version is the one that was revised in January 2012. The taxpayer may, however, rely on the instructions for the prior version of the form (revised in July 2000) for purposes of determining who must file to report foreign accounts maintained during the 2009 and prior calendar years. Taxpayers may rely on FBAR guidance that was applicable for the calendar year that is being reported (e.g., IRS Announcement 2010-16 or IRS Notice 2010-23) in determining their FBAR reporting obligations.
45.	A taxpayer has two offshore accounts. No FBARs were filed. The taxpayer reported all income from one account but not the other. Mechanically, how does the taxpayer report this? Does the taxpayer report both accounts as a voluntary disclosure or bifurcate it into a delinquent FBAR filing for the reported account and a voluntary disclosure for the unreported account?	Because the annual FBAR requirement is to file a single report reporting all foreign accounts meeting the reporting requirement, it is not possible to bifurcate the corrected filing. The taxpayer should make a voluntary disclosure for the omitted income and include the delinquent FBARs with respect to both accounts. The account with no income tax issue is unrelated to the taxpayer's tax noncompliance, so no penalty will be imposed with respect to that account.
46.	If a taxpayer is uncertain about whether he is required to file an FBAR with respect to a particular foreign account, how can the taxpayer get help with this question?	Help with questions about FBAR filing requirements is available by telephone or e-mail. Call 1-866-270-0733 (toll free within the United States) or 1-313-234-6146 (not a toll-free number) from 8 a.m. to 4:30 p.m. Eastern time, except for weekends and federal holidays. You can also submit written questions about the FBAR rules by e-mail addressed to FBARQuestions@irs.gov. The instructions to the FBAR Form are at the end of the form. Do not call the IRS OVDP Hotline with questions about whether you have an FBAR filing requirement. The purpose of the Voluntary Disclosure Hotline is to answer questions about how to make voluntary disclosures and what penalties apply, assuming a taxpayer was required to file.
TAXPAYER REPRESENTATIVES		
47.	I have a client who may be eligible to make a voluntary disclosure. What are my responsibilities to my client under Circular 230?	The IRS anticipates that taxpayers will seek qualified tax and legal advice and representation in connection with considering and making a voluntary disclosure. If a taxpayer seeks the advice of a tax practitioner, the practitioner must exercise due diligence in determining the correctness of any oral or written representations made to the client about the program and the implications for that taxpayer of going forward. If the taxpayer decides to proceed with the disclosure, the practitioner must exercise due diligence in determining the correctness of any

		oral or written representations that the practitioner makes during the representation to the Department of the Treasury; and must avoid giving, or participating in giving, false or misleading information to the Department of the Treasury or giving a false or misleading opinion to the taxpayer. If the taxpayer decides not to make the voluntary disclosure despite the taxpayer's noncompliance with United States tax laws, Circular 230 requires the practitioner to advise the client of the fact of the client's noncompliance and the consequences of the client's noncompliance. A practitioner whose client declines to make full disclosure of the existence of, or any taxable income from, a foreign financial account during a taxable year, may not prepare the client's income tax return for that year without being in violation of Circular 230.
48.	Are there special considerations for completing Form 2848, Power of Attorney and Declaration of Representative?	Yes. In addition to being authorized to represent the taxpayer for tax years within the voluntary disclosure period, the power of attorney must specifically authorize you to represent the taxpayer for income tax, civil penalties and FBARs. See a sample **power of attorney.** at irs.gov.
TAXPAYER REPRESENTATIVES		
49.	If the taxpayer and the IRS cannot agree to the terms of the OVDP closing agreement, will mediation with Appeals be an option with respect to the terms of the closing agreement?	No. The penalty framework for offshore voluntry disclosure and the agreement to limit tax exposure to an eight year period are package terms under the OVDP. If any part of the offshore penalty is unacceptable to the taxpayer, the case will be examined and all applicable penalties will be imposed (see FAQ 51). After a full examination, any tax and penalties imposed by the Service on examination may be appealed, but the Service's decision on the terms of the OVDP closing agreement may not.
50.	Will examiners have any discretion to settle offshore voluntary disclosure cases?	No. Offshore voluntary disclosure examiners do not have discretion to settle cases for amounts less than what is properly due and owing. However, because the 27.5 percent offshore penalty is a proxy for the FBAR penalty, other penalties imposed under the Internal Revenue Code, and potential liabilities for years prior to the voluntary disclosure period, there may be cases where a taxpayer making a voluntary disclosure would owe less if the special offshore initiative did not exist. Under no circumstances will taxpayers be required to pay a penalty greater than what they would otherwise be liable for under the maximum penalties imposed under existing statutes. For example, if a taxpayer had $100,000 in an offshore bank account in only one year and foreign income-producing real estate with a fair market value of $1,000,000, only the bank account would be subject to the FBAR penalty. Consequently, the maximum FBAR

