

**SBSE
Offshore Voluntary
Disclosure Initiative
(OVDI) 2011**

CENTRA Course **#45923**

Welcome, you are attending Offshore Voluntary Disclosure Initiative 2011 CENTRA training designed for examiners who have NOT worked offshore voluntary disclosure cases before.

SBSE OVDI 2011- training material

If you have not already downloaded the course materials, you may do so now by clicking on or pasting the link below:

<http://wsep.ds.irsnet.gov/sites/co/dcse/sbse/srm/hr/hrd/learning/coursedev/35888/default.aspx>

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You previously received information relative to downloading materials for this course from the L&E SharePoint site.

If you have not already downloaded the materials, please do so now by accessing the link below.

(Click or cut-n-paste)

SBSE OVDI 2011 - CENTRA – Today's Session

- **This Centra training will consist of 3 segments:**
 - 1. Submission requirements**
 - 2. Statute of Limitations**
 - 3. Offshore information returns, filing requirements and penalties**
- **The session will last approximately 2 hours**
- **This session is not pre-approved for CPA CPE credit, you can check with your state board to determine if this session meets their CPE requirements**

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This CENTRA training session is intended to highlight the key points of the 2011 OVDI, and will include discussion of the Program features that you need to be aware of as you start working these cases.

There are 2 topics the instructors will be discussing in this session

This training is expected to run between 1-2 hours

And it is not pre-approved for CPA CPE but you should check with your state association to determine if this session meets their CPE requirements

SBSE OVDI 2011 - Centra Training presenters

- David Breen, Counsel

(b) (6)



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All of the presenters involved with this training are from the SBSE division and each of them has extensive experience with offshore voluntary disclosures. They represent Counsel, Exam HQ and several Exam Areas.

Handout: SBSE OVDI 2011 - Contacts

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Contact information for these folks is one of the handouts found on the L&E's SharePoint site

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South Atlantic Area

OVDI 2011 Submission Requirements

Here's a direct link to the OVDI Submission Requirements:

<http://www.irs.gov/newsroom/article/0,,id=235584,00.html>

or refer to

2011 OVDI Frequently Asked Question - #25

Hello ... my name is (b) (6) for the 2011 OVDI program. I primarily service the SB/SE South Atlantic OVDI groups. Today I am going to cover the submission requirements for the 2011 OVDI program.

To get started ... You should have received access to a folder that contains handouts that correlate to this presentation. You will find a list of the submission requirements and significant forms. I encourage you to reference these forms throughout the lesson.

As you already know, we just completed the 2009 OVDI program and it's obvious that we learned a lot from that program. One of the biggest challenges we faced last time was getting the taxpayers to send in all of their records. We learned from that, and now for the 2011 program we asked for all of the necessary records upfront. That's right ... in order for a taxpayer to participate in the 2011 OVDI program they **MUST** submit certain records. In this part of our lesson we will go over each item in more detail.

But ... first things first ...

The taxpayers were first made aware of these submission requirements in one of two ways

One way was through the FAQs that were released when the OVDI program was announced in Feb 2011. FAQ #25 covers the submission documents.

The second place most taxpayers went to learn about the submission requirements was through irs.gov. See the direct link above.

So without any further ado let's get started ...

Original Federal Income Tax Returns

- Taxpayers must submit copies of previously filed original (and if applicable, previously filed amended) tax returns for years covered by the voluntary disclosure.

Original Federal Income Tax Returns

In order for us to complete the certification we must get RGS setup with all the correct starting information. We need the taxpayer's original tax returns and any previously filed non-OVDI amended returns. Having these returns will greatly simplify your life when you start to prepare the 4549-A.

Amended Federal Income Tax Returns

- Taxpayers must submit complete and accurate amended Federal Income Tax returns for all tax years covered by the voluntary disclosure.
- These amended returns must contain applicable schedules detailing the amount and type of previously unreported income from the foreign account or entity.
 - Sch B for interest & dividends
 - Sch D for Capital gains & losses
 - Sch E for Income from partnerships, S corps, estates or trusts
 - Foreign Information Returns ... 5471, 5472, 926, 8865, etc ...

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Amended Federal Income Tax Returns

Next, we need the taxpayer to provide Amended Tax Returns that reflect all of the properly reportable foreign income. It is not sufficient to give us the first two pages of the 1040X ... they must provide all the pertinent schedules and attach all required information returns that detail the previously unreported foreign income. The taxpayer is required to **Amend every year** where they previously failed to include the foreign income.

