

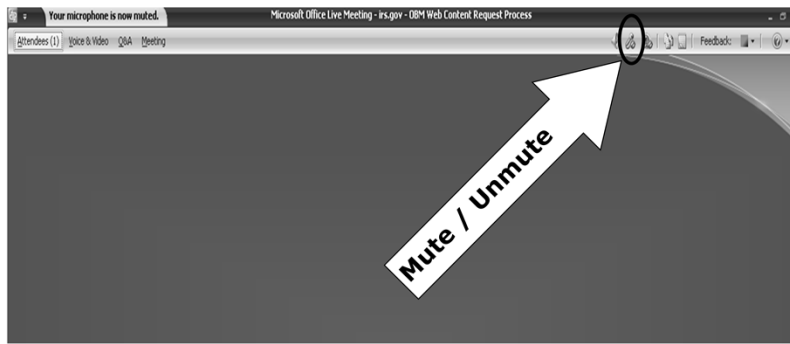
Disconnected or Trouble During the Session

Options:

- Wait...it may reconnect.
 - Exit the session. Re-open the invitation in your Outlook calendar. Click "Join the Meeting"
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Please Remain On Mute

Please also mute your telephone.



OVDI Opt-Out / Removal Foreign Penalty Workshop

Presented by

(b) (6)

Workshop Advisors

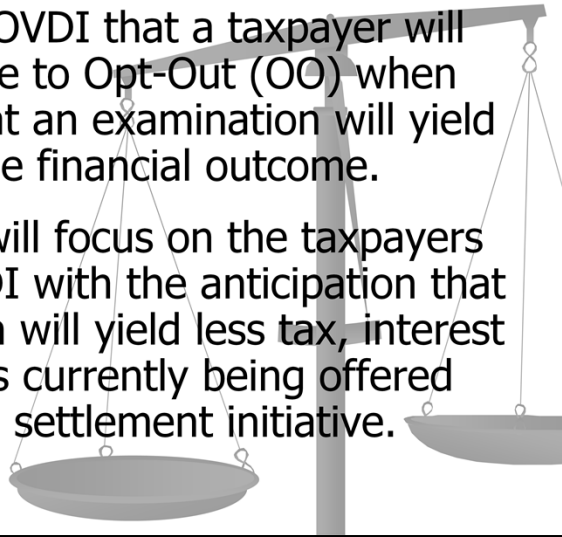
(b) (6)

	Why have a Workshop on Foreign Penalties?
	<ul style="list-style-type: none">■ To understand<ul style="list-style-type: none">– Filing requirements<li style="text-align: center;">&– Penalty structure

The Nature of an OVDI Opt-Out

We've found in OVDI that a taxpayer will generally choose to Opt-Out (OO) when they believe that an examination will yield a more favorable financial outcome.

This workshop will focus on the taxpayers who OO of OVDI with the anticipation that the examination will yield less tax, interest and/or penalties currently being offered under the OVDI settlement initiative.

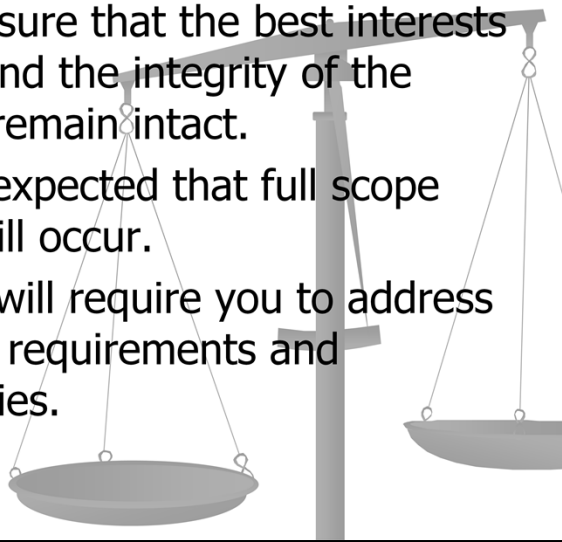


Integrity of OVDI

Your task is to ensure that the best interests of the Service and the integrity of the OVDI program remain intact.

