2011 Offshore Voluntary Disclosure Initiative
Frequently Asked Questions and Answers

OVERVIEW

Q1

Why did the IRS announce a new special offshore voluntary disclosure initiative at this time?

A1

The IRS's prior Offshore Voluntary Disclosure Program (2009 OVDP), which closed on October 15, 2009, demonstrated the value of a uniform penalty structure for taxpayers who came forward voluntarily and reported their previously undisclosed foreign accounts and assets. Not only did the initiative offer consistency and predictability to taxpayers in determining the amount of tax and penalties they faced, it also enabled the IRS to centralize the civil processing of offshore voluntary disclosures. Therefore, it was determined that a similar initiative should be available to the large number of taxpayers with offshore accounts and assets who applied to IRS Criminal Investigation's traditional voluntary disclosure practice since the October 15 deadline. This new initiative, the 2011 Offshore Voluntary Disclosure Initiative (2011 OVDI) will be available to those taxpayers and other similarly situated taxpayers who come forward and complete all requirements on or before August 31, 2011.

Q2

What is the objective of this initiative?

A2

The objective remains the same as the 2009 OVDP – 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.

Q3

How does this initiative differ from the IRS's longstanding voluntary disclosure practice or the 2009 OVDP?

A3

The Voluntary Disclosure Practice is a 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 initiative is a counter-part to Criminal Investigation's Voluntary Disclosure Practice. Like its predecessor, the 2009 OVDP, which ran from March 23, 2009 through October 15, 2009, it addresses the civil side of a taxpayer's voluntary disclosure by defining the number of tax years covered and setting the civil penalties that will apply.

Q4

Why should I make a voluntary disclosure?

A4

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 as the Foreign Account Tax Compliance Act (FATCA) and Foreign Financial Asset Reporting (new IRC § 6038D) become effective.

Q5

What are some of the civil penalties that might apply if I don't come in under voluntary disclosure and the IRS examines me? How do they work?

A5

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.

- 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 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 five 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, up to a maximum of $50,000 per return.

- 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.

Q6

What are some of the criminal charges I might face if I don't come in under voluntary disclosure and the IRS examines me?

A6

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 INITIATIVE

Q7

What are the terms of the 2011 Offshore Voluntary Disclosure Initiative?

A7

Under the terms of the 2011 Offshore Voluntary Disclosure Initiative, 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).
- 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 calendar years 2003 through 2010;
- 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 tax and penalties;
- Pay 20% accuracy-related penalties under IRC § 6662(a) on the full amount of your 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, including FBAR and offshore-related information return penalties, a miscellaneous Title 26 offshore penalty, equal to 25% (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 all tax, interest, accuracy-related penalty, 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 initiative); and
- Execute a Closing Agreement on Final Determination Covering Specific Matters, Form 906.

Q8

How does the penalty framework work? Can you give us an example?

A8

The values of accounts and other assets are aggregated for each year and the penalty is calculated at 25 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 25 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 $350,000 (i.e., $1,400,000 x 25%).

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 2011 Offshore Voluntary Disclosure Initiative 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 $4,375,000 for willful failures to file complete and correct FBARs (2004 - $550,000, 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 2011 OVDI.

Q9

What years are included in the 2011 OVDI disclosure period?

A9

Calendar year taxpayers must include tax 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.

Q10

What are my options if my account involves passive foreign investment company (PFIC) issues?

A10

To date, a significant number of cases submitted under the 2009 OVDP 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 initiative, 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 initiative. The initial MTM computation of gain or loss under this methodology will be for the first year of the 2011 OVDI application, but could be made after 2003 depending on when the first PFIC investment was made. Generally, the first year of the 2011 OVDI application will be for 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 2011 OVDI period, 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 2011 OVDI 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 2011 OVDI period, 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 2011 OVDI 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 2011 OVDI 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 2011 OVDI period at its MTM value and made an IRC § 1296 election for the first year beginning after the 2011 OVDI period. Thus, any subsequent year losses on disposition of PFIC stock assets in excess of unreversed inclusions arising after the end of the 2011 OVDI 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 2003, 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 2011 OVDI) computed under the 2011 OVDI 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 2011 OVDI.

- For any PFIC investment retained beyond December 31, 2010, 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.

Q11

What happens if I fail to make a voluntary disclosure by the August 31, 2011 deadline?

A11

Although the terms of this initiative are available only to taxpayers who complete the voluntary disclosure process on or before August 31, 2011, Criminal Investigation's Voluntary Disclosure Practice remains available to taxpayers who wish to disclose voluntarily their tax violations after that date. However, these taxpayers will not be eligible for the special civil terms of this initiative and will be liable for all applicable civil penalties, including the willful FBAR penalty. In addition, the civil resolution of their cases may extend to tax years prior to 2003.

