

OBI WAN KENOBI
Your OVDI Jedi Master



Slow closure day for OVDI



906 – Closing Agreements & Certifications

- Presented by OBI WAN (b) (6)
- Handouts:
 - 906 Example
 - Dissolved Entity Statement
 - Multiple 906 scenarios
 - Deceased Txp Job Aid
 - Certification Scope Job Aids

Form 906 Closing Agreement

- **Four Closing Agreements**
- **Which Form to Use**
- **Multiple Agreements**
- **Changes require Technical Advisor approval**
- **Job Aid #7**

Form 906 Closing Agreement

Secure 906 from VDP SharePoint

Form 906: Full Pay or Not Full Paid

- Standard or Dissolution of Foreign Entity
- Major changes to 906 must be approved by Offshore Technical Advisor and Counsel (i.e. PFIC or FTC)
- Document approval in Case History

Form 906 Closing Agreement

- **You may correct grammar**
- **Delete the phrase “overstated deductions and/or losses” if applicable.**
- **You may not add or remove determination paragraphs without the Technical Advisor’s permission**

Form 906 Closing Agreement

Prepare and complete 4 copies of the Closing Agreements

- 3 copies for Taxpayer(s) to sign and date
- 1 copy for case for comparison use later

Form 906 Closing Agreement

3 original Forms 906 sent back by taxpayer(s)

- Original signatures and dated
- If POA signed instead of taxpayer(s), attach Form 2848 to each Form 906
- Check for alterations or erasures
 - Use copy for comparison purposes
 - Contact Offshore Technical Advisor if any change identified

Form 906 Closing Agreement

**On the reverse side, date stamp all pages of
each Form 906**

**Revenue Agent should sign and date in blue
ink as "Receiving Officer"**

Deceased Taxpayers

HOW SHOULD WE IDENTIFY THE TAXPAYER ON THE FORM 906				
A	PRIMARY TAXPAYER	JOHN SMITH		
B	SECONDARY TAXPAYER	MARY SMITH		
C	EXECUTOR FOR JOHN'S ESTATE	JOE BLACK		
D	EXECUTOR FOR MARY'S ESTATE	BOB WHITE		
SCENARIO	FILING STATUS	WHO MADE VOLUNTARY DISCLOSURE	HOW SHOULD WE IDENTIFY THE TAXPAYER ON THE 906?	Reference for this came from IRM 4.10.8.20.1
1	TXP A DIED DURING 6 YEAR SCOPE	SINGLE	C	ESTATE OF JOHN SMITH (DECEASED) JOE BLACK, EXECUTOR
2	TXP A DIED DURING 6 YEAR SCOPE	MFJ & S	B	MARY SMITH
3	TXP A DIED DURING 6 YEAR SCOPE	MFJ & S	B & C	ESTATE OF JOHN SMITH (DECEASED) JOE BLACK, EXECUTOR AND MARY SMITH, SURVIVING SPOUSE
4	BOTH A & B DIED DURING SCOPE	MFJ & S	C & D	ESTATE OF JOHN SMITH (DECEASED) JOE BLACK, EXECUTOR AND ESTATE OF MARY SMITH (DECEASED) BOB WHITE, EXECUTOR
5	TXP A DIED AFTER 6 YEAR SCOPE	SINGLE	A	ESTATE OF JOHN SMITH (DECEASED) JOE BLACK, EXECUTOR
6	TXP A DIED AFTER 6 YEAR SCOPE	SINGLE	C	ESTATE OF JOHN SMITH (DECEASED) JOE BLACK, EXECUTOR
7	TXP A DIED AFTER 6 YEAR SCOPE	MFJ	A & B	ESTATE OF JOHN SMITH (DECEASED) JOE BLACK, EXECUTOR AND MARY SMITH, SURVIVING SPOUSE
8	TXP A DIED AFTER 6 YEAR SCOPE	MFJ	B	MARY SMITH
9	TXP A DIED AFTER 6 YEAR SCOPE	MFJ	B & C	ESTATE OF JOHN SMITH (DECEASED) JOE BLACK, EXECUTOR AND MARY SMITH, SURVIVING SPOUSE

Certification Scope

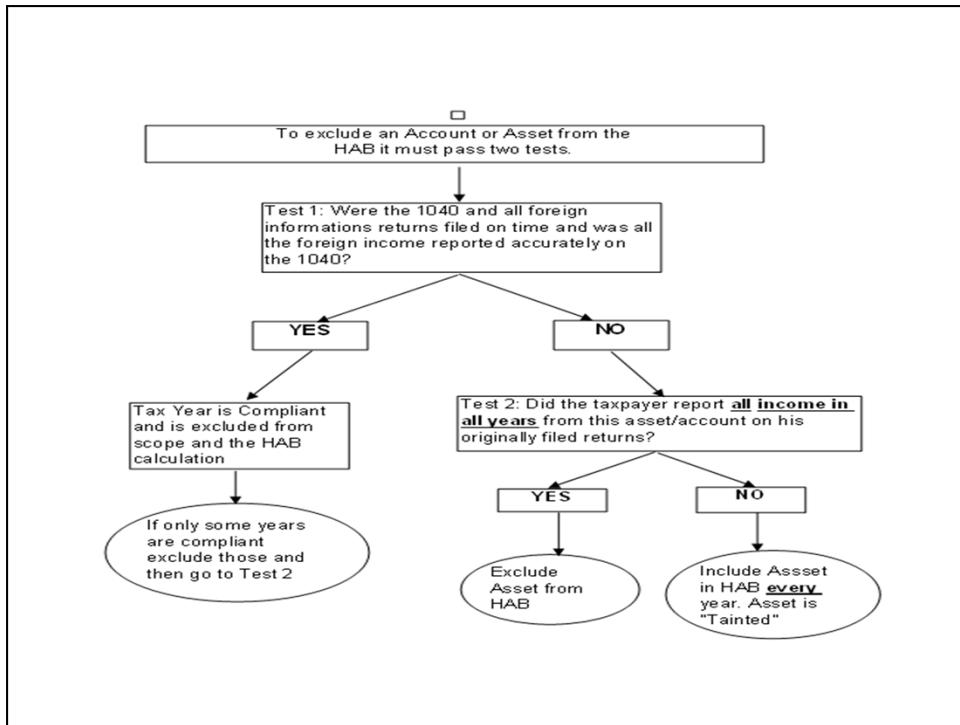
- 2012 FAQ #9
 - Most recent 8 years for which the due date has already passed (consider extensions)
 - VD made before 4/15/12 ...
 - scope 2003 -2010
 - VD made after 4/15/12 ...
 - Scope 2004 -2011
- Compliant years are eliminated

Is it a Compliant Year?

- ◆ Income Tax Returns
- ◆ Foreign Information Returns
 - FBARs, f5471, f3520, f3520-A, etc ...

If the 1040 and all foreign information returns were filed timely & accurately then the year can be eliminated from the disclosure scope.

