



Offshore Voluntary Disclosure Program

Frequently Asked Questions and Answers 2014

Effective for OVDP Submissions Made On or After July 1, 2014

#	Questions	Answers
1.	Is this a new offshore voluntary disclosure program?	<p>No. This is a continuation of the program introduced in 2012 with modified terms, but for purposes of referring to this modified program, it may be referred to as the 2014 OVDP. The IRS's prior Offshore Voluntary Disclosure Program (2009 OVDP), and Offshore Voluntary Disclosure Initiative (2011 OVDI), and the 2012 OVDP have demonstrated the value of uniform penalty structures for taxpayers who come forward voluntarily and report their previously undisclosed foreign accounts and assets. These initiatives have 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 implementation of the Foreign Account Tax Compliance Act (FATCA) and the IRS and Department of Justice offshore enforcement efforts continue to raise the risk of detection of taxpayers with undisclosed foreign accounts and assets for the foreseeable future, it has been determined that 2012 OVDP should be modified and made 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, the 2014 OVDP has no set deadline for taxpayers to apply. However, the terms of this program could change at any time. 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 time.</p>
1.1.	Were any significant changes made to the 2012 OVDP? If so, what are they?	<p>Changes have been made to the 2012 OVDP, including some which may be considered significant.</p> <ul style="list-style-type: none">• A 50% offshore penalty applies if either a foreign financial institution at which the taxpayer has or had an account or a facilitator who helped the taxpayer establish or maintain an offshore arrangement has been publicly identified as being under investigation or as cooperating with a government investigation. See FAQ 7.2.• As described below, FAQ 17 concerning filing delinquent Report of Foreign Bank and Financial Accounts (commonly known as an FBAR) has been

replaced and superseded. See [“Options Available For U.S. Taxpayers with Undisclosed Foreign Financial Assets”](#).

- As described below, FAQ 18 concerning filing certain delinquent international information returns has been replaced and superseded. See [“Options Available For U.S. Taxpayers with Undisclosed Foreign Financial Assets”](#).
- The reduced penalty structure under former FAQs 52 and 53 has been eliminated due to the expansion of the Streamlined Filing Compliance Procedures. See [“Options Available For U.S. Taxpayers with Undisclosed Foreign Financial Assets”](#) for a discussion of the various options for taxpayers with international tax compliance issues.
- FAQs 31 through 41 pertaining to the asset base to which the offshore penalty applies have been modified to promote clarity and consistency of application.
- FAQ 23 has been modified to require additional information for preclearance by Criminal Investigation.
- The Offshore Voluntary Disclosures Letter and attachment have been modified.
- FAQ 7 has been modified to require that the offshore penalty be paid at the time of the OVDP submission.
- FAQ 25 has been modified to require that account statements be provided for all foreign financial accounts regardless of account balance and to provide that voluminous documents not requiring original signatures may be submitted on CD or DVD.
- The following FAQs have been deleted as moot: 16, 17, 18, 19, 51.1, 51.2, 52, and 53.

1.2. What is the effective date of these modified FAQs?	These modified FAQs are effective for all new submissions made on or after July 1, 2014.
1.3. If I applied to OVDP prior to the effective date of these modified FAQs and my case has not yet been resolved by means of a closing agreement (Form 906), may I request consideration under these FAQs?	<p>Yes. A taxpayer who made an OVDP submission prior to July 1, 2014 may elect to have his case considered under these FAQs. A taxpayer or his representative must communicate that request in writing to the examiner assigned his case and provide all documents and information required by these FAQs. See FAQ 25. If no examiner has been assigned, send the documents and information to:</p> <p>Internal Revenue Service 3651 S. I H 35 Stop 4301 AUSC Austin, TX 78741 Attn: OVDP Determination</p>
1.4. If I applied to OVDP prior to the effective date of the expanded Streamlined Filing Compliance Procedures, may I request consideration under those	See the separate set of Frequently Asked Questions for information about eligibility and the process for requesting transitional treatment under the terms of the Streamlined Filing Compliance Procedures in your OVDP case.

	procedures?
2. What is the objective of this program?	The objective remains the same as the 2009 OVDP, the 2011 OVDI, and the original 2012 OVDP: to bring taxpayers that have used undisclosed foreign accounts and assets, including those held through undisclosed foreign entities, to avoid or evade tax into compliance with United States tax and related laws.
3. How does this program differ from the IRS's longstanding voluntary disclosure practice or the 2009 OVDP and 2011 OVDI?	<p>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 for any issue relating to tax noncompliance or failure to file Report of Foreign Bank and Financial Accounts (commonly known as an FBAR reported on FinCEN Form 114, previously Form TD F 90-22.1).</p> <p>This current offshore voluntary disclosure program is a counterpart 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 may change at any time. 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 time.</p>
4. Why should I make a voluntary disclosure?	<p>Taxpayers holding undisclosed foreign accounts and assets, including those held through undisclosed foreign 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 for all issues relating to tax noncompliance and failing to file FBARs. In contrast, taxpayers simply filing amended returns or filing through the Streamlined Filing Compliance Procedures do not 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.</p> <p>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 identifying those with undisclosed foreign financial accounts and assets. Moreover, increasingly</p>

this information is available to the IRS under tax treaties, through submissions by whistleblowers, and from other sources and will become more available under the FATCA and Foreign Financial Asset Reporting (IRC § 6038D).