		penalty would only be $100,000 (that is, the greater of $100,000 or 50% of the amount in the foreign account), which is substantially less than the offshore penalty of $302,500 (27.5% of $1,100,000). If this FBAR penalty, plus tax, interest and all other applicable penalties, are less than what is due under this offshore initiative, the taxpayer will only pay the lesser amount. Examiners will compare the amount due under this offshore initiative to the tax, interest, and applicable penalties (at their maximum levels and without regard to issues relating to reasonable cause, willfulness, mitigation factors, or other circumstances that may reduce liability) for all open years that a taxpayer would owe in the absence of the OVDP penalty regime. The taxpayer will pay the lesser amount. If the taxpayer disagrees with the result, the taxpayer may request that the case be referred for an examination of all relevant years and issues (see FAQ 51).
51.	If, after making a voluntary disclosure, a taxpayer disagrees with the application of the offshore penalty, what can the taxpayer do?	If the offshore penalty is unacceptable to a taxpayer, that taxpayer must indicate in writing the decision to withdraw from or opt out of the program. Once made, this election is irrevocable. An opt out is an election made by a taxpayer to have his or her case handled under the standard audit process. It should be recognized that in a given case, the opt out option may reflect a preferred approach. That is, there may be instances in which the results under the applicable voluntary disclosure program appear too severe given the facts of the case. There will be other instances where this is less clear. In the latter cases, the Service will look to ensure that the best interests of the Service and the integrity of the voluntary disclosure program remain intact. In these cases, it is expected that full scope examinations will occur if opt out is initiated. It is expected that opt out will be appropriate for a discrete minority of cases. Moreover, to the extent that issues are found upon a full scope examination that were not disclosed by the taxpayer, those issues may be the subject of review by Criminal Investigation. In either case, opting out is at the sole discretion of the taxpayer and the taxpayer should not be treated in a negative fashion merely because he or she chooses to opt out. The specific procedures for opting out are set forth in a separate guide titled Opt Out and Removal Guide for the 2009 OVDP, 2011 OVDI, and now the OVDP. The guide is posted to the website. Taxpayers are reminded that, even after opting out of the Service's civil settlement structure, they remain within Criminal Investigation's Voluntary Disclosure Practice. Therefore,

		taxpayers are still required to cooperate fully with the examiner by providing all requested information and records and must still pay or make arrangements to pay the tax, interest, and penalties they are ultimately determined to owe. If a taxpayer does not cooperate and make payment arrangements, or if after examination, issues exist that were not disclosed prior to opt out, the case may be referred back to Criminal Investigation.
51.1	Under what circumstances might a taxpayer consider opting out of the civil settlement structure of the OVDP?	The following scenarios are provided to illustrate the effect of a taxpayer opting out of the civil settlement structure. Opting out of the civil settlement structure does not affect the status of a taxpayer's voluntary disclosure under Criminal Investigation's Voluntary Disclosure Practice, so long as the taxpayer is fully cooperative in the examination process, by providing all requested foreign records and submitting to interviews, as requested, and as long as no new issues are uncovered that were previously not disclosed. The facts of each example were chosen to illustrate particular issues and do not represent a full analysis of a taxpayer's particular situation. Consequently, they may not be relied upon in dealing with any taxpayer's actual case. For all of the following examples, assume a 35% tax rate on all unreported income and assume a voluntary disclosure started in January 2012 for a voluntary disclosure period of 2003 through 2010. Example 1 – Unreported Income But No Tax Deficiency The taxpayer, a U.S. citizen who worked and resided in Country A, had a brokerage account in Country A that he opened in 1999. The account had a high balance of $2 million and generated income of $150,000 each year. The taxpayer did not report any of the income on his U.S. return because he mistakenly assumed he only had to report it on a Country A tax return. The taxpayer's amended Form 1040 returns showed that, after applying the foreign tax credit for taxes paid to the government of Country A, he had no tax deficiency with respect to the unreported income. Because the taxpayer had unreported income, he does not qualify for FAQ 17. In addition, assume the taxpayer does not otherwise qualify for a reduced penalty under FAQ 52 or 53. The Offshore Penalty under OVDP is $550,000 (i.e., 27.5% of $2 million), even though there was no tax owed to the U.S. Government and no other indication of wrongdoing. If the taxpayer elected to opt out and, upon examination, IRS determined that the FBAR violation was not willful, he would be subject to an FBAR penalty of up to $10,000 per year ($60,000 total for six years). If IRS determines that the violation was due to reasonable cause