One more bit of information ... If the taxpayer meets the requirements to file an Information Return (which we will cover a little bit later) such as a 5471, 5472, 926 or an 8865 you will likely find it attached to the income tax return. So be sure to look for it. Normally filing requirements direct taxpayers to send Forms 3520 and 3520-A to Ogden ... they aren't generally attached to the tax returns ... but in OVDI ... the taxpayer may either enclose them loose in their package or they may attach them to the returns ... you never know ... so keep an eye out for them as well.

OVDI Letter

- **Criminal Investigation (CI) are the gate keepers to the OVDI program.**
 - All taxpayers wishing to make a voluntary disclosure must be reviewed and approved before they are allowed entrance into the OVDI program.
- **Taxpayers are required to complete and submit a 3-page letter that they download from irs.gov.**
- **This letter identifies the taxpayer, the undisclosed foreign accounts or assets, the value of the accounts, the unreported income and information concerning the history of the foreign accounts/assets.**
- **The taxpayer must sign the letter under penalties of perjury.**

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The OVDI Letter is a crucial piece of information for the certification process. This is where you learn about the history of the foreign accounts or assets. Everyone who makes a Voluntary Disclosure must submit the OVDI Letter to CI in order to gain access into the program. This 3-page letter was created with specific questions that the taxpayer must address so CI can evaluate a taxpayer's violation and either allow them into OVDI or deny entrance into the program. The taxpayer may submit their own version of the letter but they must address all of the questions that are found in the pro-forma OVDI letter that is available at irs.gov.

The 3-pager (as it's generally referred to) identifies the taxpayer who is making the voluntary disclosure as well as provides valuable details concerning the foreign accounts and assets. The information covers the source of the foreign assets, the value, the level of unreported income, the purpose of establishing the foreign accounts, contacts with the foreign banks, and more ...

It's important to note that the taxpayer must sign the letter under penalties of perjury ... basically We're looking for the truth ... the

whole truth. The 3-pager is a good place to start.

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								

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I really want to call your attention to one particular aspect of the 3-pager. The taxpayer is asked to provide an estimate of the annual range of highest aggregate VALUE of their offshore accounts/assets. They are also asked to estimate their total unreported INCOME from the offshore accounts/assets. As you will later learn this information may be very helpful during the certification process.

Send a Check to the U.S. Treasury

- **Taxpayers must remit payment.**
- **The check must include the amount of tax, interest and accuracy-related penalty under IRC § 6662(a) and if applicable, the failure to file and failure to pay penalties under IRC § 6651(a).**
- **If you can not pay the total amount as described above taxpayers must submit Form 433-A or Form 433-B as appropriate.**

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Please send a payment! That's right ... the taxpayer's were expected to remit payment for all tax, interest, accuracy and applicable delinquency penalties. You'll notice that the Miscellaneous Offshore Penalty (or MOP as we call it) was not required to be remitted upfront, although we do know that some taxpayers prepaid this as well.

If a taxpayer is unable to remit payment they may still participate in the OVDI program however they must submit the proper Form 433-A or Form 433-B with their submission package.

Foreign Account or Asset Statement

- Completed foreign account or asset statement.
- Separate statements for each foreign account or asset included in the voluntary disclosure.
 - Financial account information
 - PFIC
 - Asset information

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Foreign Account or Asset Statement

This is a new form created for the 2011 OVDI program. Every taxpayer will need to submit one form per foreign account or asset that is included in their voluntary disclosure. So it's fair to say that every taxpayer will have at least one form or why would they be in the program.

This form will be of particular interest to you during the certification process as it will provide you specific details concerning each foreign account/asset. The form even requires the taxpayer to identify if a PFIC is present in their foreign accounts. You'll learn more about PFICs later on but this form will be your first hint that you may encounter PFICs during the certification process.

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			
4	Is the offshore account a bank account holding cash, money market, or CD?	YES	NO	
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.

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Here's a quick look at the form. Question 13 address the PFIC.

Penalty Computation Worksheet

- The worksheet will show the taxpayer's determination of the highest aggregate balance (HAB) of his undisclosed offshore accounts, FMV of foreign assets and penalty computation.
 - Notice the penalty rate that the taxpayer is using
 - √ 5%, 12.5% or 25%
- The worksheet is to be signed by the taxpayer and the taxpayer's representative.