5. What are some of the civil penalties that might apply if I don't participate in the OVDP and the IRS examines me?

Depending on a taxpayer's particular facts and circumstances, the following penalties could apply:

- A penalty for failing to file FBARs. 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 financial accounts exceeded \$10,000 at any time during the year. 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 financial 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 IRC § 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 IRC § 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.

		<ul style="list-style-type: none"> • 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.
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6.	<p>What are some of the criminal charges I might face if I don't participate in the OVDP and the IRS examines me?</p>	<p>Possible criminal charges related to tax matters include tax evasion (IRC § 7201), filing a false return (IRC § 7206(1)) and failure to file an income tax return (IRC § 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. Additional possible criminal charges include conspiracy to defraud the government with respect to claims (18 U.S.C. § 286) and conspiracy to commit offense or to defraud the United States (18 U.S.C. § 371).</p> <p>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. A person convicted of conspiracy to defraud the government with respect to claims is subject to a prison term of up to not more than 10 years or a fine of up to \$250,000. A person convicted of conspiracy to commit offense or to defraud the United States is subject to a prison term of not more than five years and a fine of up to \$250,000.</p>
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KEY FEATURES OF PROGRAM

7.	<p>What are the requirements of the Offshore Voluntary Disclosure</p>	<p>Under the terms of the Offshore Voluntary Disclosure Program, taxpayers must:</p>
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<p>Program?</p>	<ul style="list-style-type: none"> • Provide all documents required by FAQ 25; • Cooperate in the voluntary disclosure process, including providing information on foreign accounts and assets, institutions and facilitators, and signing agreements to extend the period of time for assessing Title 26 liabilities and FBAR penalties; • Pay 20-percent 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 the undisclosed foreign accounts, 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 percent (or 50 percent in circumstances described in FAQ 7.2) of the highest aggregate value of OVDP assets as defined in FAQ 35 during the period covered by the voluntary disclosure (the 27.5 percent and 50 percent penalties are together referred to in these FAQs as the “offshore penalty”); • Submit full payment of any Title 26 tax liabilities for years included in the offshore disclosure period, applicable interest, an offshore penalty, accuracy-related penalties for offshore-related underpayments, and, if applicable, the failure-to-file and failure-to-pay penalties or, if the taxpayer is unable to make full payment, make good faith arrangements with the IRS to pay in full (see FAQ 20 for more information) (note: the suspension of interest provisions of IRC § 6404(g) do not apply to interest due in this program); • Execute a Closing Agreement on Final Determination Covering Specific Matters, Form 906; and • Agree to cooperate with IRS and Department of Justice offshore enforcement efforts, if requested, by providing information about financial institutions and other facilitators who helped the taxpayer establish or maintain an offshore arrangement.
<p>7.1. What if I have unreported income from a domestic source or some other undisclosed income tax liability that is not related to foreign financial accounts?</p>	<p>As was the case with the 2009 OVDP and the 2011 OVDP, the OVDP is available to taxpayers who have both foreign and domestic issues to disclose. The Voluntary Disclosure Practice requires a complete, accurate, and truthful disclosure. Consequently, in addition to disclosing all items relating to foreign financial accounts, OVDP submissions must correct any previously unreported income from domestic sources, inappropriate deductions or credits claimed, or other incomplete, inaccurate or untruthful items on the originally filed returns. The offshore penalty structure</p>

only resolves liabilities and penalties related to offshore noncompliance. Domestic portions of a voluntary disclosure are subject to examination. See FAQ 24.

7.2. What if the government is investigating the foreign financial institution where I hold my account or another facilitator who assisted in establishing or maintaining my offshore arrangement?

Beginning on August 4, 2014, any taxpayer who has an undisclosed foreign financial account will be subject to a 50-percent miscellaneous offshore penalty if, at the time of submitting the preclearance letter to IRS Criminal Investigation: an event has already occurred that constitutes a public disclosure that either (a) the foreign financial institution where the account is held, or another facilitator who assisted in establishing or maintaining the taxpayer's offshore arrangement, is or has been under investigation by the IRS or the Department of Justice in connection with accounts that are beneficially owned by a U.S. person; (b) the foreign financial institution or other facilitator is cooperating with the IRS or the Department of Justice in connection with accounts that are beneficially owned by a U.S. person or (c) the foreign financial institution or other facilitator has been identified in a court- approved issuance of a summons seeking information about U.S. taxpayers who may hold financial accounts (a "John Doe summons") at the foreign financial institution or have accounts established or maintained by the facilitator. Examples of a public disclosure include, without limitation: a public filing in a judicial proceeding by any party or judicial officer; or public disclosure by the Department of Justice regarding a Deferred Prosecution Agreement or Non-Prosecution Agreement with a financial institution or other facilitator. A [list of foreign financial institutions or facilitators](#) meeting this criteria is available. Once the 50-percent miscellaneous offshore penalty applies to any of the taxpayer's accounts or assets in accordance with the terms set forth in the paragraph above, the 50-percent miscellaneous offshore penalty will apply to all of the taxpayer's assets subject to the penalty (see FAQ 35), including accounts held at another institution or established through another facilitator for which there have been no events constituting public disclosures of (a) or (b) above.