(for example, the taxpayer reasonably acted on the written advice of an independent legal advisor after having disclosed the account to the advisor), the taxpayer would be subject to no FBAR penalty.
The penalty for a nonwillful failure to file an FBAR would apply with respect to FBARs that were due on or after June 30, 2006. For this example, this would include FBARs that were filed to report foreign financial accounts maintained during calendar years 2005 through 2010.

	Civil Settlement Structure	**Opt out and 6 years nonwillful FBAR penalty**
Income Tax Due (not including interest)	0	0
20% Accuracy-related penalty	0	0
27.5% Offshore Penalty	$550,000	0
FBAR Penalty	0	$60,000
Total	$550,00	$60,000

Example 2 - Unreported Income and Failure to File FBAR
The taxpayer is a U.S. citizen, who lived abroad in 2007, 2008 and 2009. While living abroad, the taxpayer opened an account in 2007 with a bank located in Country X. Assume that the highest account balance during the three years (2007, 2008 and 2009) was $200,000. The taxpayer filed U.S. income tax returns for all years but only filed an FBAR for 2008 and 2009, not for 2007. The taxpayer was unaware of his FBAR filing obligation until having his return professionally prepared in 2008. The taxpayer failed to report approximately $2,000 of interest income from the account, and, is therefore, unable to simply file a delinquent FBAR for 2007 as provided in FAQ 17. The tax deficiency was $700. In addition, assume the taxpayer does not otherwise qualify for a reduced penalty under FAQ 52 or 53.
The Offshore Penalty under OVDP will be $55,000 (i.e., 27.5% of $200,000). The taxpayer would also be required to pay the tax deficiency for each year, interest on the deficiency, and the 20% accuracy-related penalty on the deficiency. If the taxpayer elected to opt out, the taxpayer will be subject to tax, penalties, and interest on the unreported income and, if, upon examination, IRS determines that the failure to file the FBAR was not willful, the taxpayer will be subject to a non-willful FBAR penalty of no more than $10,000 for failing to file an FBAR for 2007. If IRS determines that the FBAR violation was due to

reasonable cause, then no FBAR penalty will be imposed.

	Civil Settlement Structure	Opt out and 1 year nonwillful FBAR penalty	Opt out and assume the civil fraud penalty applied
Income Tax Due (not including interest)	$700	$700	$700
20% Accuracy-related penalty	$140	$140	0
27.5% Offshore Penalty	$55,000	0	0
Civil Fraud Penalty	0	0	$525
FBAR Penalty	0	$10,000	$10,000
Total	$55,840	$10,840	$11,225

Example 3 - Unreported Controlled Foreign Corporation

The taxpayer, a U.S. citizen who lives in the United States, owns a 100% interest in a foreign corporation that has substantial operations in Country A and a foreign bank account. The foreign corporation is not required to file an FBAR and does not file one. The taxpayer also has signature authority over the foreign bank account. The taxpayer did not file an FBAR to report his financial interest in, or signature authority over, the foreign bank account of the corporation that he controls. The interest income earned on the foreign account was $5,000 for each year. The tax deficiency for each year was $1,750. The balance in the foreign bank account during the calendar years 2003 through 2010 was a constant $1 million. The value of the taxpayer's controlling interest in the foreign corporation is determined to be $100 million (including the value of the $1 million foreign bank account).