In OO cases it is expected that full scope examinations will occur.

The examination will require you to address all foreign filing requirements and potential penalties.

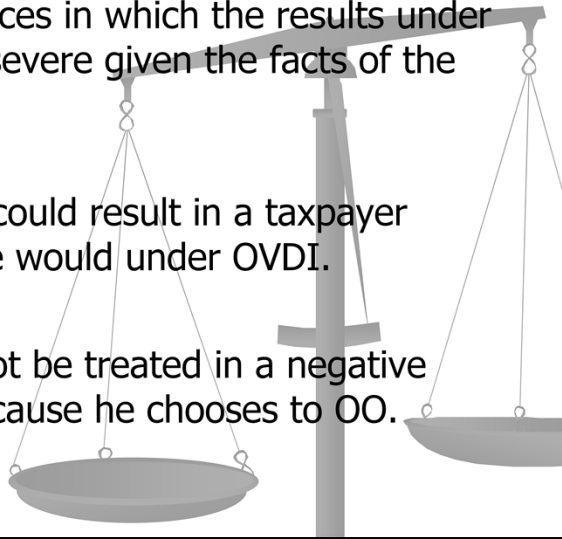


OO could be a Preferred Approach

There may be instances in which the results under OVDI appear too severe given the facts of the case.

An OO examination could result in a taxpayer owing less than he would under OVDI.

A taxpayer should not be treated in a negative fashion merely because he chooses to OO.

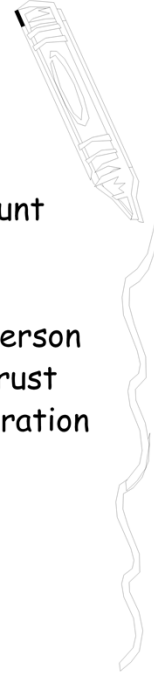


Who Opts-Out of OVDI?

- ◆ FAQs address scenarios where it may or may not be advantageous to Opt-Out.
- ◆ Taxpayer's with exposure to foreign information penalties generally do not choose to OO
- ◆ However, some have and are planning to raise a Reasonable Cause defense to their failure to file their information returns.

OO is Generally NOT Favorable in Certain Situations

- The TP has an unreported foreign financial account
- The TP has an unreported foreign asset
- The TP received a gift from a foreign person
- The TP received an inheritance from a foreign person
- The TP is an owner or beneficiary of a foreign trust
- The TP is an owner or officer of a foreign corporation
- The TP is a partner of a foreign partnership



Reasonable Cause

- Reliance on a tax preparer
 - Did the txp disclose to the preparer?
 - Preparer penalties

- Reasonable Cause is not lack of knowledge of the requirement to file a form

Foreign Penalties

- ◆ Create a separate case file for each year and for each information return
- ◆ We will be controlling these on ERCS – watch for future guidance on this
- ◆ Follow IRM 20.1.9
- ◆ Follow the Lead Sheets

Taxpayer Name:

Examiner:

TIN:

Tax Form: 3520

Date:

Tax Year (s):

OVDI-OOR: Form 3520 Penalty Issue Lead Sheet

Transactions with Foreign Trusts	Tax Year	Tax Year	Tax Year	Tax Year
IRC 6677 (PRII 659)- Initial				
IRC 6677 (PRII 702)- Continuation				

Conclusion: *(Reflects the final determination on the issue.)*

The following techniques are not intended to be all-inclusive nor are they mandatory steps to be followed. Judgment should be used in selecting the techniques that apply to each taxpayer.

Audit Steps: *(Document audit steps taken or to be taken.)*

Workpaper Reference

1. If the taxpayer is, or controls, any foreign trust where the transaction exceeds \$25,000, an International referral is required. See IRM Section 4.60.6. However, special procedures may apply to OOR-OVDI taxpayers which require that you discuss with your OVDI Technical Advisor if any of the mandatory conditions apply in your case.