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Penalty Computation Worksheet

OK, here's where we really get down to business. The taxpayer must provide a penalty computation worksheet showing their highest aggregate balance (or HAB) for their foreign accounts as well as the FMV of any unreported foreign assets.

Even though this penalty computation workpaper was made available on irs.gov with a MOP penalty rate of 25% some taxpayers have modified their computation to reflect a different penalty amount. Just be aware of this during your review of the worksheet.

Also, this penalty computation is required to be signed by the taxpayer and if represented ... by the representative too.

PENALTY COMPUTATION WORKSHEET									
	2003	2004	2005	2006	2007	2008	2009	2010	
Acct #1 *									
Acct #2 *									
Acct #3 *									
Acct #4 *									
(add additional accounts as needed)									
Highest Aggregate Balance	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0
25% Offshore Penalty									
Highest Aggregate Balance is in year:									
Highest Aggregate Balance in USD is:									
Multiply the highest aggregate balance by 25%									
			25%						
Calculated Offshore Penalty:			\$0						
* For each year of your voluntary disclosure, provide the highest balance in the account (or fair market value of the asset)									
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				
I am submitting this Penalty Computation Worksheet and any accompanying documents. Upon information and belief, the statements herein are true and correct.									
Representative's Signature					Date				

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Here it is if you haven't seen a penalty computation worksheet yet. Notice the 8 years across the top ... the 25% MOP rate and the signature lines at the bottom.

Also ... the computation should be reflected in US Dollars.

Statute of Limitations - Consents

- **Completed and signed agreement to extend the period of time to assess tax (including tax penalties).**
- **Form 872**
- **Completed and signed agreement to extend the period of time to assess FBAR penalties.**

Consents

The taxpayers were required to sign statute extensions. One for income tax and penalties and one for FBAR penalties. Both of the forms were made available on irs.gov and already had certain fields pre-filled.

Form 872 for the income taxes covers the periods ending 2003 through 2008. You will learn more about this OVDI 872 and how to determine what years are valid to be extended. For now ... Just be aware that all years may not be extended by this 872 even though they are listed. I recommend that you pay particular attention to the lesson on OVDI statutes.

The FBAR consent covers the 2004 & 2005 years. The next slide displays this unique form.

**CONSENT TO EXTEND THE TIME TO
ASSESS CIVIL PENALTIES PROVIDED BY
31 U.S.C. § 5321 FOR FBAR VIOLATIONS**

WHEREAS, the parties to this agreement desire to extend the time during which the penalties provided by 31 U.S.C. 5321 may be assessed and collected,

WHEREAS, the parties to this agreement are aware that they have the right to refuse to sign this consent,

_____ (name and taxpayer identification number)

United States person, of _____ (address)

and the Commissioner of the Internal Revenue Service, hereby agree and consent to the following:

(1) For violations with respect to the requirement, established under 31 U.S.C. 5314, for a United States person to report having a financial interest in or signature authority, or other authority, over a financial account during the calendar years 2004 and 2005 that was maintained with a financial institution located in a foreign country, the amount of any penalty provided by 31 U.S.C. 5321 may be assessed at any time on or before December 31, 2012.

(2) This consent does not reduce, waive, or extend any period of limitation under 26 U.S.C. 6521 for assessing or collecting tax. This consent also does not supersede or amend any other agreement between the United States person and the Internal Revenue Service.

Date _____ Signature of the United States Person _____

Date _____ Signature of Authorized Representative _____

Date _____ Signature of the Commissioner's Delegate _____

_____ Title _____

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Here is the consent that is used for FBARs. Separate FBAR consent forms must be signed by each person, even if the accounts are jointly owned.

When you receive your cases you must thoroughly review all of the consents to determine if they are valid, have they been executed, and have proper updates been made to AIMS to reflect any date changes.

In OVDI ... if all goes well you will not need to rely on these consents ... however ... if the taxpayer elects to opt-out or is removed from the program these consents will be of vital importance.

Foreign Financial Institution Statement

- **Taxpayers who are disclosing offshore financial accounts with a HAB in any year of \$1 million or more, must submit a separate statement for each foreign financial institution.**
- **These statements will be used to identify promoters and banks.**

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Foreign Financial Institution Statement

Another new OVDI form. This time we are looking for information on any foreign accounts with an HAB of over \$1 million. We state right on the form that the IRS will use this information to identify promoters and banks who may have been involved in offshore activities.