The taxpayer did not file a Form 5471 to report his interest in the controlled foreign corporation. Instead, he wrongly treated the foreign corporation as a disregarded entity and reported the corporation's income on a Schedule C. The income he reported from the foreign corporation did not include interest income earned on the corporation's foreign bank account. Otherwise, the individual was fully compliant in reporting all other taxable income, including income from the controlled foreign corporation. The statute of

limitations for assessing tax and tax penalties with respect to the controlled foreign corporation remained open under IRC § 6501(c)(8) because the Form 5471 was not filed.

	Civil Settlement Structure	Opt out and 6 years of the § 6038(a) penalty plus 6 years of the FBAR nonwillful penalty	Assume the civil fraud penalty applied for six years and the FBAR willful penalty applied for 6 years
Income Tax Due (not including interest)	$14,000	$14,000	$14,000
20% Accuracy-related penalty	$2,800	$2,800	0
27.5% Offshore Penalty	$27,500,000	0	0
§ 6038(a) Penalty	0	$60,000	$60,000
Civil Fraud Penalty	0	0	$10,500
FBAR Penalty	0	$60,000	$3,000,000
Total	$27,516,800	$136,800	$3,084,500

Example 4 –The taxpayer is a dual citizen of the United States and Country A. Taxpayer lived and worked in Country A during 2000 through 2010. He had checking and savings accounts in country A with an aggregate balance of approximately $50,000 in each year. He had no income from U.S. sources during the period. The taxpayer complied with Country A's tax laws and fully reported his salary and the interest on his bank accounts. Although Taxpayer earned income in excess of the applicable exemption amount and standard deduction, he did not timely file U.S. income returns or FBARs for any of the years he lived in Country A. After learning of his U.S. filing obligations, taxpayer consulted with counsel, who concluded that he did not qualify for FAQ 17 relief because of his tax non-compliance. Taxpayer made a voluntary disclosure, filing income tax returns reporting tax of approximately $400 each year. He also filed delinquent FBARs.

		The taxpayer qualifies for a reduced penalty of 5 percent under FAQ 52, part 3, below. The Offshore Penalty under OVDP will therefore be $2,500 (i.e., 5% of $50,000). The taxpayer would also be required to pay the tax deficiency for each year, interest on the deficiency, and the 20% accuracy-related penalty on the deficiency. If the taxpayer elects to opt out, the taxpayer will still be subject to tax and interest on the unreported income but, upon examination, IRS is not likely to assert accuracy related or FBAR penalties. See Fact Sheet 2011-13 (December 2011). Non-resident taxpayers should also review the **New Filing Compliance Procedures for Non-Resident U.S. Taxpayers** to determine if they qualify for the new compliance procedures. Example 5 – The facts are the same as in Example 4, except that, the taxpayer also has interests in offshore entities for which Forms 5471 or 3520 should have been filed. The value of the taxpayer's interest in the entities is approximately $200,000 in each year. The taxpayer acquired his interest in the entities with tax compliant funds, and the entities' assets produce no income. The taxpayer does not qualify for FAQ 18 relief because of the tax noncompliance discussed in Example 4, and decides to make a voluntary disclosure including, in addition to the items in Example 4, delinquent Forms 5471 and 3520. The Offshore Penalty under OVDP will be $2,500 (i.e., 5% of $50,000). The taxpayer would also be required to pay the tax deficiency for each year, interest on the deficiency, and the 20% accuracy-related penalty on the deficiency. If the taxpayer elects to opt out, the taxpayer will still be subject to tax and interest on the unreported income but upon examination, IRS is not likely to assert accuracy related, FBAR, or information return penalties. See Fact Sheet 2011-13 (December 2011). Non-resident taxpayers should also review the New Filing Compliance Procedures for Non-Resident U.S. Taxpayers to determine if they qualify for the new compliance procedures.
51.2	Under what circumstances might opting out of the civil settlement structure of the 2011 OVDI be a disadvantage for the taxpayer?	The following scenarios are provided to illustrate the effect of a taxpayer opting out of the civil settlement structure. Opting out of the civil settlement structure does not affect the status of a taxpayer's voluntary disclosure under Criminal Investigation's Voluntary Disclosure Practice, so long as the taxpayer is fully cooperative in the examination process, by providing all requested foreign records and submitting to interviews, as requested, and as long as no new issues are uncovered that were previously not disclosed. The facts of each example were chosen to illustrate particular issues and do not represent a