- ◆ Not on the 906
- ◆ Not part of the penalty computation
- ◆ Request a DC12 closure from the TA for the year



Bifurcated Approach

**INCOME
TAX
CASE**

MFT 30

**OFFSHORE
PENALTY
CASE**

MFT 55



Income Tax Certifications

- Minimal testing of taxpayer's assertions as reported in 1040X's
- **But**, expected and required to use auditing skills to evaluate the reasonableness/overall accuracy and completeness of the disclosure
- No required workpapers or leadsheets, but must document actions performed to certify
- This process is not considered an exam; no reopening procedures required; the taxpayer has no Appeal Rights in the process
- Form 4549-A prepared and adjustments/issues incorporated into Form 906

Offshore Penalty Certifications

- Miscellaneous civil penalty in lieu of FBAR penalties and penalties for failure to file information returns disclosing offshore entities/transactions
- Based on Highest Aggregate Balance of offshore accounts and assets
- Penalty rates are not negotiable

Find a Way to Certify

- Use the Info in the file
- Phone calls - fast
- Fax / email – faster
- Get GM involved
- Document your steps to certify
- Make decisions
- Issue the 906
 - Even if they want to Opt-Out

Non-Full Pay 906

- FAQ #20 – Taxpayers can make a VD even if they can not full pay
- FAQ #25 – Form 433-A or 433-B must be submitted

- NFP 906
- Referral to collections – National SP site
 - Collection contact is based on Txp's location

Estate & Gift

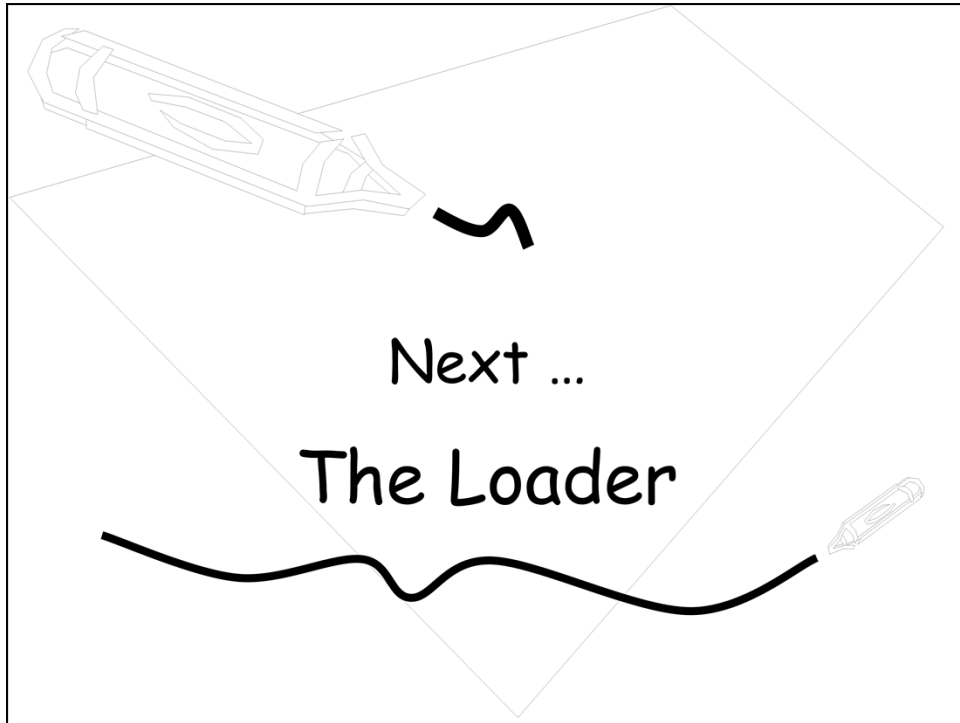
- Estates

- Income = Form 1041
- Value = Form 706

- Gifts

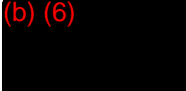
- Form 709

(b) (6) [REDACTED] is our OVDI E&G Tech Advisor





HAB & MOP

- **Presented by OBI WAN** (b) (6) 
- **Handouts:**
 - **HAB Computation**
 - **HAB Errors**
 - **Foreign Account Statement**
 - **Co-owner Job Aid**

HAB and Calculating the Offshore Penalty

- **FAQ # 35: Highest Aggregate Balance (HAB) includes all of the taxpayer's offshore holdings that are in anyway related to tax non-compliance**
 - Determined without regard to the form of taxpayer's ownership or character of the asset
 - Assets directly owned: cash, securities, real estate
 - Assets indirectly owned: taxpayer's interest in the underlying assets owned through nominee entities
 - If 2009/2010 tax returns were filed properly (offshore-related income accurately reported), there is no tax non-compliance and those years will not be included in the HAB determination

CI – 3 page OVDI Letter

- Please check the box to estimate the annual range of the highest aggregate *value* of your offshore accounts/assets.

Highest Aggregate Account Asset Value	2003	2004	2005	2006	2007	2008	2009	2010
\$0 to \$100,000								
\$100,000 to \$1,000,000								
\$1,000,000 to \$2,500,000								
\$2,500,000 to \$10,000,000								
\$10,000,000 to \$100,000,000								
Greater than \$100,000,000								

- Please check the box to estimate the potential total unreported *income* from the offshore account(s) during each disclosure period. If known, please enter exact amounts/assets.

Estimated Total Unreported Income	2003	2004	2005	2006	2007	2008	2009	2010
\$0 to \$100,000								
\$100,000 to \$1,000,000								
\$1,000,000 to \$2,500,000								
\$2,500,000 to \$10,000,000								
Greater than \$10,000,000								

Foreign Account or Asset Statement
Statement ___ of ___

Name: _____
Social Security Number: _____

Submit a separate Statement for each foreign account or asset included in your voluntary disclosure. At least one Statement must be submitted. Respond to each applicable question in the space provided –attachments are appropriate should additional space be necessary.

1	Name of Foreign Financial Institution			
2	Country where Institution is Located			
3	Contact Person at this Institution			
		YES	NO	
4	Is the offshore account a bank account holding cash, money market, or CD?			
5	Is the offshore account a custodial account holding securities?			
6	Is the offshore account another type of account or asset?			
7	If so, what type of account or asset?			
Bank or Financial Accounts				
8	Source of funds within account			
9	Name under which the account was held			
10	If held by an entity, type of entity			
11	Date account was opened			
12	Date account was closed			
13	Does the account include Passive Foreign Investment Company (PFIC) or mutual funds?	YES	NO	OTHER
Other Assets (real estate, artwork, bullion, etc.)				
14	Description and Location of the Asset			
15	Purchase price and date acquired			
16	Sales price and date of disposition (if sold)			
17	FMV at 12/31/10 if asset is still owned			

The highest value of this account and/or fair market value of asset over the period of the voluntary disclosure should be included on the Penalty Computation Worksheet.