FBARs

- The taxpayer must submit complete and accurate form TD F 90.22-1 for foreign accounts maintained during calendar years covered by the voluntary disclosure.
- If applicable, taxpayer must submit copies of previously filed FBARs.

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FBAR - Report of Foreign Bank and Financial Accounts

Taxpayers who have foreign bank accounts are required to file an FBAR every year when the aggregate balance of ALL of their foreign accounts exceeds \$10,000. There can be substantial penalties imposed for failure to do this.

As part of the OVDI submission requirements, taxpayers must submit complete and accurate FBARs for all years covered by the voluntary disclosure.

If the taxpayer previously filed FBARs they must send in copies.

Just so you know CBRS contains information on previously filed FBARs. You should gain access through a 5081 so you can check your taxpayer's FBAR filing history.

One final thing to consider ... FBARs can also be a good place to get information concerning an account's HAB

Foreign Financial Institution Statement
Statement ___ of ___

Name: _____
Social Security Number: _____

For those applicants disclosing offshore financial accounts with an aggregate highest account balance in any year of \$1 million or more, submit a separate Statement for each foreign financial institution where you held the funds you are now disclosing. At least one Statement must be submitted. These Statements will be used by us to identify promoters and banks. We may request additional information from you about promoters or banks.

Name of Foreign Financial Institution		Country where it is located	
Question			
		YES	NO
1	Did a representative of the foreign financial institution visit you in the United States regarding the offshore account or asset?		
2	Did a representative of the foreign financial institution suggest to you the use of offshore accounts, offshore investments, offshore entities or particular foreign countries as a way of avoiding taxes or avoiding the disclosure of your ownership of the account or asset?		
3	Did a representative of the foreign financial institution suggest to you the use of practices such as holding mail at the institution, using of prepaid phone cards, bank storage of account documentation, or conducting face to face meetings to avoid the disclosure of your ownership of the account or asset?		
4	Did a representative of the foreign financial institution or one of its U.S. subsidiaries provide services in the U.S. related to offshore accounts or assets (such as facilitating opening accounts, reviewing account activity, forwarding account statements, providing investment and/or tax advice, etc.)?		
5	Were you able to make deposits to or withdrawals from your offshore account through the use of a U.S. domestic branch office of the foreign financial institution?		
6	Were you able to access funds in your offshore account by the use of wire transfers made into the U.S.?		
7	Was an accountant, attorney, return preparer or other business person in the U.S. involved in setting up the offshore account, investment or entity or in advising their use?		
8	Was a U.S. bank, brokerage firm, or other financial services company involved in setting up the offshore account, investment or entity or in advising their use?		
9	Did a representative of the foreign financial institution attempt to discourage or prevent you from filing a voluntary disclosure with the IRS or repatriating the foreign funds into the U.S.?		
10	Did an advisor or other person attempt to influence you to move funds from one foreign financial institution to another or from one foreign country to another to avoid disclosure of the account or asset?		

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Here is a look at the Foreign Financial Institution Statement. I anticipate that this form will greatly assist you during your completion of the E-Trak database.

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.

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Offshore Financial Account Statements

This one is fairly straight forward ... if you have over \$500,00 in a foreign account you must submit your bank statements so we can verify your foreign income and confirm your HAB.

The taxpayer must explain any differences between the amounts indicated in the bank statements and their tax returns.

Taxpayers with accounts with less than \$500,000 must be prepared to provide bank records upon request. So basically, if you determine that you need the bank records to verify any part of the certification you should not hesitate to request them.

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.

Offshore Entities

... foreign partnerships, foreign corporations, trusts, foundations, etc ...
As part of making a complete and accurate disclosure the taxpayer must notify us of any offshore entities that they were involved in during the years covered by the voluntary disclosure.

There is no pro-forma format for this statement. The taxpayer may use any format that conveys the required information ... particularly their ownership or control share of each entity.