full analysis of a taxpayer's particular situation. Consequently, they may not be relied upon in dealing with any taxpayer's actual case. For all of the following examples, assume a 35% tax rate on all unreported income and assume a voluntary disclosure started in January 2012 for a voluntary disclosure period of 2003 through 2010.

Example 6 - Large Unreported Gain

The taxpayer, a U.S. citizen, opened a checking account in Country A in 2008 with funds upon which U.S. taxes were previously paid. The taxpayer discloses that he had failed to report the sale, in 2008, of an apartment building in Country A that he owned. The apartment building was valued at $10 million and the taxpayer's unreported gain on the sale was $6 million. The related tax deficiency was $2,100,000. The taxpayer deposited the entire $10 million, from the sale, in the checking account with the foreign bank. $10 million represented the highest balance in the foreign checking account during the year and was the balance in the account as of June 30 of the following year, the date that an FBAR was due. The apartment building that was sold was held in a foreign trust that was a grantor trust (with the taxpayer as the grantor). The taxpayer established the trust in 2008, just prior to the sale of the apartment building, and transferred the building to the trust. The taxpayer did not file a Form 3520 to report the creation of the trust and the transfer of property into the trust.

The Offshore Penalty under OVDP will be $2,750,000 (i.e., 27.5% of $10 million). The taxpayer would also be required to pay the $2,100,000 tax deficiency, interest, and a 20% accuracy-related penalty. A 20% penalty on a $2,100,000 deficiency is $420,000.

If the taxpayer elected to opt out, he could face an FBAR penalty with respect to the 2008 calendar year of $5,000,000 (i.e., a 50% willful FBAR penalty on the balance in the checking account as of June 30, the date that the FBAR was due). Taxpayer will also owe tax, penalties, and interest with respect to the $2,100,000 deficiency. The taxpayer would also be subject to FBAR penalties for all other open years, if the aggregate balance in the checking account exceeded $10,000 during each year.

Upon examination, the revenue agent may determine that the nonreporting was due to fraud. In that case, the civil fraud penalty on the $2.1 million tax deficiency attributable to fraud would be $1,575,000 (i.e., 75% of $2,100,000). The IRC § 6677 penalty for failing to file the Form 3520 information return would be an additional $3.5 million (i.e., 35% of $10 million).

	Civil	Opt out and	Opt out and

	Settlement Structure	1 year willful FBAR penalty	assume the civil fraud penalty applied
Income Tax Due (not including interest)	$2,100,000	$2,100,000	$2,100,000
20% Accuracy-related penalty	$420,000	$420,000	0
27.5% Offshore Penalty	$2,750,000	0	0
Civil Fraud Penalty	0	0	$1,575,000
§ 6677 Penalty	0	$3,500,000	$3,500,000
FBAR Penalty	0	$5,000,000	$5,000,000
Total	$5,270,000	$11,020,000	$12,175,000

Example 7 – Civil Fraud Penalty Warranted
In 2002, Taxpayer sold a building located in Country X for $400,000 short term capital gain, which he intentionally failed to report on his 2002 Form 1040. Assume the taxpayer's basis in the building was zero. He deposited the sales proceeds in an offshore account with a bank located in Country Y. The account with the bank in Country Y is in the name of a trust the taxpayer established in Country Z in 2000. The account earned $12,000 in interest each year from 2003 through 2010. The taxpayer closed the account with the bank in Country Y in 2010 and brought the funds back into the United States, disguising the funds as a loan from an allegedly unrelated entity.
The highest balance in the foreign account was $496,000. The Offshore Penalty under OVDP is $136,400 (i.e., 27.5% of $496,000). The total of the tax deficiencies for the years 2002 through 2010 was $173,600. This consisted of a tax deficiency of $140,000 for the 2002 year (for the unreported gain of $400,000) and a total of $33,600 for the tax years 2003 through 2010 (for the unreported interest income). The 75% civil fraud penalty would otherwise apply with respect to the related tax deficiencies. There is no statute of limitations for assessments of tax attributable to fraud.
The total of the IRC § 6677 penalty for failing to file a Form 3520 to report the $400,000 transfer to the account (35% of $400,000) and the failure to file Forms 3520-A (5% of the $400,000 plus the interest income added each year) was