Offshore Financial Account Statements

- **Taxpayers who are disclosing offshore financial accounts with an HAB in any year of \$500,000 or more must submit financial account statements reflecting all account activity for each of the tax years covered by their voluntary disclosure.**
- **Taxpayers must explain any differences between the amounts reported in the account statements and the tax returns.**
- **Taxpayers with accounts with an HAB less than \$500,000 are required to provide statements upon request.**

Offshore Entities

- **Taxpayers must submit a statement identifying all offshore entities for the tax years covered by the voluntary disclosure whether held directly or indirectly.**
- **The statement must indicate their ownership or control share of such entities.**

Agents must resist the temptation to blindly accept the HAB Schedule

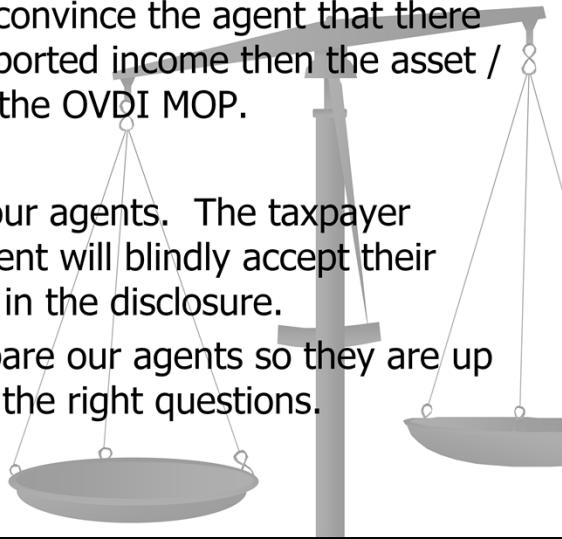
- Agents must verify:
 1. Is there any foreign account or asset missing from the HAB calculation?
 2. Is an account or asset being backed-out of the calculation?
 3. Should the value of the foreign entities be included in the calculation?

If	And	FBAR Filed	Info Report Filed	Include in HAB
The taxpayer has a foreign bank account	Income was always (in every year) reported on originally filed returns	NO	NA	NO
	Income was not reported on originally filed returns	NO	NA	YES
The TP has a Foreign Assets such as art, rental property etc.	Income from the property has not been reported	NA	NA	Yes
TP has a Foreign Asset such as art, rental property etc	There is no unreported income associated with the asset and the asset was either: 1. Purchased with previously taxed (U.S.) funds or 2. Purchased with funds not subject to US Taxation.	NA	NA	NO
TP has a Foreign Asset such as art, rental property etc.	There is no unreported income associated with the asset, but the funds used to purchase the asset were subject to US taxation and <u>no such tax was paid.</u>	NA	NA	YES
TP has an ownership interest in a foreign corporation, partnership, trust or equivalent foreign entity	Entity and any related income was always timely reported.	NA	YES or NO	NO
	Entity and any related income was not always timely reported.	NA	YES or NO	YES

Why Disclose but Not Report?

If the taxpayer can convince the agent that there has been no unreported income then the asset / entity will escape the OVDI MOP.

- They are testing our agents. The taxpayer hopes that the agent will blindly accept their position as stated in the disclosure.
- Our aim is to prepare our agents so they are up to the task to ask the right questions.



PENALTY COMPUTATION WORKSHEET

	2003	2004	2005	2006	2007	2008	2009	2010
Acct #1 123456789	\$45,647	\$45,788	\$45,993	\$46,002	\$46,773	\$46,998	\$47,001	\$0
Acct #2 987654321	\$13,567	\$13,435	\$13,789	\$14,567	\$14,327	\$14,987	\$13,976	\$0
Acct #3 5678943	\$22,456	\$22,765	\$23,678	\$23,898	\$32,344	\$34,765	\$34,678	\$0
TOTAL 5%	<u>\$61,217</u>	<u>\$61,227</u>	<u>\$61,787</u>	<u>\$62,575</u>	<u>\$63,107</u>	<u>\$63,993</u>	<u>\$62,986</u>	\$0
Acct #4 76923444	\$67,888	\$67,884	\$68,443	\$68,744	\$69,003	\$73,098	\$78,654	\$0
Acct #5 877658 *	\$234,567	\$234,786	\$234,856	\$234,115	\$234,987	\$235,674	\$235,446	\$0
Indian Property **	\$45,000	\$45,000	\$45,000	\$45,000	\$45,000	\$45,000	\$45,000	\$0
Gobi Corp ***	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0
Gold - precious metals ****	\$100	\$100	\$100	\$100	\$100	\$100	\$100	\$0
Highest Aggregate Balance	<u>\$347,555</u>	<u>\$347,770</u>	<u>\$348,399</u>	<u>\$347,959</u>	<u>\$349,090</u>	<u>\$353,872</u>	<u>\$359,200</u>	\$0
Less - Transfers	(\$34,565)	(\$45,643)	(\$2,000)	(\$23,765)	(\$56,450)	(\$45,900)	(\$2,674)	\$0
Less - footnotes	(\$279,667)	(\$279,886)	(\$279,956)	(\$279,215)	(\$280,087)	(\$280,774)	(\$280,546)	\$0
Highest Aggregate Balance	<u>\$33,323</u>	<u>\$22,241</u>	<u>\$66,443</u>	<u>\$44,979</u>	<u>\$12,553</u>	<u>\$27,198</u>	<u>\$75,980</u>	\$0

25% Offshore Penalty

Highest Aggregate Balance is in year:

2009 2008
\$75,980 \$63,993

Highest Aggregate Balance in USD is:

25% 5%

Multiply the highest aggregate balance by 25%

Calculated Offshore Penalty: \$18,995 \$3,200

* 50% acct owned by father. Txp has no access to funds. Can not bring over to US.

** former personal residence in India - exclude as it is not investment property - will go back to India to live someday

*** family owned business; no income received

**** No FBAR requirement. Not included in penalty calculation

Under the penalties of perjury, I declare that I examined the facts stated in this Penalty Computation Worksheet, including any accompanying documents, and, to the best of my knowledge and belief, they are true, correct, and complete.

Taxpayer's Signature(s)

Date

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Acct #3 5678943	\$22,456	\$22,765	\$23,678	\$23,898	\$32,344	\$34,765	\$34,678	\$0
TOTAL 5%	\$61,217	\$61,227	\$61,787	\$62,575	\$63,107	\$63,993	\$62,986	\$0
Acct #4 76923444	\$67,888	\$67,884	\$68,443	\$68,744	\$69,003	\$73,098	\$78,654	\$0
Acct #5 877658 *	\$234,567	\$234,786	\$234,856	\$234,115	\$234,987	\$235,674	\$235,446	\$0
Indian Property **	\$45,000	\$45,000	\$45,000	\$45,000	\$45,000	\$45,000	\$45,000	\$0
Gobi Corp ***	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0
Gold - precious metals ****	\$100	\$100	\$100	\$100	\$100	\$100	\$100	\$0
Highest Aggregate Balance	\$347,555	\$347,770	\$348,399	\$347,959	\$349,090	\$353,872	\$359,200	\$0
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Highest Aggregate Balance	\$33,323	\$22,241	\$66,443	\$44,979	\$12,553	\$27,198	\$75,980	\$0
25% Offshore Penalty								
Highest Aggregate Balance is in year:			2009		2008			
Highest Aggregate Balance in USD is:			\$75,980		\$63,993			
Multiply the highest aggregate balance by 25%			25%		5%			
Calculated Offshore Penalty:			\$18,995		\$3,200			
* 50% acct owned by father. Txp has no access to funds. Can not bring over to US.								
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Taxpayer's Signature(s)				Date				