8. How does the offshore penalty framework work? Can you provide an example?

The offshore penalty applies to OVDP assets as defined in FAQ 35. The values of OVDP assets are aggregated for each year and the offshore penalty is calculated at the applicable rate (either 27.5 percent or 50 percent) of the highest year's aggregate value during the period covered by the voluntary disclosure. If the taxpayer has multiple OVDP assets where the highest value of some OVDP assets is in different years, the values of OVDP assets are aggregated for each year and a single offshore penalty is calculated at the applicable rate of the highest year's aggregate value. For example, assume the taxpayer had the following amounts in a foreign financial 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 2005 and was not unreported income in 2005.

Year	Amount on Deposit	Interest Income	Account Balance
2005	\$1,000,000	\$50,000	\$1,050,000
2006		\$50,000	\$1,100,000
2007		\$50,000	\$1,150,000
2008		\$50,000	\$1,200,000
2009		\$50,000	\$1,250,000
2010		\$50,000	\$1,300,000
2011		\$50,000	\$1,350,000
2012		\$50,000	\$1,400,000

(NOTE: This example does not provide for compound interest, and assumes the taxpayer is in the 35-percent tax bracket, does not have an investment in a Passive Foreign Investment Company (PFIC) and files a return but does not include the foreign financial account or the interest income on the return. This example further assumes that the taxpayer is subject to a 27.5 percent offshore penalty.)

If the taxpayer in the above example comes forward and his voluntary disclosure is accepted by the IRS, he faces this potential scenario:

He would pay \$553,000 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
- A miscellaneous offshore penalty (see FAQ 7) of \$385,000 (i.e., \$1,400,000 x 27.5%).

If the taxpayer didn't come forward, when the IRS discovered his tax and FBAR noncompliance, he would have to pay substantially more in penalties. The taxpayer 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 (2007 - \$575,000, 2008 - \$600,000, 2009 - \$625,000, 2010 - \$650,000, and 2011 - \$675,000, and 2012 - \$700,000),
- The potential of having the fraud penalty (75 percent) apply, and
- The potential of substantial additional information return penalties if the foreign financial account is held through a foreign entity such as a trust or

corporation and required information returns were not filed.

In addition, if the taxpayer is not in OVDP and the foreign noncompliance started before 2005, the Service may examine tax years prior to 2005.

9. What years are included in the OVDP disclosure period?

The voluntary disclosure period is the most recent eight tax years for which the due date has already passed. Thus, for taxpayers who submit a voluntary disclosure prior to the due date (or properly extended due date) for the 2013 tax year, the disclosure must include each of the tax years 2005 through 2012 in which they have undisclosed OVDP assets. For taxpayers who submit a voluntary disclosure after the due date (or properly extended due date) for 2013, the disclosure must include each of the tax years 2006 through 2013 in which they have undisclosed OVDP assets. 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.

The eight-year voluntary disclosure period does not include fully tax compliant years. For taxpayers who establish that they began filing timely, original, compliant returns that fully reported previously undisclosed OVDP assets (see FAQ 35) 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, for 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 through 2012 without making a voluntary disclosure, and who files a voluntary disclosure in January 2014, the voluntary disclosure period will be 2005 through 2008.

10. What are my options if my OVDP asset involves passive foreign investment company (PFIC) issues?

A significant number of cases submitted under the 2009 OVDP and 2011 OVDI involved 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 IRC § 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, 2005. 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 percent 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 percent 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 IRC § 1296 as well as the provisions of IRC §§ 1291-1298, as applicable.

Before electing the alternative PFIC resolution, a taxpayer with PFIC investments should consult his tax advisors to ensure that the issue is material in his case and that the alternative is in fact preferable to the statutory computation in his situation. If the taxpayer does not elect to use the alternative PFIC computation, the PFIC provisions of IRC §§ 1291-1298 apply.

11. Previously deleted.

ELIGIBILITY FOR THIS PROGRAM

12. Who is eligible to make a voluntary disclosure under this program?

Taxpayers who have legal source funds invested in undisclosed OVDP assets (see FAQ 35) 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. The OVDP is available only to address the taxpayer’s own liability. Individuals who facilitated the tax noncompliance of others are not eligible to participate in OVDP. Taxpayers who have made a submission under the [Streamlined Filing Compliance Procedures](#) are not eligible to participate in OVDP. See FAQ 21 for other ways a taxpayer may be rendered ineligible to participate in the OVDP.

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. May I participate in the OVDP?

No. If the IRS has initiated a civil examination for any year, regardless of whether it relates to undisclosed OVDP assets (see FAQ 35), the taxpayer will not be eligible to participate in the OVDP. A taxpayer under criminal investigation by CI is also ineligible. In these circumstances, the taxpayer or the taxpayer’s representative should discuss undisclosed financial accounts and assets with the agent.

15. What if a taxpayer has already filed amended returns reporting income from OVDP assets without making a voluntary disclosure (i.e. “quiet disclosure”)?