		$495,200. The statute of limitations for assessing FBAR penalties for willful violations in each year is open for the 2005 through 2010 calendar years. The total amount of willful FBAR penalties that may be assessed is $1,398,000 (50% of the balance in the account for each year, including the $12,000 in interest income added to the account each year). **Civil Settlement Structure** / **Opt out and 8 years § 6677 penalty and 6 years FBAR Penalty** Income Tax Due (not including interest): $33,600 / $173,600 75% Civil Fraud Penalty: 0 / $130,200 20% Accuracy-related penalty: $5,040 / 0 27.5% Offshore Penalty: $136,400 / 0 § 6677 Penalty: 0 / $495,200 FBAR Penalty: 0 / $1,398,000 Total: $175,040 / $2,197,000
51.3	If I opt out of the OVDP and undergo a regular examination, is there a chance my case could be referred back to Criminal Investigation for penalties or prosecution?	Yes. Criminal Investigation's Voluntary Disclosure Practice provides a recommendation that you not be prosecuted for violations up to the date of your disclosure. If your disclosure is ultimately determined to have not been complete, accurate, and truthful, or if you commit a crime after the date of your voluntary disclosure, you are potentially subject to penalties and prosecution.
52.	Under what circumstances would a taxpayer making a voluntary disclosure under this initiative qualify for a reduced 5 percent offshore penalty?	Unless the taxpayer would owe a lesser amount under FAQ 50, taxpayers making voluntary disclosures who fall into one of the three categories described below will qualify for a 5 percent offshore penalty. Examiners have no authority to negotiate a different offshore penalty percentage. 1. Taxpayers who meet all four of the following conditions: (a) did not open or cause the account to be opened (unless the bank required that a new account be opened, rather than allowing a change in ownership of

an existing account, upon the death of the owner of the account); (b) have exercised minimal, infrequent contact with the account, for example, to request the account balance, or update accountholder information such as a change in address, contact person, or email address; (c) have, except for a withdrawal closing the account and transferring the funds to an account in the United States, not withdrawn more than $1,000 from the account in any year for which the taxpayer was non-compliant; and (d) can establish that all applicable U.S. taxes have been paid on funds deposited to the account (only account earnings have escaped U.S. taxation). For funds deposited before January 1, 1991, if no information is available to establish whether such funds were appropriately taxed, it will be presumed that they were.

Example 1: When the taxpayer's father died, the taxpayer inherited two offshore accounts. His father's last deposit to the accounts was more than 30 years ago. The taxpayer provided his email address to the bank to receive bank statements by email and indicated an investment approach as required by the bank to open the account in the taxpayer's name. Twice he has been to the foreign jurisdiction and talked to a banker—during one of those visits he withdrew $1,000 from one of the accounts. Otherwise, he did not withdraw any money from the accounts until last year, when he closed the accounts and repatriated the money to a U.S. bank. He never reported earnings on the accounts on his U.S. tax returns and he never filed an FBAR. He is entitled to the reduced 5% offshore penalty.

Example 2: The facts are the same as in example 1, except that $40,000 of the funds were deposited to one of the accounts in 1995. The taxpayer would have to identify the source of the deposit and, if the source was taxable in the U.S., prove that U.S. income tax was paid on those funds. In the absence of such proof, the taxpayer is not entitled to the reduced 5% offshore penalty.

Example 3: The facts are the same as in example 1, except that subsequent to opening the account, the taxpayer voluntarily provided instructions to the bank concerning the investment of funds. The taxpayer is not entitled to the reduced 5% offshore penalty.