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Highest Aggregate Balance	\$33,323	\$22,241	\$66,443	\$44,979	\$12,553	\$27,198	\$75,980	\$0

25% Offshore Penalty

Highest Aggregate Balance is in year:

	2009	2008
Highest Aggregate Balance in USD is:	\$75,980	\$63,993
Multiply the highest aggregate balance by 25%	25%	5%

Calculated Offshore Penalty:

\$18,995	\$3,200
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Highest Aggregate Balance	<u>\$33,323</u>	<u>\$22,241</u>	<u>\$66,443</u>	<u>\$44,979</u>	<u>\$12,553</u>	<u>\$27,198</u>	<u>\$75,980</u>	<u>\$0</u>

25% Offshore Penalty

Highest Aggregate Balance is in year:
 Highest Aggregate Balance in USD is:
 Multiply the highest aggregate balance by 25%

2009	2008
<u>\$75,980</u>	<u>\$63,993</u>
<u>25%</u>	<u>5%</u>

Calculated Offshore Penalty:

<u>\$18,995</u>	<u>\$3,200</u>
------------------------	-----------------------

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Highest Aggregate Balance	<u>\$33,323</u>	<u>\$22,241</u>	<u>\$66,443</u>	<u>\$44,979</u>	<u>\$12,553</u>	<u>\$27,198</u>	<u>\$75,960</u>	<u>\$0</u>
25% Offshore Penalty								
Highest Aggregate Balance is in year:								
			2009		2008			
			\$75,980		\$63,993			
Highest Aggregate Balance in USD is:								
			25%		5%			
Calculated Offshore Penalty:								
			<u>\$18,995</u>		<u>\$3,200</u>			
* 50% acct owned by father. Txp has no access to funds. Can not bring over to US.								
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Under the penalties of perjury, I declare that I examined the facts stated in this Penalty Computation Worksheet, including any accompanying documents, and, to the best of my knowledge and belief, they are true, correct, and complete.								
Taxpayer's Signature(s)				Date				

PENALTY COMPUTATION WORKSHEET

	2003	2004	2005	2006	2007	2008	2009	2010
Acct #1 123456789	\$45,647	\$45,788	\$45,993	\$46,002	\$46,773	\$46,998	\$47,001	\$0
Acct #2 987654321	\$13,567	\$13,435	\$13,789	\$14,567	\$14,327	\$14,987	\$13,976	\$0
Acct #3 5678943	\$22,456	\$22,765	\$23,678	\$23,898	\$32,344	\$34,765	\$34,678	\$0
TOTAL 5%	<u>\$61,217</u>	<u>\$61,227</u>	<u>\$61,787</u>	<u>\$62,575</u>	<u>\$63,107</u>	<u>\$63,993</u>	<u>\$62,986</u>	<u>\$0</u>
Acct #4 76923444	\$67,888	\$67,884	\$68,443	\$68,744	\$69,003	\$73,098	\$78,654	\$0
Acct #5 877658 *	\$234,567	\$234,786	\$234,866	\$234,115	\$234,987	\$236,674	\$236,446	\$0
Indian Property **	\$45,000	\$45,000	\$45,000	\$45,000	\$45,000	\$45,000	\$45,000	\$0
Gobi Corp ***	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0
Gold - precious metals ****	\$100	\$100	\$100	\$100	\$100	\$100	\$100	\$0
Highest Aggregate Balance	<u>\$347,555</u>	<u>\$347,770</u>	<u>\$348,399</u>	<u>\$347,959</u>	<u>\$349,090</u>	<u>\$353,872</u>	<u>\$359,200</u>	<u>\$0</u>
Less - Transfers	(\$34,565)	(\$45,643)	(\$2,000)	(\$23,765)	(\$56,450)	(\$45,900)	(\$2,674)	\$0
Less - footnotes	<u>(\$279,667)</u>	<u>(\$279,886)</u>	<u>(\$279,956)</u>	<u>(\$279,215)</u>	<u>(\$280,087)</u>	<u>(\$280,774)</u>	<u>(\$280,546)</u>	<u>\$0</u>
Highest Aggregate Balance	<u>\$33,323</u>	<u>\$22,241</u>	<u>\$66,443</u>	<u>\$44,979</u>	<u>\$12,553</u>	<u>\$27,198</u>	<u>\$75,980</u>	<u>\$0</u>

25% Offshore Penalty

Highest Aggregate Balance is in year:
 Highest Aggregate Balance in USD is:
 Multiply the highest aggregate balance by 25%

2009	2008
\$75,980	\$63,993
<u>25%</u>	<u>5%</u>

Calculated Offshore Penalty:

<u>\$18,995</u>	<u>\$3,200</u>
-----------------	----------------

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 Taxpayer's Signature(s)

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PENALTY COMPUTATION WORKSHEET

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25% Offshore Penalty

Highest Aggregate Balance is in year:	2009	2008
Highest Aggregate Balance in USD is:	\$75,980	\$63,993
Multiply the highest aggregate balance by 25%	25%	5%

Calculated Offshore Penalty:	<u>\$18,995</u>	<u>\$3,200</u>
-------------------------------------	-----------------	----------------

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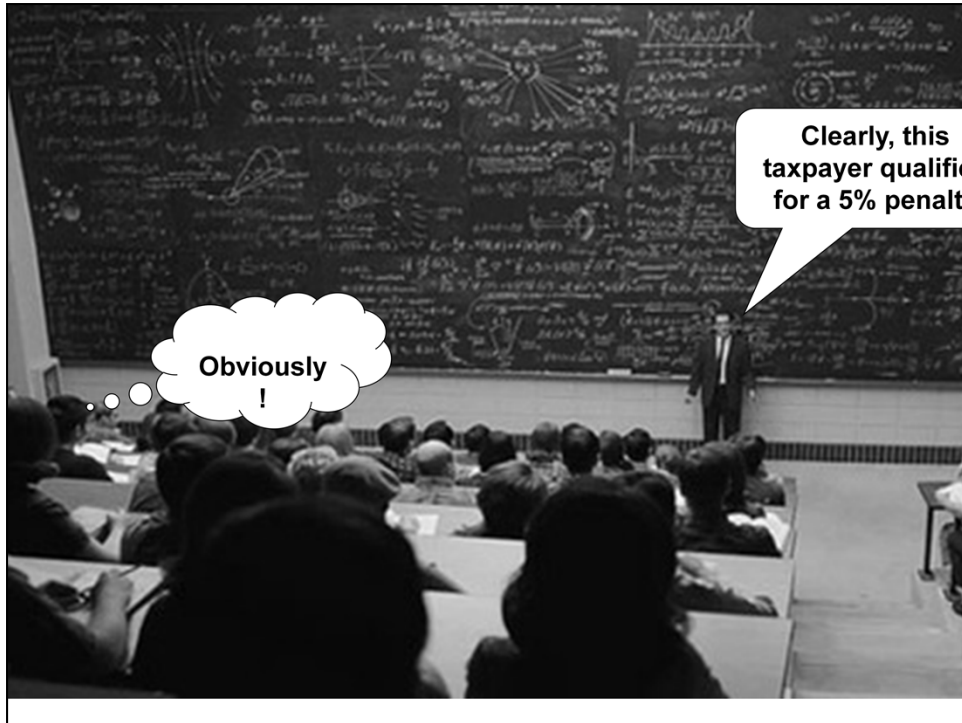
 Date