The IRS is aware that some taxpayers have made “quiet disclosures” by filing amended returns, by filing delinquent FBARs, and paying any related tax and interest for previously unreported income from OVDP assets (see FAQ 35) without otherwise notifying the IRS. Taxpayers who have already made “quiet disclosures” are encouraged to participate in the OVDP by submitting an application, along with copies of their previously filed returns (original and amended), and all other required documents and information (see FAQ 25) to the IRS’s Voluntary Disclosure Coordinator (see FAQ

		24). Taxpayers are encouraged to avail themselves of the protection from criminal prosecution and the favorable penalty structure offered under the OVDP. Unlike a voluntary disclosure through the OVDP, quiet disclosures provide no protection from criminal prosecution and may lead to civil examination and the imposition of all applicable penalties.
16.	Consolidated into FAQ 15.	
17.	Deleted. FAQ 17 has been replaced and superseded by section 3 in “Options Available For U.S. Taxpayers with Undisclosed Foreign Assets.” If you have circumstances covered by former FAQ 17, you should not use OVDP and should see section 3 of the “Options Available For U.S. Taxpayers with Undisclosed Foreign Accounts.”	
18.	Deleted. FAQ 18 has been replaced and superseded by section 4 in “Options Available For U.S. Taxpayers with Undisclosed Foreign Assets.” If you have circumstances covered by former FAQ 18, you should not use OVDP and should see section 3 of the “Options Available For U.S. Taxpayers with Undisclosed Foreign Accounts.”	
19.	Deleted	
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 with his submission the tax, interest, offshore penalty, and accuracy-related penalty, and, if applicable, the failure-to-file and failure-to-pay penalties. 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. If you cannot pay the total amount of tax, interest, offshore penalty, and other penalties required, 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, Collection Information Statement for Businesses, as appropriate). 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 foreign, 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 to be entitled to the penalty structure of 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 OVDP asset, 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. But such activity may subject a taxpayer to a higher offshore penalty at the rate of 50 percent. See FAQ 7.2.

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 an otherwise eligible 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 determine that certain taxpayer groups that have or had accounts held at a specific financial institution will be ineligible due to U.S. government actions in connection with the specific financial institution.

OVDP PROCESS

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

Yes, but hypothetical situations present the potential for misunderstandings. Hypotheticals rarely contain all relevant facts. Posing a hypothetical does not satisfy the requirements for making a voluntary disclosure. If the IRS receives information relating specifically to the taxpayer's undisclosed OVDP assets (see FAQ 35) 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 preclearance before I submit my offshore voluntary disclosure?

For the OVDP, the preclearance process is as follows:

1. Taxpayers or representatives send a facsimile to the IRS – Criminal Investigation Lead Development Center (LDC) with:
 - (a) Applicant identifying information including complete names, dates of birth (if applicable), tax identification numbers, addresses, and telephone numbers.

(b) Identifying information of all financial institutions at which undisclosed OVDP assets (see FAQ 35) were held. Identifying information for financial institutions includes complete names (including all DBAs and pseudonyms), addresses, and telephone numbers.

(c) Identifying information of all foreign and domestic entities (e.g., corporations, partnerships, limited liability companies, trusts, foundations) through which the undisclosed OVDP assets (see FAQ 35) were held by the taxpayer seeking to participate in the OVDP; this does not include any entities traded on a public stock exchange. Information must be provided for both current and dissolved entities. Identifying information for entities includes complete names (including all DBAs and pseudonyms), employer identification numbers (if applicable), addresses, and the jurisdiction in which the entities were organized.

(d) Executed [power of attorney](#) forms (if represented).

The LDC fax number to request preclearance before making an offshore voluntary disclosure is (267) 941-1115. In the case of jointly filed returns, if each spouse intends to apply for OVDP, each spouse should request preclearance.

The LDC fax number to request preclearance before making an offshore voluntary disclosure is (267) 941-1115. In the case of jointly filed returns, if each spouse intends to apply for OVDP, each spouse should request preclearance.

2. Criminal Investigation will notify taxpayers or their representatives via fax whether or not they are eligible to make an offshore voluntary disclosure. It may take up to 30 days for Criminal Investigation to notify taxpayers or their representatives of the decision.

Preclearance does not guarantee a taxpayer acceptance into the OVDP. Taxpayers pre-cleared for OVDP must follow the steps outlined below (FAQ 24) within 45 days from receipt of the fax notification to make an offshore voluntary disclosure. Taxpayers must truthfully, timely, and completely comply with all provisions of the OVDP.

Taxpayers or representatives with questions regarding preclearance 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 conditionally accepted under this program?

For the OVDP, submit an offshore voluntary disclosure 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 Disclosure Letter and notify taxpayers or representatives by mail or facsimile whether their offshore voluntary disclosures have been preliminarily accepted as timely or declined. Criminal Investigation intends to complete its work within 45 days of receipt of a complete Offshore Voluntary Disclosure Letter.

Once a taxpayer's disclosure has been preliminarily accepted by CI as timely, the taxpayer must complete the submission and cooperate with the civil examiner in the resolution of the civil liability before the disclosure is considered 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 domestic 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 spouses make a joint submission, they must include all required information and documents for each spouse and clearly indicate the intention to disclose jointly. If spouses make separate submissions, each spouse must 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 as timely, what other information will I be required to provide?