2. Taxpayers who are foreign residents and who were unaware they were U.S. citizens.

Example 1: The taxpayer was born in the U.S. to parents of foreign citizenship. She grew up in a foreign jurisdiction, unaware that she had been born in the U.S. She has a $60,000 account in

the foreign jurisdiction. She has never filed U.S. returns or FBARs. She became aware she was a U.S. citizen when she had to get a birth certificate in order to obtain a passport from the foreign jurisdiction where she resides. Unless she decides to opt out, she is entitled to the reduced 5% offshore penalty. Subsequent to learning of her U.S. citizenship, taxpayer took no action with respect to her foreign accounts that would disqualify a U.S. taxpayer from the 5 percent penalty under paragraph 1, above. Also see FAQ 51.1 Examples 4 and 5.
Non-resident taxpayers should also review the **New Filing Compliance Procedures for Non-Resident U.S. Taxpayers** to determine if they qualify for the new compliance procedures.
Example 2: The facts are the same as in example 1, except that the taxpayer always knew she was a U.S. citizen and never inquired about her U.S. tax obligations. The taxpayer is not entitled to the reduced 5% offshore penalty, unless she qualifies under paragraph 1 or 3. Also see FAQ 51.1 Examples 4 and 5.
Non-resident taxpayers should also review the **New Filing Compliance Procedures for Non-Resident U.S. Taxpayers** to determine if they qualify for the new compliance procedures.

3. Taxpayers who are foreign residents and who meet all three of the following conditions for all of the years of their voluntary disclosure: (a) taxpayer resides in a foreign country; (b) taxpayer has made a good faith showing that he or she has timely complied with all tax reporting and payment requirements in the country of residency; and (c) taxpayer has $10,000 or less of U.S. source income each year. For these taxpayers only, the offshore penalty will not apply to non-financial assets, such as real property, business interests, or artworks, purchased with funds for which the taxpayer can establish that all applicable taxes have been paid, either in the U.S. or in the country of residence. This exception only applies if the income tax returns filed with the foreign tax authority included the offshore-related taxable income that was not reported on the U.S. tax return.

Example 1: The taxpayer is a U.S. citizen who has lived and worked as a corporate executive in Country X since 1995. His income has included earnings in excess of $250,000 in each year, as well as bank interest and investment income on financial accounts that had a high aggregate balance of $1.2 million in 2009. He has paid all required taxes on his earnings and investment income in Country X in every year, but has filed no U.S. income tax returns since moving out of the United States. In addition to his financial

		accounts, the taxpayer has acquired a personal residence in Country X with an equity of $900,000 and an automobile worth $85,000, both financed with previously taxed savings from the U.S., as well as his salary and investment earnings in Country X. Because the taxpayer was fully tax compliant in Country X, he will be eligible for a reduced offshore penalty of 5 percent of the value of the financial accounts, or $60,000. The residence and automobile will not be included in the penalty base because the funds used to acquire them were fully taxed in the Country X. Non-resident taxpayers should also review the **New Filing Compliance Procedures for Non-Resident U.S. Taxpayers** to determine if they qualify for the new compliance procedures. Example 2: The taxpayer is a U.S. citizen who has lived in Country X since 1995. He is an entrepreneur who developed his own software business, which he operated as a wholly owned corporation, ABC Corp., incorporated in Country X, until he took the corporation public in 2005. After the IPO, the taxpayer sold ABC stock at a capital gain of $5 million, and retained other ABC stock with a market value of approximately $20 million. He used $2 million of the stock proceeds to purchase a personal residence and put the remainder in his investment accounts. His income has included salary exceeding $250,000 in each year, the $5 million capital gain in 2005, and bank interest and investment income on financial accounts that had a high aggregate balance of $3.8 million in 2009. He has paid all required taxes on his earnings, capital gain, and investment income in Country X in every year, but has filed no U.S. income tax returns since moving out of the United States. Because the taxpayer was fully tax compliant in the country of residence, he will be eligible for a reduced offshore penalty of 5 percent of the value of the financial accounts, or $190,000. The ABC stock and the personal residence will not be included in the penalty base because the funds used to acquire them were fully taxed in the country of residence. Non-resident taxpayers should also review the **New Filing Compliance Procedures for Non-Resident U.S. Taxpayers** t to determine if they qualify for the new compliance procedures.
53.	Under what circumstances would a taxpayer making a voluntary disclosure under this initiative qualify for a reduced 12.5 percent offshore penalty?	Unless the taxpayer qualifies for a lesser payment as calculated under FAQ 50 or a 5 percent offshore penalty under FAQ 52, taxpayers whose highest aggregate account balance (including the fair market value of assets in undisclosed offshore entities and the fair market value of any foreign assets that were either acquired with improperly untaxed funds or produced improperly untaxed income) in each of