Information Returns Required to be Filed

- When accounts or assets were held in the name of a foreign entity, taxpayers must submit complete and accurate amended (or original, if delinquent) information returns required to be filed.
- Forms, including but not limited to, the 3520, 3520-A, 5471, 5472, 926 and 8865 for all tax years covered by the voluntary disclosure.
- If the taxpayer is requesting that the IRS waive the information report requirement, they should submit a complete and signed Statement on Dissolved Entities. (See FAQ 29)

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Information Returns

When accounts and/or assets are held in foreign entities or certain gifts and inheritances are received, taxpayers are required to inform the government through filing certain information returns. The more common information forms are the 3520, 3520-A, the 5471 and the 5472. All of these information returns will be reviewed in a few minutes.

Taxpayers in OVDI have a unique decision to make ...

They may provide us with complete and accurate amended or original information forms and continue the involvement with the foreign entity. Of course, going forward they would report all of their income and file the required information returns.

OR ... if they choose ...

A taxpayer may admit that the entity was a mere nominee or alter ego that had no business purpose other than to hold the foreign financial accounts. In doing so we ask that the taxpayer dissolve or terminate the entity and sign a separate STATEMENT ON DISSOLVED ENTITIES. The relief to the taxpayer is that they would NOT have to file the various information returns as normally required. In some cases this could represent a substantial savings to the taxpayer.

Here's some BONUS INFO ... not only is a STATEMENT ON DISSOLVED ENTITIES required but a 906 that address dissolved entities would also be prepared. You can find

the Dissolved Entity 906 on the national SharePoint site.

Estates, Executors and Advisors

- If the taxpayer is a decedent's estate, and the foreign account, asset or entity was not adequately disclosed on a required estate tax return, Form 706, the responsible party must submit a complete and accurate estate tax return (an original if none has been filed, a supplemental if merely adding assets).
- (b) (6) is our OVDI Estate and Gift Tax specialist.

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Estates, Executors and Advisors

This one sounds worse than it really is ... not all of our taxpayers are still alive ... especially in OVDI. Since our 2011 OVDI scope could potentially span eight years it is possible that your taxpayer may have died sometime during that period. It's up to the executor or advisor of the estate to make sure that all income tax returns are properly filed. But you already know that part ... here's where OVDI kicks in ...

Generally, when dealing with a decedent's estate we find that the foreign accounts or assets were not originally reported for estate tax purposes (on the Form 706) **AND** any income earned on these foreign assets was not reported for income tax purposes (either on the decedent's Form 1040 or on the estate's income tax return, the Form 1041).

As part of the OVDI submission requirements the Estate must file all required tax returns. These must be complete and accurate returns. If you secure the original returns, you should make a copy for your casefile and submit the originals for processing. Contact (b) (6) if you have any questions at all concerning estate tax questions.

This submission requirement also applies to any situation where a gift tax return would have been required.

In a nutshell .. In order to participate in OVDI ... a taxpayer must file all required tax returns ... the returns must be complete and accurate ... meaning that the foreign income is reported accurately!

What to do with decedent issues?

Whether you are working a case where your taxpayer is deceased prior to your involvement, or after your involvement, there are ways to deal with it...

Some of the OVDI 11 disclosures are made on behalf of decedents, either by executors, personal representatives, or family members. Sometimes, your taxpayer may die during the course of the OVDI certification. Either way, you should always remember to contact the E & G liaison, (b) (6)

(b) (6)

Discuss the facts of the case, including the dollars involved, with the Liaison to determine if a referral to E & G may be warranted.

Typically, the issues that could arise during the certification include, but are not limited to, the following:

- **The foreign bank account or other asset is the result of a gift or an inheritance**
- **The disclosing taxpayer is a donor (person who made the gift) or an estate**
- **The disclosing taxpayer is a decedent's estate reporting only income tax non-compliance**

Estate Tax Filing Requirements

Tax / Calendar Year	Minimum Gross Estate
2003	\$1,000,000.
2004	\$1,500,000.
2005	\$1,500,000.
2006	\$2,000,000.
2007	\$2,000,000.
2008	\$2,000,000.
2009	\$3,500,000.

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If the decedent had a gross estate (the Fair Market Value of all assets owned by the decedent, including the offshore asset(s) on the date of his/her death) equal to or in excess of the filing requirement, then an Estate Tax Return, Form 706, should be filed.

You can research whether a Form 706 was filed on behalf of the decedent by checking IDRS. Using Command Code BMFOL, you would check: BMFOLI123-45-6789V (the decedent's SSN followed by the letter V). The only thing that will show on IDRS with that format is the 706, if filed.