ELIGIBILITY FOR THIS INITIATIVE

Q12

Who is eligible to make a voluntary disclosure under this initiative?

A12

Taxpayers who have undisclosed offshore accounts or assets are eligible to apply for IRS Criminal Investigation's Voluntary Disclosure Practice and the 2011 OVDI penalty regime for tax years 2003 through 2010.

Q13

Are entities, such as corporations, partnerships and trusts eligible to make voluntary disclosures?

A13

Yes, entities are eligible to participate in the 2011 OVDI.

Q14

I'm currently under examination. Can I come in under voluntary disclosure?

A14

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 2011 OVDI. Taxpayers under criminal investigation by CI are also ineligible. The taxpayer or the taxpayer's representative should discuss the offshore accounts with the agent.

Q15

What if the taxpayer has already filed amended returns reporting the additional unreported income, without making a voluntary disclosure (i.e. quiet disclosure)?

A15

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 initiative 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) by August 31, 2011.

Taxpayers are strongly encouraged to come forward under the 2011 OVDI 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.

Q16

Some taxpayers have made quiet disclosures by filing amended returns. Will the IRS audit these taxpayers? If so, will they be eligible for the 25 percent offshore penalty? Is the IRS really going to prosecute someone who filed an amended return and correctly reported all their income?

A16

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 25 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.

Q17

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 initiative to correct this?

A17

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 the FBARs are filed by August 31, 2010. However, FBARs for 2010 are due on June 30, 2011 and must be filed by that date.

Q18

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?

A18

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.)

The IRS will not impose a penalty for the failure to file the information returns if there are no underreported tax liabilities and the information returns are filed by August 31, 2011.

Q19

Is a taxpayer who previously sought relief under the IRS's traditional Voluntary Disclosure Practice or who made a quiet disclosure before the 2011 OVDI was announced eligible for the terms of the 2011 OVDI?

A19

A taxpayer who made a voluntary disclosure (other than a voluntary disclosure under the 2009 OVDP) or made a quiet disclosure is eligible to apply for the 2011 OVDI. Participants in the 2009 OVDP are not eligible.

Q20

If I don't have the ability to full pay can I still participate in this initiative?

A20

Yes. The terms of this initiative 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 initiative.

Q21

If the IRS has served a John Doe summons 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 initiative?

A21

No. The mere fact that the Service served a John Doe summons does not make every member of the John Doe class ineligible to participate. However, once the Service obtains information under a John Doe summons that provides evidence of a specific taxpayer's noncompliance with the tax laws, that particular taxpayer may become ineligible. For this reason, a taxpayer concerned that a party served with a John Doe summons will provide information about him to the Service should apply to make a voluntary disclosure as soon as possible.

2011 OVDI PROCESS

Q22

Can my representative talk to the IRS without revealing my identity?

A22

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 OVDI Hotline at (267) 941-0020, visit www.irs.gov, or contact their nearest CI office with questions.

Q23

How do I request pre-clearance before I submit my offshore voluntary disclosure?

A23

For the 2011 OVDI pre-clearance may be requested as follows:

1) Taxpayers or representatives may fax to the Criminal Investigation Lead Development Center (LDC) identifying information (name, date of birth, social security number and address) and an executed power of attorney (if represented) to (215) 861-3050 to request pre-clearance before making an offshore voluntary disclosure.
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 30 days from receipt of the fax notification to make an offshore voluntary disclosure.

Pre-clearance does not guarantee a taxpayer acceptance into the 2011 OVDI. Taxpayers must truthfully, timely, and completely comply with all provisions of the offshore voluntary disclosure program.

Taxpayers or representatives with questions regarding pre-clearance can call (215) 861-3759 or contact their nearest CI office. For all other offshore voluntary disclosure questions call the IRS OVDI Hotline at (267) 941-0020.

Q24

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 initiative?

A24

For the 2011 OVDI, an offshore voluntary disclosure is submitted as follows:

1) Taxpayers or their representatives should mail their Offshore Voluntary Disclosures Letter to the following address:

   Offshore Voluntary Disclosure Coordinator
   600 Arch Street, Room 6404
   Philadelphia, PA 19106

2) Criminal Investigation will review the Offshore Voluntary Disclosures Letter received and notify taxpayers or representatives by mail whether their offshore voluntary disclosures have been preliminarily accepted or declined. It is intended that Criminal Investigation will complete its work within 30 days of receipt of a complete Offshore Voluntary Disclosures Letter.

All other voluntary disclosures that are not covered under this initiative should follow the instructions that will be available at http://www.irs.gov/compliance/enforcement/article/0,,id=205909,00.html.