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Highest Aggregate Balance is in year:			2009		2008			
Highest Aggregate Balance in USD is:			\$75,980		\$63,993			
Multiply the highest aggregate balance by 25%			<u>25%</u>		<u>5%</u>			
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Taxpayer's Signature(s)				Date				

MOP Penalty Rates

- FAQ #7 – Terms of the program lists the possible MOP rates ...
- 5% Reduced MOP (FAQ #52)
- 12.5% for HAB under \$75,000 (FAQ #53)
- 27.5% standard MOP for 2012 OVDI





5% MOP – FAQ #52

- Must have Tech Advisor written approval
- Taxpayer must meet strict criteria
 - “Standard” 5% (FAQ #52)
 - Unaware US Citizen (FAQ #52.2)
 - NR taxpayers (FAQ #52.3)
- Any disqualifying acts prior to becoming a US taxpayer do NOT make them ineligible.



CO-OWNERS - FAQ 24 & 40

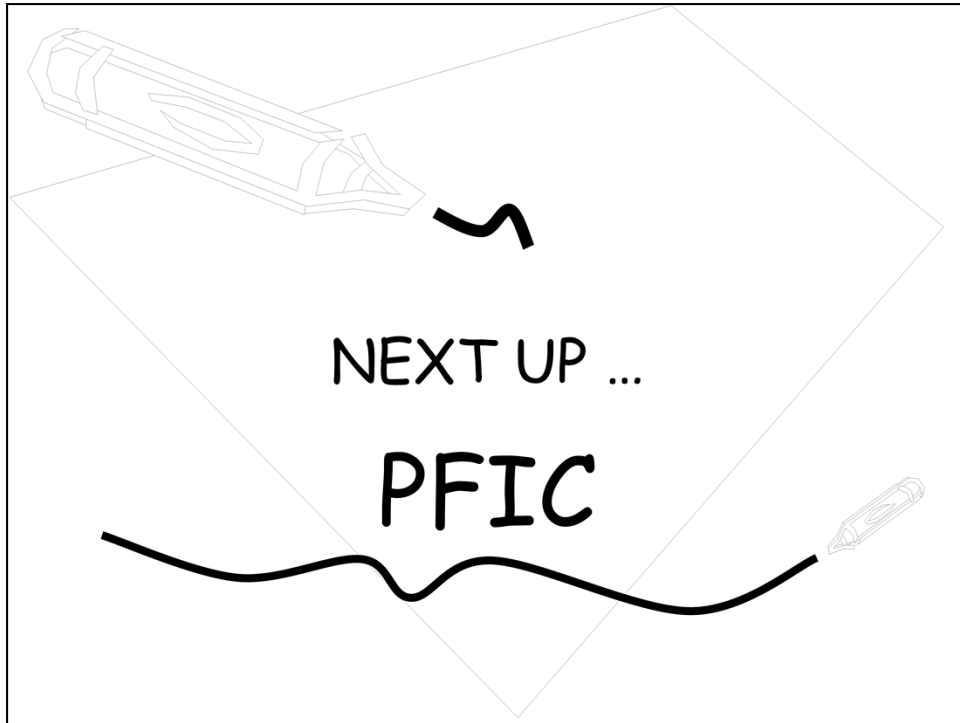
- A taxpayer can not manipulate their HAB or MOP by structuring their ownership in any other way than by their true ownership percentages.

Married taxpayers

- Community property states
- Unmarried taxpayers
- Job Aid

SUMMARY

- Almost all OVDI disclosures have some element of the txp attempting to reduce their MOP
 - Some methods are permissible
 - Request to split accounts
 - 5% & 12.5% MOP requests
 - Some methods are NOT
 - Not including accounts & assets in the HAB
 - Not reflecting all unreported income from an entity to avoid the HAB & MOP



Foreign Tax Credits



Foreign Tax Credit

- **Due to the type of cases in this project, FTC will be an issue on many of these cases**
- **TP files form 1116 that may be incorrect**

Foreign Taxes Paid

- The 906 locks the taxpayer into the amount of foreign taxes paid.
- After we agree on the taxes paid ... getting to the credit is just computational.
- Use the Job Aid

FTC TABLE

Foreign Taxes, paid or accrued	2003	2004	2005	2006	2007	2008	2009	2010
Form 1116 Line 8, original return	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -
Form 1116 Line 8, amended	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -
Form 1116 Line 8, certified	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -

FTC Language required?: No

*Note: There may be multiple F1116s. Sum up all line 8s within the cell above for each year.
Think of it as "gross" foreign taxes paid/accrued.*

Name of country to which taxpayer paid or accrued foreign income taxes:

Does AMT FTC apply?

Look at the RAR, Line 6 - Does AMT Apply in any year?

If you require FTC Special Language and AMT is being applied in any year then you will need AMT FTC Special Language.

Foreign Taxes Paid

Pub 901 is a useful tool

Tax Rates on income as stated in
various Tax Treaties

FTC requires Special
language on the 906

AMT in any year of the disclosure
will trigger the need for AMT FTC
special language

Pub 901 Exhibit

Table 1. Tax Rates on Income Other Than Personal Service Income Under Chapter 3, Internal Revenue Code, and Income Tax Treaties

► Taxpayers must meet the limitation on benefits provisions in the treaty, if any, to qualify for reduced withholding rates.
 ► In most cases, the Business Profits article, rather than a reduced withholding tax rate, applies if the income is attributable to a permanent establishment of the taxpayer in the United States.

Income Code Number		1	6	7	14	21
		Interest	Dividends			
Name	Code	Paid by U.S. Obligor— General	Paid by U.S. Corporations— General ^a	Qualifying for Direct Dividend Rate ^{a, b}	Pensions and Annuities ^c	Social Security Payments ^d
Australia	AS	10 g, k, nn	15 nm	5 nm, oo	0	30
Austria	AU	0 g, j	15 w	5 w	0	30
Bangladesh	BG	10 g, bb, jj	15 nm	10 nm	0 f, q	30
Barbados	BB	5	15 w	5 w	0 f	30
Belgium	BE	0 g, j	15 dd, mm	5 dd, mm, oo	0 f	30
Bulgaria	BU	5 g, dd, jj, nn	10 dd, mm	5 dd, mm	0 f	30
Canada	CA	0 g, j	15 nm	5 nm	15	0
China, People's Rep. of	CH	10	10	10	0 t	30
Comm. of Independent States ^e		0 n	30	30	30	30
Cyprus	CY	10 nn	15	5	0 f	30
Czech Republic	EZ	0 g	15 w	5 w	0 f	30
Denmark	DA	0 g, kk	15 dd, mm	5 dd, mm, oo	30 c, t	30
Egypt	EG	15	15	5	0 f	0
Estonia	EN	10 g, kk	15 w	5 w	0 f	30
Finland	FI	0 g, kk	15 dd, mm	5 dd, mm, oo	0 f	30
France	FR	0 g, k	15 nm	5 nm, oo	30 t	30
Germany	GM	0 g, j	15 dd, mm	5 dd, mm, oo	0 f	0
Greece	GR	0 f	30	30	0	30