The letter from CI will instruct the taxpayer or his representative to submit the full voluntary disclosure submission to the Austin Campus within 90 days of the date of the timeliness determination. The voluntary disclosure submission must be sent in two separate parts.

1. Payment to the Department of Treasury in the total amount of tax, interest, offshore penalty, accuracy-related penalty, and, if applicable, the failure-to-file and failure-to-pay penalties, for the voluntary disclosure period must be sent with information identifying the taxpayer name, taxpayer identification number, and years to which the payments relate. To ensure payments are properly posted to the taxpayer's account, separate checks should be made for each tax year which would include all applicable tax, interest, accuracy-related penalties, and failure-to-file and failure-to-pay penalties. The offshore penalty should be paid by a separate check. These payments are advance payments; consequently, any credit or refund of the payments is subject to the limitations of IRC § 6511.

If you cannot pay the total amount of tax, interest, offshore penalty, and other 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). Send letters containing the taxpayer's identifying information and all checks in a single envelope 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

- a. **All applicants:** Copies of previously filed original (and, if applicable, previously filed amended) federal income tax returns for tax years covered by the voluntary disclosure;
- b. **All applicants:** 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 foreign financial accounts or domestic sources (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). For taxpayers who began filing timely, original, compliant returns that fully reported previously undisclosed foreign financial accounts before making the voluntary disclosure for certain years of the offshore disclosure period, copies of the previously filed returns for the compliant years. If you are submitting a copy of a previously filed return, write "COPY" on the top of the first page of the return.
- c. **All applicants:** Copy of your completed and signed Offshore Voluntary Disclosure Letter (including enclosures and attachments) submitted to Criminal Investigation.

- d. **All applicants:** A completed [Foreign Account or Asset Statement](#) for each previously undisclosed OVDP asset during the voluntary disclosure period.
- e. **All applicants:** A completed and signed [Taxpayer Account Summary With Penalty Calculation](#).
- f. **All applicants:** Properly completed and signed agreements to extend the period of time to assess tax (including tax penalties) and to assess FBAR penalties. The agreements to extend the period of time to assess tax and FBAR penalties must follow the [instructions](#) provided. Failure to extend the period of time to assess tax and assess FBAR penalties according to the instructions will render your OVDP submission incomplete.
- g. **All applicants disclosing foreign financial accounts:** Copies of filed Reports of Foreign Bank and Financial Accounts (commonly known as FBARs reported on FinCEN Form 114, previously Form TD F 90-22.1) for foreign financial accounts maintained during the period of your voluntary disclosure. See FAQs 44-46 for further information on FBAR filing requirements, including the requirement that FBARs be filed electronically.
- h. **All applicants:** Copies of statements for all financial accounts reflecting all account activity for each of the tax years covered by your voluntary disclosure. For OVDP assets (see FAQ 35) other than foreign financial accounts, provide all relevant documents pertaining to the asset. For example, if a taxpayer has foreign issued life insurance with cash value, provide all documents governing the policy and, if any, all legal and tax opinions issued to the taxpayer relating to the policy.
- i. **All applicants disclosing foreign entities:** A statement identifying all foreign entities, whether held directly or indirectly, for the tax years included in the voluntary disclosure, and a statement concerning ownership or control of such entities.
- j. **All applicants disclosing foreign entities:** If foreign entities held OVDP assets (see FAQ 35), provide complete and accurate information returns (or amended returns, if applicable) required to be filed, including but not limited to Forms 3520, 3520-A, 5471, 5472, 926, 8865, and 8938 for all tax years included in the voluntary disclosure. If the taxpayer requests that the Service waive information reporting requirements, the taxpayer must submit a completed and signed "Statement on Abandoned Entities" form. See FAQ 29.

k. Applicants with estate and gift tax issues: If the taxpayer is a decedent's estate, or is an individual who participated in the failure to report an OVDP asset (see FAQ 35) in a required gift or estate tax return, either as executor or advisor, provide complete and accurate amended estate or gift tax returns (original estate or gift tax returns if not previously filed) for tax years included in the voluntary disclosure correcting the underreporting or omission of OVDP assets (see FAQ 35).

l. Applicants with Passive Foreign Investment Company (PFIC) issues: A statement whether the amended or delinquent returns involve PFIC issues during the tax years covered by the OVDP period, and if so, whether the taxpayer chooses to elect the alternative to the statutory PFIC computation that resolves PFIC issues on a basis that is consistent with the mark to market (MTM) methodology authorized in IRC § 1296 but does not require complete reconstruction of historical data. See FAQ 10.

m. Applicants with Canadian registered retirement savings plans (RRSPs) or registered retirement income funds (RRIFs) who wish to make late elections to defer U.S. tax on earnings: Provide the documents required in FAQ 54.

You may also be contacted by an examiner for specific additional information 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 complete submission is required for acceptance into the program.

Taxpayers may submit voluminous documents not requiring original taxpayer signatures (e.g., bank statements, entity organization documents, etc.) on a compact disc (CD) or a USB removable storage device (flash drive). See FAQ 25.2.