Q25

After I am notified by CI that my disclosure is timely, what other information will I have to provide?

A25

The letter from CI will instruct the taxpayer or their representative to submit the full voluntary disclosure package of information to the Austin Campus:

Internal Revenue Service
3651 S. I H 35 Stop 4301 AUSC
Austin, TX 78741
ATTN: 2011 Offshore Voluntary
Disclosure Initiative

on or before August 31, 2011. This package must include:

- Copies of previously filed original (and, if applicable, previously filed amended) federal income tax returns for tax years covered by the voluntary disclosure;
- 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).
- A completed Foreign Account or Asset Statement for each previously undisclosed foreign account or asset during the voluntary disclosure period (available at www.irs.gov);
- For those applicants disclosing offshore financial accounts with an aggregate highest account balance in any year of $1 million or more, a completed Foreign Financial Institution Statement for each foreign financial institution with which the taxpayer had undisclosed accounts or transactions during the voluntary disclosure period (available at www.irs.gov);
- Properly completed and signed Taxpayer Account Summary With Penalty Calculation (available at www.irs.gov);
- 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 IRS's website, www.irs.gov, 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.

Q26

Who will process my voluntary disclosure after I have submitted the information described in FAQ 25?

A26

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.

Q27

Will my voluntary disclosure be subject to an examination?

A27

Normally, no examination will be conducted with respect to a 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.

Q28

How long should the process take before it is completed?

A28

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 August 31, 2011. 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 www.irs.gov. Once the examiner has all the information needed to certify your voluntary disclosure, most cases should be completed expeditiously. The 2011 OVDI will operate on a first-come, first-served basis. As a result, complete submissions coming in before the final deadline are likely to close much faster.

Q29

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?

A29

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.

Q30

What should I do if I am having difficulty obtaining my records from overseas?

A30

If you are having difficulty, speak with your agent or if your case is not yet assigned, contact the IRS OVDI 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

Q31

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?

A31

Convert foreign currency by using the foreign currency exchange rate at the end of the year. 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.

Q32

If a taxpayer's violation includes unreported individual foreign accounts and business accounts (for an active business), does the 25 percent offshore penalty include the business accounts?

A32

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 account or a savings or investment account. If the business to which the foreign account relates is a foreign business, the value of the entire business would be included in the penalty base, to the extent of the taxpayer's interest.

Q33

Is there a de minimis unreported income exception to the 25 percent penalty?

A33

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 25 percent penalty.

Q34

If the look back period is 2003-2010, what does the taxpayer do if the taxpayer held foreign real estate, sold it in 2002, and did not report the gain on his 2002 return? Does the taxpayer compute the 25 percent on the highest aggregate balance in 2003-2010? What, if anything, does IRS expect the taxpayer to do with respect to 2002?

A34

Gain realized on a foreign transaction occurring before 2003 does not need to be included as part of the voluntary disclosure. If the proceeds of the transaction were repatriated and were not offshore after December 31, 2002, they will not be included in the base for the 25 percent offshore penalty. On the other hand, if the proceeds remained offshore after December 31, 2002, they will be included in the base for the penalty.

Q35

What kinds of assets does the 25 percent offshore penalty apply to?

A35

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.

Q36

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 25 percent penalty? What if the property produced income that the taxpayer did not report?

A36

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 25 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 2003-2010 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.

Q37

If a taxpayer transferred funds from one unreported foreign account to another between 2003 and 2010, will he have to pay a 25 percent offshore penalty on both accounts?

A37

No. If the taxpayer can establish that funds were transferred from one account to another, any duplication will be removed before calculating the 25 percent penalty. However, the burden will be on the taxpayer to establish the extent of the duplication.

Q38

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 25 percent offshore penalty?

A38

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 by August 31, 2011. 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 25 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.

Q39

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 25 percent each? Will each parent have a 25 percent penalty on 50 percent of the balance?

A39

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 25 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 25 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.

Q40

If multiple taxpayers are co-owners of an offshore account, who will be liable for the offshore penalty?

A40

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. 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.

Q41

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 25 percent offshore penalty?

A41

Only one 25 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

Q42

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?

A42

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 or Form 5471, 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).

Q43

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 are otherwise set to expire while my application is being processed by the IRS?

A43

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 by August 31, 2011 (see FAQ 25).

FBAR QUESTIONS

Q44

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?

A44

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 October 2008. 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 guidance that was applicable for prior FBAR filing seasons (e.g., IRS Announcement 2010-16 or IRS Notice 2010-23) in determining their FBAR reporting obligations.

Q45

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?

A45

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.

Q46

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?