Proof of Credits

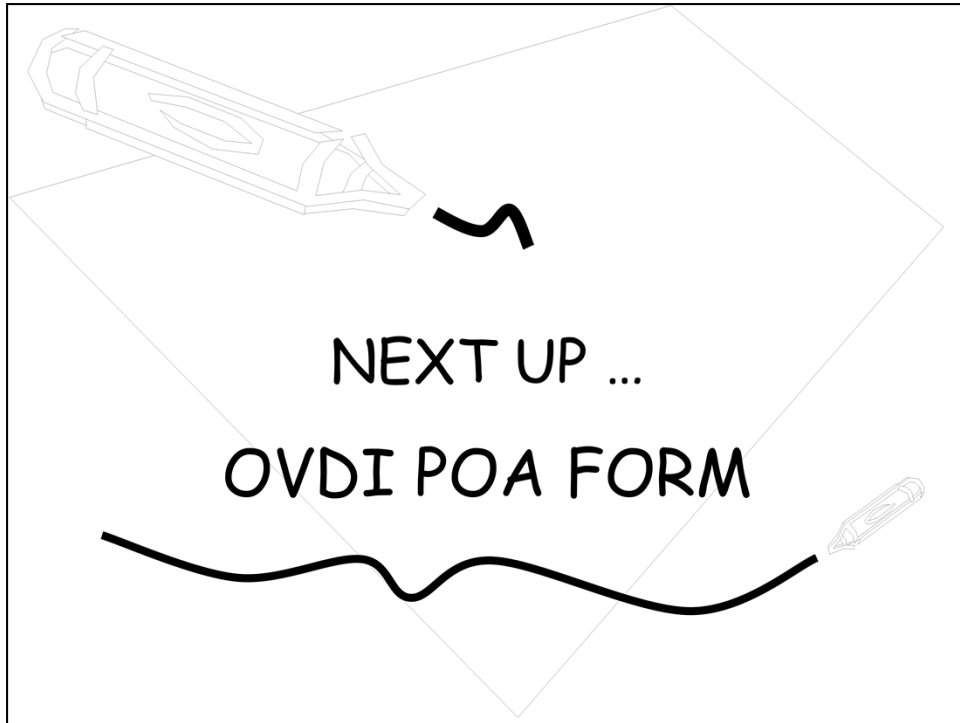
- **For OVDI purposes, agents and group managers have discretion either to accept the foreign taxes claimed as filed or to request backup documentation as described below.**
- **We may accept secondary evidence such as a copy of a check, draft or other form of payment only if original is “impossible” to get.**
- **If withholding at source, can accept secondary evidence based on taxpayer’s books of accounts and the foreign country and their withholding rates**

Closing Agreement Language

WHEREAS Paragraph should read as follows: Taxpayer paid or accrued foreign income taxes to (insert country name(s)) during taxable years 2003 through 2008;

(New determination paragraph)

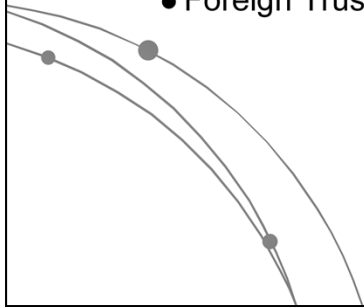
Taxpayer paid or accrued foreign income taxes to (insert country name(s)) eligible for foreign tax credit under section 901 of the Internal Revenue Code as follows:



Emerging OVDI Issues

Foreign Entities

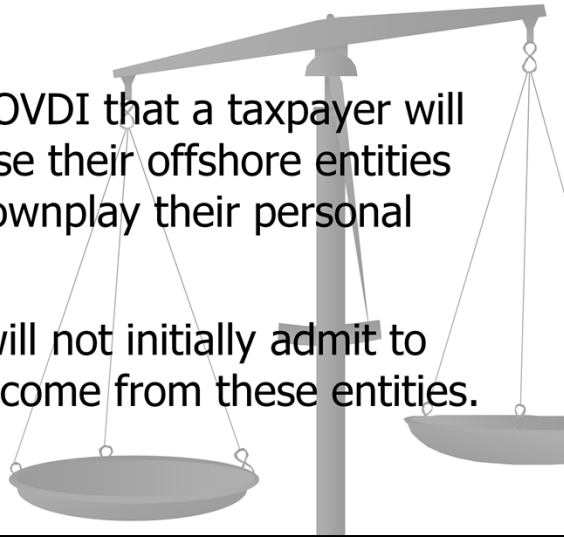
- Most common identified entities in OVDI
 - Foreign Corporations
 - Foreign Trusts



The Disclosure

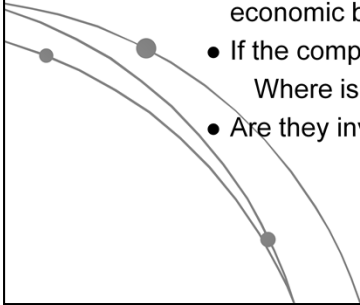
We've found in OVDI that a taxpayer will generally disclose their offshore entities but will likely downplay their personal involvement.

They probably will not initially admit to receiving any income from these entities.



Looking for the Income?

- In order for the value of a foreign entity to be included in the HAB we must determine if there has been any unreported income
 - Ask yourself
 - Why would the txp own a company that he derives no economic benefit from?
 - If the company is profitable and it's not paying dividends, Where is the money going?
 - Are they investing the profits? (Subpart F income?)



What should I be looking for when dealing with a Foreign Corp ?

Unreported Income

- **Dividends or Subpart F Income**
 - Wages, Mgmt Fees, Consulting Income, etc ...

Form 5471

Schedule I

Line 1 Subpart F

Line 7 Dividends received

Subpart F, does not purport to tax the foreign corporation. Rather, its rules apply only to a U.S. person who owns, directly or indirectly, 10% or more of the stock of a foreign corporation that is controlled by U.S. persons.

Subpart F Income

- Subpart F is certain types of income earned by a controlled foreign corporation (CFC).
- Subpart F Income does NOT have to be distributed to be taxable.
- Common Subpart F Income is Investment Income ... dividends, interest, investment gains/losses ... sometimes referred to as “moveable” income.

Foreign Information Returns

Form 5471

“Information Return of U.S. Persons With Respect to Certain Foreign Corporations”

■ Penalties for Failure to File

- IRC 6679, 6046, 6046A, 6038
- **\$10,000**, max \$60,000
- For EACH F5471 required to be filed
 - Ex: have 3 CFC’s – 3 F5471’s are required

The penalty for failure to file is \$10,000 per Form 5471 that the U.S. shareholder fails to file, and if not filed w/in 90 days after the notice of the failure to file, then an additional penalty of \$10,000 for each 30 days period the failure to file continues. The maximum additional penalty for each Form 5471 is \$50,000.