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 submission. A taxpayer requesting an extension must submit his name, address, date of birth, social security number, and telephone 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

		<p>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</p>
25.2	<p>Are there any requirements or procedures for submitting documents on a compact disc (CD) or a USB removable storage device (flash drive)?</p>	<p>Yes. These procedures may be used only by professional firms with established record retention policies.</p> <ol style="list-style-type: none"> 1. The representative must submit an original, signed paper Agreement for Digital Submission of OVDP Documentation. A copy of the Form 2848 must be attached. There must be one signed agreement for each taxpayer. The only exception is that married taxpayers who are submitting joint returns for all years included in the disclosures may submit only one Agreement for Digital Submission of OVDP documentation. 2. All other required OVDP documents other than the Agreement for Digital Submission of OVDP documentation may be submitted digitally. 3. All required OVDP documents, or as many as possible, should be transferred to a CD or flash drive. 4. All required OVDP required OVDP documents being submitted digitally must be submitted in a format that does not permit editing or changing the stored information without warning, e.g. .PDF. The preferred format is .PDF. 5. The digital documents should not be password protected. Documents submitted on a CD or flash drive will be handled in the same secure manner as paper documents. 6. The digital documents should be arranged in separate folders in the same sequence as a paper submission would be assembled. 7. The CD or flash drive must be labeled with the last four digits only of the taxpayer's Taxpayer Identification Number.
26.	<p>Who will process my voluntary disclosure after I have submitted the information described in FAQ 25?</p>	<p>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, and completeness. 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.</p>
27.	<p>Will my voluntary disclosure be subject to an examination?</p>	<p>Normally, no examination will be conducted with respect to an offshore voluntary disclosure made under this program, although the Service reserves the right to conduct an examination. The normal process is to assign the voluntary disclosure to an examiner to certify</p>

		<p>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 disclosure 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.</p>
28.	<p>How long should the process take before it is completed?</p>	<p>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 gather all other documents and information required for the OVDP. See FAQ 25. Case assignments to specific examiners are delayed when required documents are not timely provided. Once the case is assigned to an examiner to certify your completed voluntary disclosure, most cases should be resolved expeditiously. The OVDP generally operates on a first-come, first-served basis.</p>
29.	<p>My OVDP 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 abandon the entity now that I am making a voluntary disclosure. Do I still have to file the delinquent information returns for the entity?</p>	<p>A taxpayer who holds OVDP assets (see FAQ 35) through a foreign entity he 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 dealings with the OVDP 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 liquidates and abandons 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 will be required to certify under penalty of perjury that the entity had no purpose other than to conceal the taxpayer’s ownership of assets and that it has been liquidated and abandoned by filing a Statement on Abandoned Entities.</p>

<p>30. What should I do if I am having difficulty obtaining my records from overseas?</p>	<p>If you are having difficulty obtaining records, carefully document your attempts. For phone conversations, note the date, time, and duration of the call; note the complete name of the employee of the foreign financial institution with whom you speak. For correspondence, make a photocopy of all correspondence to and from the foreign financial institution. We recommend using a delivery or postal service that provides delivery confirmation or a return receipt for all correspondence sent to foreign financial institutions. Provide your documentation relating to your attempts to obtain records to the examiner handling your case, 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 financial institutions.</p>
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CALCULATING THE OFFSHORE PENALTY

<p>31. When determining the highest value of each OVDP asset for each year what exchange rate should be used?</p>	<p>Convert foreign currency by using the foreign currency exchange rate at the end of the year regardless of when during the year the highest value 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 OVDP asset is to be valued separately.</p>
<p>32. If a taxpayer's violation includes unreported foreign individual accounts and business accounts (for an active business), does the offshore penalty include the business accounts?</p>	<p>Yes. Assuming that there is unreported gross 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.</p>
<p>33. Is there a de minimis unreported income exception relating to tax noncompliance and the offshore penalty?</p>	<p>No. No amount of unreported gross income is considered de minimis for purposes of determining whether there has been tax noncompliance with respect to an OVDP asset. Even one dollar of unreported gross income from an OVDP asset will bring it into the offshore penalty base.</p>
<p>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 offshore penalty on the highest aggregate balance in the voluntary disclosure period? What, if anything, does the Service expect a taxpayer to do with respect to tax noncompliance in a year prior to the voluntary disclosure period?</p>	<p>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 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 offshore penalty. The purpose of the OVDP is to bring taxpayers into compliance for the voluntary disclosure period with the expectation that compliance will continue into the future. In exchange for coming forward through OVDP, the taxpayer agrees to pay the tax, interest, and accuracy-related (or delinquency) penalty for the voluntary disclosure period, plus a miscellaneous offshore penalty in lieu of all other liabilities and penalties that may apply.</p>
<p>35. What kinds of assets does the</p>	<p>The offshore penalty is intended to apply to all of the</p>