A46

Help with questions about FBAR filing requirements is available on the FBAR Hotline at 1-800-800-2877. Select option 2. 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 available at www.irs.gov. Do not call the IRS OVDI 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

Q47

I have a client who may be eligible to make a voluntary disclosure. What are my responsibilities to my client under Circular 230?

A47

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, may not prepare a current or future income tax return for that taxpayer without being in violation of Circular 230.

Q48

Are there special considerations for completing Form 2848, Power of Attorney and Declaration of Representative?

A48

Yes. In addition to being authorized to represent the taxpayer for tax years 2003 through 2010, the power of attorney must specifically authorize you to represent the taxpayer for income tax, civil penalties and FBARs. A sample power of attorney can be found at www.irs.gov.

CASE RESOLUTION

Q49

If the taxpayer and the IRS cannot agree to the terms of the 2011 OVDI closing agreement, will mediation with Appeals be an option with respect to the terms of the closing agreement?

A49

No. The penalty framework and the agreement to limit tax exposure to years 2003 through 2010 are package terms under the 2011 OVDI. 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 2011 OVDI closing agreement may not.

Q50

Will examiners have any discretion to settle cases?

A50

No. Voluntary disclosure examiners do not have discretion to settle cases for amounts less than what is properly due and owing. However, because the 25 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 2003, 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 $50,000, substantially less than the offshore penalty of $275,000 (25% 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 2011 OVDI 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).

Q51

If, after making a voluntary disclosure, a taxpayer disagrees with the application of the offshore penalty, what can the taxpayer do?

A51

If the offshore penalty is unacceptable to a taxpayer, that taxpayer must indicate in writing the decision to withdraw from the program. Once made, this election is irrevocable. At that point, the examiner and manager will consider the facts of the case and how the audit process will proceed. In referring the case for examination, the examiner and manager will decide whether to refer the case for a normal examination or to a Special Enforcement Program agent. In considering the facts of the case and referring the case for examination, the examiner and manager will consult with technical advisors. All relevant years and issues will be subject to a complete examination. At the conclusion of the examination, all applicable penalties will be imposed. Those penalties could be substantially greater than the 25 percent penalty (see FAQ 5). If the case is unagreed, the taxpayer will have recourse to Appeals.

Taxpayers are reminded, that even after opting out of the Service's civil settlement initiative, they remain within Criminal Investigation's Voluntary Disclosure Practice. Therefore, they are still required to cooperate fully with the agent 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 or make payment arrangements, the case may be referred back to Criminal Investigation.

Q52

Under what circumstances would a taxpayer making a voluntary disclosure under this initiative qualify for a reduced 5 percent offshore penalty?

A52

Unless the taxpayer qualifies for a lesser payment as calculated under FAQ 50, taxpayers making voluntary disclosures who fall into one of the two 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 covered by the voluntary disclosure; 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 in a foreign jurisdiction. His father's last deposit to the accounts was more than 30 years ago. The taxpayer provided his email address to the bank and received bank statements by email. 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 the taxpayer gave the bank instructions on how to invest the funds in the accounts and signed a "hold mail" agreement to prevent the mailing of statements to the U.S. 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. She is entitled to the reduced 5% offshore penalty.

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.

Taxpayers who participated in the 2009 OVDP whose cases have been resolved and closed with a Form 906 closing agreement who believe the facts of their case qualify them for the 5% reduced penalty criteria of the 2011 OVDI, but paid a higher penalty amount under the 2009 OVDP should provide a statement to this effect including all pertinent contact information (name, address, SSN, home/cell phone numbers), the name of the Revenue Agent assigned to their case, and a copy of their closing agreement. This information should be sent to:

Internal Revenue Service
3651 S. I H 35 Stop 4301 AUSC
Austin, TX 78741
Attn: 2009 OVDP Determination

Upon receipt of this information, the case will be assigned to an examiner to review and make a determination.

Q53

Under what circumstances would a taxpayer making a voluntary disclosure under this initiative qualify for a reduced 12.5 percent offshore penalty?

A53

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 2011 OVDI 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 2011 OVDI was greater than $75,000, the taxpayer is not entitled to the reduced 12.5% offshore penalty.

Taxpayers who participated in the 2009 OVDP whose cases have been resolved and closed with a Form 906 closing agreement who believe the facts of their case qualify them for the 12.5% reduced penalty criteria of the 2011 OVDI, but paid a higher penalty amount under the 2009 OVDP should provide a statement to this effect including all pertinent contact information (name, address, SSN, home/cell phone numbers), the name of the Revenue Agent assigned to their case, and a copy of their closing agreement. This information should be sent to:

Internal Revenue Service
3651 S. I H 35 Stop 4301 AUSC
Austin, TX 78741
Attn: 2009 OVDP Determination

Upon receipt of this information, your case will be assigned to an examiner to review and make a determination.