		the years covered by the OVDP is less than $75,000 will qualify for a 12.5 percent offshore penalty. As in other cases, examiners have no authority to negotiate a different offshore penalty percentage. Example 1: The taxpayer was born in a foreign jurisdiction and is now a U.S. citizen. He has a landscaping business in the U.S. He sends money to an account in the foreign jurisdiction that he owns jointly with his mother (who is a resident of that jurisdiction). The account never has more than $75,000 in it. He has never filed an FBAR or paid U.S. tax on the earnings from the account. He is entitled to the reduced 12.5% offshore penalty. The result would be the same for taxpayers who are U.S. citizens by birth. Example 2: The facts are the same as in example 1, except that the taxpayer made a deposit to the account in 2005 that briefly brought the account balance to $78,000. Because the highest account balance during the years covered by the OVDP was greater than $75,000, the taxpayer is not entitled to the reduced 12.5% offshore penalty.

54.	I have a Canadian registered retirement savings plan (RRSP), registered retirement income fund (RRIF), or other similar Canadian plan. I did not make a timely election pursuant to Article XVIII(7) of the U.S. – Canada income tax treaty to defer U.S. income tax on income earned by the RRSP or RRIF that has not been distributed, but I would now like to make an election. What should I do?	The answer depends upon whether you are participating in the OVDP announced by the IRS on January 9, 2012, the 2011 OVDI, or the 2009 OVDP.
		Taxpayers who are participating in the OVDP announced by the IRS on January 9, 2012, should provide the following information (see FAQ 7):
		• A statement requesting an extension of time to make an election to defer income tax
		• Forms 8891 for each of the tax years and type of plan covered under the voluntary disclosure
		• A dated statement signed by the taxpayer under penalties of perjury describing:
		  • Events that led to the failure to make the election
		  • Events that led to the discovery of the failure
		  • If the taxpayer relied on a professional advisor, the nature of the advisor's engagement and responsibilities
		Taxpayers who are participating in the 2011 OVDI should wait until they are contacted by an examiner about their case. Once they are contacted, they should inform the examiner of their desire to make an election and provide the examiner the information listed above.
		Taxpayers who participated in the 2009 OVDP whose cases have not been resolved and closed with a Form 906 closing agreement should inform the examiner working their case of their desire to make an election and provide the examiner the

		information listed above. Taxpayers who participated in the 2009 OVDP whose cases have been resolved and closed with a Form 906 closing agreement who believe that the account balance of the RRSP or RRIF was included in the calculation of the miscellaneous Title 26 offshore penalty and would now like to make an election should provide a statement to this effect including all pertinent contact information (name, address, SSN, home/cell phone numbers), the name of the examiner assigned to their case, and a copy of the closing agreement. This information should be sent to: Internal Revenue Service 3651 S. I Hi 35 Stop 4301 AUSC Austin, TX 78741 Attn: 2009 OVDP Determination Upon receipt of this information, the case will be assigned to an examiner. The examiner will provide the taxpayer with further instructions on making the election. Making this election does not preclude an OVDP participant from electing to opt out of the civil settlement structure of the program.
54.1	If my election is granted, will the RRSP or RRIF balance be included in the offshore penalty base?	No.
55.	I have a retirement or pension plan in a foreign country (other than a plan described in FAQ 54) that I do not believe should be included in the offshore penalty base. What should I do?	If you have a retirement or pension plan in a foreign country (other than a plan described in FAQ 54) for which you believe there is no U.S. reporting requirement and that you believe should not be included in the offshore penalty base, you should contact the OVDI hotline at (267) 941-0020.

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