	<p>offshore penalty apply to?</p>	<p>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 ("OVDP assets"). OVDP assets include all assets directly or indirectly 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 gross 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.</p>
<p>35.1.</p>	<p>If a taxpayer holds OVDP assets through an entity or a series of entities, may the taxpayer apply valuation discounts such as a discount reflecting lack of marketability, a discount for holding a minority interest, or a discount for holding a tenants in common interest?</p>	<p>No. The offshore penalty will be applied to the taxpayer's interest in the underlying OVDP assets without regard to valuation discounts.</p>
<p>36.</p>	<p>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 the offshore penalty? What if the property produced income that the taxpayer did not report?</p>	<p>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 gross 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 offshore penalty would not apply to those assets. In answer to the second question, if the assets produced gross 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.</p>
<p>37.</p>	<p>If a taxpayer transferred funds from one unreported foreign financial account to another during the voluntary disclosure period, will</p>	<p>No. If the taxpayer can establish that funds were transferred from one account to another, any duplication will be removed before calculating the offshore penalty. However, the burden will be on the taxpayer to establish</p>

	he have to pay the offshore penalty on both accounts?	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 financial account be included in the base for calculating the taxpayer's 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 this account at any time prior to being contacted by the IRS regarding an income tax examination or delinquent returns by filing the FBAR with an explanatory statement. See section 3 of " Options Available For U.S. Taxpayers with Undisclosed Foreign Financial Assets " for instructions. 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 an entity controlled by the taxpayer; (2) the account is held in the name of a foreign entity 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 (e.g., was used by the taxpayer as a conduit). In these cases, the taxpayer may have an OVDP asset to which the offshore penalty applies. See FAQ 35.
39.	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. How should the family correct this, and how will the offshore penalty be applied?	Signatories with no ownership interest in the account, such as the children in this scenario, should file delinquent FBARs with explanatory statements. See section 3 of " Options Available For U.S. Taxpayers with Undisclosed Foreign Financial Assets " for instructions. As for the parents, only one offshore penalty will be applied with respect to voluntary disclosures relating to the same foreign financial account. In the example, the parents will be jointly required to pay a single offshore penalty (at the applicable offshore penalty rate of either 27.5 percent or 50 percent) on the account. This can be satisfied by one parent paying the total offshore penalty or by each paying a portion, at the taxpayers' option. However, any joint owner of a foreign financial account who does not make a voluntary disclosure may be examined and subject to all applicable penalties.
40.	If multiple taxpayers are co-owners of an OVDP asset, 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 ownership of the highest value of the OVDP asset. The burden will be on the disclosing taxpayer claiming ownership of less than 100 percent of the OVDP asset 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 applicable penalties.
41.	If there are multiple individuals with signature authority over an OVDP asset held in the name of a trust, does everyone involved need to file delinquent FBARs? If so, must everyone pay the offshore penalty?	Only one offshore penalty will be applied with respect to voluntary disclosures relating to the same OVDP asset. 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 person 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?	As a condition to participate in the OVDP and receive the benefits of the OVDP's penalty structure, the taxpayer must agree to the assessment of tax and penalties for all voluntary disclosure years. If the taxpayer does not agree to the tax, interest, and penalties 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 assessing 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 are otherwise set to expire while my voluntary disclosure is being processed by the IRS?	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 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 FBAR should I use to report my interests in foreign financial accounts?	Taxpayers are required to file FBARs electronically at FinCEN's website . On the cover page of the electronic form, select "Other" as the reason for filing late. An explanation box will appear. In the explanation box, enter "OVDP." Taxpayers who are unable to file electronically may contact FinCEN's Regulatory Helpline at 1-800-949-2732 or 1-703-905-3975 (if calling from outside the United States) to determine possible alternatives to electronic filing.
45.	A taxpayer has two foreign financial accounts. No FBARs were filed. The taxpayer reported all income from one account but not the other. Mechanically, how does the taxpayer report this?	Taxpayers are required to file a single FBAR reporting all foreign financial accounts meeting the reporting requirement. The taxpayer should make a voluntary disclosure for the omitted income and file 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 financial account, how can the taxpayer get help with this question?	Information about FBAR filing requirements is available on FinCEN's website . Help with questions about FBAR filing requirements is also 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. Submit written questions by e-mail addressed to [FBARQuestions](#). Do not call the IRS OVDP Hotline with questions about whether you have an FBAR filing requirement. The purpose of the IRS OVDP Hotline is to answer questions about how to make voluntary disclosures and what penalties apply.

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. The practitioner 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 .

CASE RESOLUTION

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 voluntary disclosure and the agreement to limit tax exposure to an eight year period are nonnegotiable terms under the OVDP. If any part of the closing agreement is unacceptable to the taxpayer, the taxpayer may opt out and 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 may be appealed, but the Service's decision on the terms of the OVDP closing agreement may not be appealed.
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 offshore penalty is a proxy for the FBAR penalty, civil fraud penalty, other penalties imposed under the