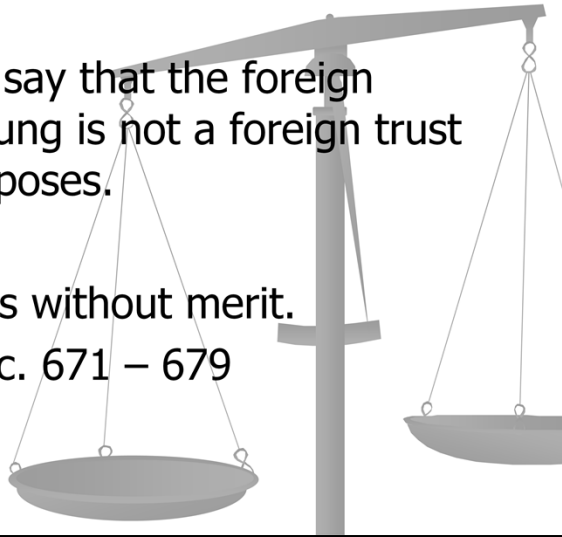
So you can see the failure to file each Form 5471 can be significant. For example, you have the initial penalty \$10,000 and then the additional penalty of \$50,000 so you can see where failing to file ONE Form 5471 can reach \$60,000.

Foreign Trusts

- A very common foreign entity found in our OVDI certifications
- Taxpayers were frequently encouraged to create foreign trusts by the Swiss bankers
- Usually the foreign trusts are just set up to hold the foreign investments of the taxpayer
- Some taxpayers are disclosing the trusts ... others are claiming that they were unaware of the trust ever being formed

Foreign Foundation/Stiftung is a Foreign Trust

- POA may try to say that the foreign foundation/stiftung is not a foreign trust for U.S. tax purposes.
- This argument is without merit.
- Refer to IRC Sec. 671 – 679



Foreign Information Returns

Form 3520

“Annual Return to Report Transactions With Foreign Trusts and Receipt of Certain Foreign Gifts”

– **Who Must File**

- Reportable Events
- Grantor Trust
- Distributions
- Gifts

– **Due Date for Filing**

- Same as U.S. Persons Income Tax return including extensions

Now we will look at some of the specific information returns. First we will look at Form 3520. What is the purpose of Form 3520?

It's for any U.S. person who creates a foreign trust or who directly or indirectly gratuitously transfers money or property to a foreign trust. It doesn't matter whether the Foreign Trust has a U.S. beneficiary or not. U.S. persons file Form 3520 to report:

- Certain transactions with foreign trusts
- Ownership of foreign trust under the rules of sections 671 through 679 and
- Receipt of certain large gifts or bequests from certain foreign persons

Now ***who must file*** the Form 3520? There are four reportable events which may trigger the filing of the form. They include –

1. the transferor responsible for any reportable event such as the creation of a foreign trust by a U.S. person or when there is a direct or indirect transfer of money or property to a foreign trust by a U.S. person.
2. any U.S. person who was treated as owner of any of the assets of a foreign trust under the grantor trust rules.
3. any U.S. person who during the tax year received a distribution from a foreign trust or
4. any U.S. person who received during the taxable year more than \$100,000 from a nonresident alien or foreign estates that was treated as a gift or bequest OR more than \$12,375 from foreign corporations that was treated as gifts. (The \$12,375 is for tax year 2005 only and is different for earlier years).

Now there are exceptions to filing Form 3520 for certain transactions and those seven exceptions can be found on the instructions to Form 3520.

Foreign Information Returns

Form 3520

– **Penalties for Failure to File**

- **IRC 6677, 6048, & 6039F**
- **Pre 12/31/2009 filing:**
 - **35% of amount transferred, 100% of transfer max**
- **Post 12/31/2009 filing:**
 - **The greater of \$10,000 or 35% of the amount transferred, 100% of transfer max**
- **5% of foreign gift, 25% of gift maximum**

There are **penalties** for not filing the Form 3520 on or before the due date or not including accurate information. The penalty for failing to file Form 3520 is 35% of the gross reportable amount and if the failure to file continues for more than 90 days after notification by the Service, a \$10,000 penalty for each 30 day the failure to file continues, with the maximum penalty amount capped at the gross reportable amount.

FOR RETURNS FILED AFTER 12/31/2009:

In 2010, P.L. 111-147, Sec. 535(a) (applicable to notices and returns required to be filed after 12/31/2009, as provided by Sec. 535(b) of P.L. 111-147, which appears as a note to this section), amended the concluding matter of subsec. (a) by inserting "the greater of \$10,000 or" and by substituting the sentence beginning "At such time . . ." for "In no event shall the penalty under this subsection with respect to any failure exceed the gross reportable amount."

Form 3520 is also used to report the receipt of gifts from foreign persons. Under IRC 6039F the penalty for failure to file Form 3520 is equal to five percent per month of the amount of such foreign gift for the period that the gift is not reported, up to a maximum of twenty-five percent.

Also, penalties will be imposed on the extent the transaction is not reported. For example, if a U.S. person transfers property worth \$1 million to a foreign trust, but only reports \$400,000 of that amount, penalties would only be imposed on the unreported \$600,000.

Foreign Gift – Tax Law Change for returns beginning with the 2012 return:

Law changes and now requires more people to file on receipt of lesser gift amounts.

Foreign Information Returns

Form 3520A

“Annual Information Return of Foreign Trust With a U.S. Owner”

- Who Must File
 - U.S. owner of foreign trust
 - Reports accounting of trust activities/operations

- Due Date for Filing
 - 15th day of 3rd month after end of trust's tax year

Now lets talk about Form 3520 A and ***who must file.*** Each (emphasize the word Each) person who is treated as an owner of any portion a foreign trust under the grantor trust rules is responsible for ensuring the filing requirement is met. The purpose of the form is to ensure a reporting and accounting of the trust activities and/or operations.

Foreign Information Returns

Form 3520A

- **Penalties for Failure to File**
 - IRC 6677, 6048
 - Pre 12/31/2009 filing:
 - 5% of the FMV of the trust, Max penalty is value of the trust
 - Post 12/31/2009 filing:
 - The greater of \$10,000 or 5% of the FMV of the trust, Max penalty is value of the trust

FMV of the trust = gross reportable amount

FMV includes income producing assets in addition to financial accounts.

Reduce FMV of asset by any encumbrances.

NOTE: Research if asset is a precious metal.

The **penalties for failing to file** Form 3520-A includes a continuation penalty if TP fails to file after being noticed. If the failure to file continues for more than 90 days after notification by the Service, then an additional penalty of \$10,000 for each 30 day period the failure continues, up to the gross reportable amount.

Why do we care about Foreign Info Returns & Penalties in OVDI?