Taxpayer Name:
 TIN:
 Tax Form:
 Tax Year:

Examiner:
 Date:



Form 5471 Penalty Issue Lead Sheet

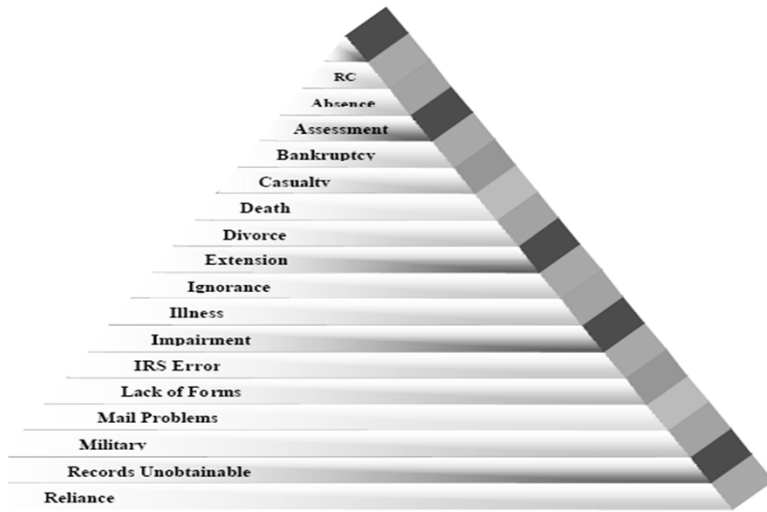
Tax Period	Per Return	Per Exam	Adjustment	Reference

Conclusion: *(Reflects the final determination on the issue.)*

The following techniques are not intended to be all-inclusive nor are they mandatory steps to be followed. Judgment should be used in selecting the techniques that apply to each taxpayer.

Audit Steps: <i>(Document audit steps taken or to be taken.)</i>	Workpaper Reference
1. Determine if taxpayer is a US citizen/resident [IRC sections (§§) 6035 and 6046] or 'US person' [IRC §§ 6038 and 7701(a)(30)]	
2. Determine if taxpayer was an officer, director, had " control " of any foreign business entities [IRC § 6038]; or became an officer, director, or 10% or greater shareholder in any foreign corporation [IRC § 6046].	

Office of Penalties and Interest
Failure To File - Form 5471
Decision Tree



IRM 20.1.9

International Penalties

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 - 20.1.9.1.4 - [Voluntary Disclosure Special Process](#)
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 - 20.1.9.2.1 - [Penalty Assessment—Form 8278, Assessment and Abatement of Miscellaneous Civil Penalties](#)
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- 20.1.9.4 - [IRC 6038\(c\) – Reduction of Foreign Tax Credit](#)
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 - 20.1.9.4.5 - [Reasonable Cause](#)

IRC 6039F(c) – Large Gifts From Foreign Persons

(1) [IRC 6039F](#) provides reporting requirements for U.S. persons who receive large gifts from foreign persons.

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20.1.9.10.1 (03-21-2013)

Reporting and Filing Requirements

- (1) U.S. persons who receive gifts from a foreign individual or foreign estate during the taxable year that in the aggregate exceed \$100,000 must file [Form 3520](#), *Annual Return to Report Transactions With Foreign Trust and Receipt of Certain Foreign Gifts*, and fill out Part IV of [Form 3520](#). These gifts are reportable under [IRC 6039F\(a\)](#).
- (2) The threshold for gifts received from a foreign corporation or a foreign partnership was statutorily \$10,000, but the amount is adjusted each year for inflation. For example, for 2011, the threshold for a filing requirement was raised to \$14,375. The instructions for [Form 3520](#) for any year will have the applicable dollar threshold for the filing requirement for that year. Failure to report gifts above the applicable dollar threshold for the relevant year is subject to penalties under [IRC 6039F](#). Gifts from foreign trusts are reportable as distributions from a foreign trust under [IRC 6048\(c\)](#) and failure to report such distributions on Part III of the [Form 3520](#) gifts is subject to penalties under [IRC 6677](#).