		<p>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 outside of the OVDP. 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 the years included in the disclosure period.</p> <p>Examiners will compare the amount due under this offshore program 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 years within the disclosure period that a taxpayer would owe outside of the OVDP. 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).</p>
50.1	<p>On May 13, 2015 the IRS released the memorandum titled "Interim Guidance for Report of Foreign Bank and Financial Accounts (FBAR) Penalties." Does the May 13, 2015 Interim FBAR Guidance impact the computation of maximum FBAR penalties under FAQ 50? If so, how?</p>	<p>Yes. The May 13, 2015 Interim FBAR Guidance impacts the maximum penalty analysis under FAQ 50. The maximum willful FBAR penalty under the May 13, 2015 Interim FBAR Guidance is "100 percent of the highest aggregate balance of all unreported foreign financial accounts during the years under examination." Hence, the FAQ 50 analysis now requires using the lesser of the maximum willful FBAR penalty under the May 13, 2015 Interim FBAR Guidance or the statutory maximum penalty for all years within the disclosure period.</p>
51.	<p>If, after making a voluntary disclosure, a taxpayer disagrees with the application of the offshore penalty, what can the taxpayer do?</p>	<p>If the offshore penalty is unacceptable to a taxpayer, that taxpayer must indicate in writing his 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 case handled under the standard audit process. Some taxpayers may prefer this approach; in some cases the results under the OVDP may appear too severe given the facts of the case. In other cases, this is less clear. In these less clear cases, the IRS will protect its interests and the integrity of the voluntary disclosure program. In these cases, the IRS will likely conduct full scope examinations. We anticipate that opting out will be appropriate for a discrete minority of cases. Moreover, to the extent that issues are found in 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 will not be treated in a negative fashion merely because he chooses to opt out.</p> <p>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. 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</p>

		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	Deleted	
51.2	Deleted	
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.	Deleted. If you have circumstances covered by former FAQ 52, you should not use OVDP and should see section 2 of the " Options Available For U.S. Taxpayers with Undisclosed Foreign Financial Assets ".	
53.	Deleted. If you have circumstances covered by former FAQ 53, you should not use OVDP and should see section 2 of the " Options Available For U.S. Taxpayers with Undisclosed Foreign Financial Assets. "	
54.	Deleted	
54.1.	Deleted	
54.2.	I have a Canadian registered retirement savings plan (RRSP), registered retirement income fund (RRIF), or other similar Canadian retirement plan. I am an "eligible individual" as defined in § 4.01 of Rev. Proc. 2014-55. Under the procedures in effect prior to the issuance of Rev. Proc. 2014-55, 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 undistributed income earned by my Canadian retirement plan. How should I report my Canadian retirement plan in the OVDP, and will it be included in the penalty base?	Under § 4.02 of Rev. Proc. 2014-55, you are treated as having made the election. <u>See</u> Rev. Proc. 2014-55, § 7. In addition, your Canadian retirement plan will not be included in the offshore penalty base. In your OVDP submission please state that you are an "eligible individual" under Rev. Proc. 2014-55. You may need to report your interest in the Canadian retirement plan on FBARs or Forms 8938. Please refer to the instructions for these forms for more information. See also the submission requirements in FAQ 25.
54.3.	Same facts as FAQ 54.2 except I am not an "eligible individual" because I failed to satisfy the	If you submit tax returns through the OVDP and resolve your OVDP case with a closing agreement, you will be afforded relief consistent with Rev. Proc. 2014-55.

	<p>requirement for filing a U.S. Federal income tax return for each tax year during which I was a U.S. citizen or resident as required by § 4.01 B) of Rev. Proc. 2014-55. How should I report my Canadian retirement plan in the OVDP, and will it be included in the penalty base?</p>	<p>Further, your Canadian retirement plan will not be included in the offshore penalty base. If this applies to you, please refer to this FAQ in your OVDP submission.</p> <p>You may need to report your interest in the Canadian retirement plan on FBARs or Forms 8938. Please refer to the instructions for these forms for more information. See also the submission requirements in FAQ 25.</p>
54.4.	<p>Same facts as FAQ 54.2 except I am not an “eligible individual” because I reported as gross income on a U.S. Federal income tax return some or all of the accrued but undistributed earnings in my Canadian retirement plan, thereby failing the requirement of § 4.01 C) of Rev. Proc. 2014-55. I now realize I could have deferred the tax on the accrued but undistributed earnings in my Canadian retirement plan. How do I correct my reporting of accrued but undistributed earnings in my Canadian retirement plan in the OVDP, and will my Canadian retirement plan be included in the penalty base?</p>	<p>If you submit amended income tax returns through the OVDP and resolve your OVDP case with a closing agreement, you will be afforded relief consistent with Rev. Proc. 2014-55. Further, your Canadian retirement plan will not be included in the offshore penalty base. If this applies to you, please refer to this FAQ in your OVDP submission.</p> <p>You may need to report your interest in the Canadian retirement plan on FBARs or Forms 8938. Please refer to the instructions for these forms for more information. See also the submission requirements in FAQ 25.</p>
55.	<p>I have a retirement or pension plan in a foreign country (other than a Canadian RRSP, RRIF, or other similar Canadian retirement plan) that I do not believe should be included in the offshore penalty base. What should I do?</p>	<p>If you have a retirement or pension plan in a foreign country (other than a Canadian RRSP, RRIF, or other similar Canadian plan) 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 OVDP hotline at (267) 941-0020.</p> <p>Please provide the OVDP Hotline specific information including (i) the country where the plan is maintained, (ii) whether the plan is employer-sponsored, and (iii) whether any income tax treaty provisions may apply.</p>