- As we venture further into OVDI our agents must be vigilant:
 - in recognizing all filing requirements
 - Looking for potential unreported income
 - Making sure that all assets are included in the HAB calc if required
 - Consider FAQ #50 comparisons
 - Discuss potential OO ramifications

FOUNDATION

=

FOREIGN TRUST



STIFTUNG

=

FOREIGN TRUST



ANSTALT

=

FOREIGN CORPORATION



IBC

=

**INTERNATIONAL
BUSINESS CORPORATION**



CFC

=

**CONTROLLED FOREIGN
CORPORATION**



OPERATING

=

**CONDUCTING
REAL BUSINESS**



NON-OPERATING

=

**NO BUSINESS
USUALLY HOLDING
PERSONAL ASSETS**



DISREGARDED

=

ALL INCOME TO F1040



SHAM

=

NEVER EXISTED



SUBPART F

=

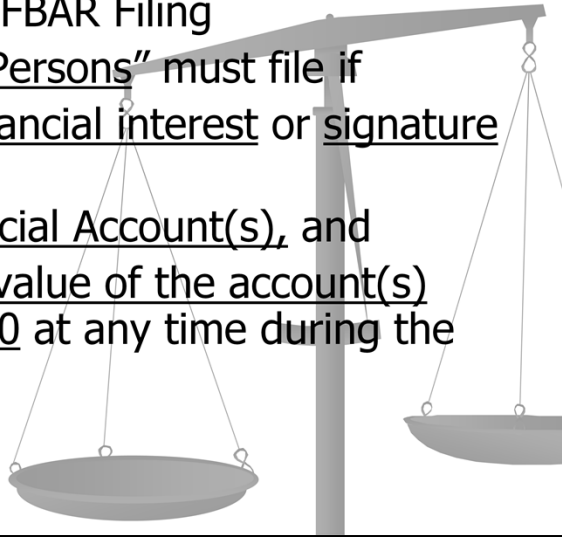
UNEARNED INCOME



FBAR Filing Basics

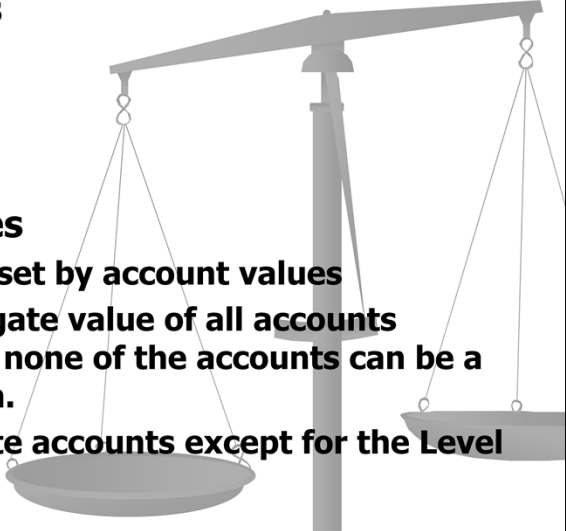
Four Elements of FBAR Filing

- “United States Persons” must file if
- They have a financial interest or signature authority over
- A Foreign Financial Account(s), and
- The aggregate value of the account(s) exceeds \$10,000 at any time during the calendar year.



FBAR Penalties

- **Warning Letters**
 - **Non-Willful**
 - **Willful**

 - **Mitigation Tables**
 - **Violation levels set by account values**
 - **Once the aggregate value of all accounts exceeds \$50K – none of the accounts can be a Level 1 violation.**
 - **Do not aggregate accounts except for the Level 1 violation test.**
- 

Account Balance	Penalty Structure	Account Balance	# of Violations	Computed Penalty Amount
Level I - Balance <\$50,000	\$500 for each violation, not to exceed an aggregate penalty of \$5,000			\$ -
Level II - Balance <\$250,000	\$5,000 for each violation, not to exceed 10% of the maximum balance in the account during the year			\$ -
Level III - Balance >\$250,000	\$10,000 for each violation			\$ -
Account Balance	Penalty Structure	Account Balance	# of Violations	Computed Penalty Amount
Level I - Balance <\$50,000	The greater of \$1,000 for each violation or 5% of the maximum balance in the account during the year			\$ -
Level II - Balance <\$250,000	The greater of \$5,000 for each violation or 10% of the maximum balance in the account during the year			\$ -
Level III - Balance >\$250,000 but <\$1,000,000	The greater of 10% of the maximum balance during the year or 50% of the account balance in the account as of the last day for filing the FBAR			
Level IV - Balance >\$1,000,000	The greater of \$100,000 or 50% of the closing balance in the account as of the last day for filing the FBAR			\$ -
			FBAR Penalty	\$ -

FBAR Penalty Example #1

- 2008 Year
 - Acct #1 12,000
 - Acct #2 15,000
 - Acct #3 22,000

- NW FBAR penalty?
- Willful FBAR penalty?

FBAR Penalty Example #1 - Answer

- 2008 Year

- Acct #1 12,000
- Acct #2 15,000
- Acct #3 22,000

- NW FBAR penalty? \$1,500
- Willful FBAR penalty? \$3,100

FBAR Penalty Example #2

- 2008 Year
 - Acct #1 \$ 12,000
 - Acct #2 \$ 100,000
 - Acct #3 \$ 265,000
 - Acct #4 \$1,200,000

- NW FBAR penalty?
- Willful FBAR penalty?

FBAR Penalty Example #2 - Answer

- 2008 Year

- Acct #1 \$ 12,000
- Acct #2 \$ 100,000
- Acct #3 \$ 265,000
- Acct #4 \$1,200,000

- NW FBAR penalty? \$ 26,200
- Willful FBAR penalty? \$ 747,500

Statement of Specified Foreign Financial Assets

► Information about Form 8938 and its separate instructions is at www.irs.gov/form8938.
 ► Attach to your tax return

OMB No. 1545-2195

Attachment
 Sequence No. 175

If you have attached additional sheets, check here

Name(s) shown on return	Identifying number
Number, street, and room or suite no. (if a P.O. box, see instructions)	
City or town, province or state, and country (including postal code)	
For tax year beginning	, 20 , and ending

Note. All information must be in English. Show all amounts in U.S. dollars. Show currency conversion rates in Part I, line 6(2), or Part II, line 6(2).

Type of filer
 a Specified individual (1) Married filing a joint return (2) Married filing a separate return (3) Other individual
 b Specified domestic entity (1) Partnership (2) Corporation (3) Trust

Check this box if this is an amended or supplemental Form 8938 for the tax year

Part I Foreign Deposit and Custodial Accounts (see instructions)

If you have more than one account to report, attach a continuation sheet with the same information for each additional account (see instructions).

1 Type of account	<input type="checkbox"/> Deposit	<input type="checkbox"/> Custodial	2 Account number or other designation
3 Check all that apply	a <input type="checkbox"/> Account opened during tax year	b <input type="checkbox"/> Account closed during tax year	
	c <input type="checkbox"/> Account jointly owned with spouse	d <input type="checkbox"/> No tax item reported in Part III with respect to this account	
4 Maximum value of account during tax year \$		
5 Did you use a foreign currency exchange rate to convert the value of the account into U.S. dollars? <input type="checkbox"/> Yes <input type="checkbox"/> No		
6 If you answered "Yes" to line 5, complete all that apply.			
(1) Foreign currency in which account is maintained	(2) Foreign currency exchange rate used to convert to U.S. dollars	(3) Source of exchange rate used if not from U.S. Treasury Financial Management Service	

**Next up
Streamlined Process**