Note: [Form 3520](#) has four different parts that relate to different requirements for filing a [Form 3520](#). The obligation to file a [Form 3520](#) to report the receipt of a large gift from a foreign person by a U.S. person is reportable on Part IV of the Form.

INTERNATIONAL PENALTIES IN A NUTSHELL

Penalty Section	Description	Amount	Deficiency Procedures	Reasonable Cause Relief	Form	Effective Date
874(a)	Failure of nonresident alien individual to file return	Denial of deductions and credits (other than credits under §§ 31-33 [tax withholding on wages], 34 [fuel excise taxes] and 852(b)(3)(D)(ii) [RIC shareholder basis adjustment for undistributed capital gains])	Yes	No, but protective return procedure under § 1.874-1 and if t/p acted in good faith	1040NR	Tax years after 2002
882(c)(2)	Failure of foreign corporation engaged in U.S. trade or business to file return	Denial of deductions (other than § 170) and credits (other than credits under §§ 33 [tax withholding on wages], 34 [fuel excise taxes] and 852(b)(3)(D)(ii) [RIC shareholder basis adjustment for undistributed capital gains]). Does not apply for § 541 purposes (PHC tax).	Yes	No, but protective return procedure under § 1.882-4 and if t/p acted in good faith	1120-F	Tax years after 2002

Common Foreign Information
Returns

3520

3520-A

5471

926

8865

8938

Form **8938**
(November 2012)

Department of the Treasury
Internal Revenue Service

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 , 20

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).

CENTRA

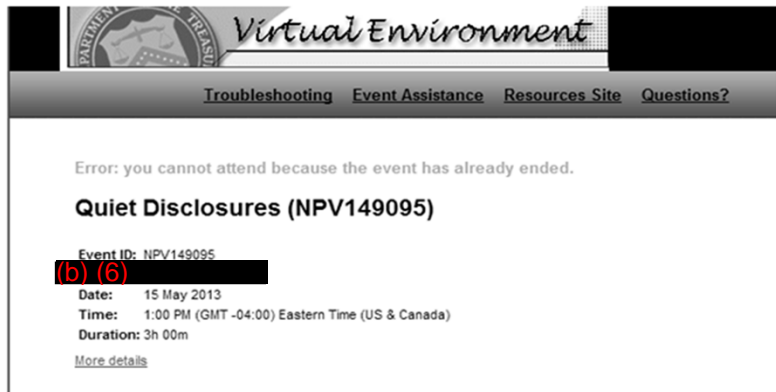
Quiet Disclosures

- We sent you the link and the slides
- OO is an Exam
- Quiet Disclosure is an Exam
- The information on penalties provided in the Centra course is applicable to your OO exams

Use the link below to download the CENTRA session for the 06/20/2013, OVDI-OOR International Penalties workshop.

http://ve.learning.irs.gov/main/User/GuestAttend.jhtml?s_guid=0000004df9a00000013e462803bd8024&domain=/

Follow the instructions on the screen shots below to save the recorded session to your computer.



The screenshot shows a webpage header with the IRS Treasury seal and the text "Virtual Environment". Below the header is a navigation bar with links for "Troubleshooting", "Event Assistance", "Resources Site", and "Questions?". The main content area displays an error message: "Error: you cannot attend because the event has already ended." Below this is the event title "Quiet Disclosures (NPV149095)" and the following details:

- Event ID: NPV149095
- (b) (6)
- Date: 15 May 2013
- Time: 1:00 PM (GMT -04:00) Eastern Time (US & Canada)
- Duration: 3h 00m
- [More details](#)

Workshop - Training

Charge your time to:

**683 – OTHER
TRAINING**



Next week's Workshop

Thursday June 27th

OVDI Opt-Out/Removal
Exam Techniques and
Administrative Issues