For all intents and purposes, there was no estate tax in calendar year 2010. There are extenuating circumstances depending up on the size of the estate, so contact the E & G liaison with any questions regarding decedent's estates from 2010.

Gift Tax Filing Requirements

Tax / Calendar Year	Minimum Gross Estate
2003	\$11,000.
2004	\$11,000.
2005	\$11,000.
2006	\$12,000.
2007	\$12,000.
2008	\$12,000.
2009	\$13,000.
2010	\$13,000.

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There may be times when you are told the taxpayer received the funds as gifts. If the donor was subject to US income tax, there should be a gift tax return, Form 709, filed by the donor reporting the gifts.

If there was no Form 709 filed by the donor (not the recipient), then you should again contact the E & G liaison to discuss a possible referral to E & G.

PFIC

- The taxpayer must provide a statement whether the amended returns involve PFIC issues.
- The taxpayer must indicate if they choose to elect the alternative MTM PFIC method allowed in OVDI.

PFIC – Passive Foreign Investment Company

... sounds scary doesn't it? It's really nothing more than a foreign mutual fund. I already told you that the taxpayer is required to indicate on the Foreign Account or Asset Statement if their investments include PFICs. This requirement now delves further into the PFIC issue and requires that the taxpayer make an election ... they can stay with the statutory 1291 PFIC computation or elect to utilize the alternative OVDI mark-to-market method. You will learn more about these concepts later on.

I will add, that we expect any taxpayer who has PFIC issues to have properly accounted for this in their amended tax returns.

Power of Attorney

- Taxpayers wishing to be represented must submit a form 2848 with the unique OVDI language requirements.
- The OVDI form 2848 is available on irs.gov.
 - Sec. 3 – Matters must include:
 - Income, civil penalties & FBARs
 - Sec. 5 – Acts authorized must include:
 - The appropriate reference to FBAR related matters

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The Power of Attorney form is not really a submission requirement as not every taxpayer chooses to be represented but it seems to fit in here so let's cover it.

Since the OVDI program covers a lot of ground the F2848 that we utilize also has to reflect that same coverage. Taxpayers could go onto irs.gov and download a F2848 with all the OVDI language requirements. Even though a newer version of the F2848 is now available we are **NOT** required to solicit the newer version. As long as the form you are dealing with has income, civil penalties and FBARs listed under section 3 and section 5 has the appropriate FBAR related matters reference you are good to go.

If for some reason you do not have a valid POA and need to seek a new one, you **should** use the current version of form 2848 (revised 2/2012). The new form has been updated by Counsel to reflect the proper OVDI requirements. You'll find this newly updated OVDI f2848 in the handouts for this lesson.

CI Folder

- Every OVDI case should contain a **blue CI folder**.
- Each folder should contain **2 critical items**
 - The first is the CI 3-page letter completed and signed by the taxpayer.
 - The second is CI's acceptance letter to the taxpayer outlining the requirement of continued cooperation throughout the OVDI process.

One last topic before I send you onto the next OVDI lesson ...

Every OVDI case that you receive **SHOULD** have a blue folder in it someplace. This is the CI folder. This folder contains two critical items.

First ... this is where you usually find the CI 3-page OVDI Letter. Remember, we spoke about that before.

The second piece of information is the letter that CI sends to the taxpayer informing them that they are accepted into the OVDI program. This letter outlines the requirement that the taxpayer continue their cooperation throughout the OVDI process. Sometimes taxpayers need to be reminded of this.

Well ... there you have it ... the 2011 OVDI Submission Requirements.

(b) (6)

(b) (6)

South

Atlantic Area

Statute of Limitations

In this presentation we will cover statute of limitation issues that you may encounter while working offshore voluntary disclosure cases.

My name is (b) (6) (b) (6) for the 2011 OVDI program. I work for SBSE in the South Atlantic Area. You can reach me at (b) (6). This number and other contact information can be found on the OVDI SharePoint site.

Our regular workload in SB/SE normally does not involve offshore issues, but all of you are familiar with computing assessment statutes, and all of you know that the regular income tax assessment statute is three years from the date the taxpayer files the return.

Most of you are also familiar with exceptions to this standard three year assessment statute, such as the six-year assessment statute for substantial omissions of income, or the open-ended assessment statute for fraud.

We will touch on those exceptions very briefly. However, this presentation is designed to cover alternative assessment statutes

and the related issues that could apply to taxpayers with offshore accounts and assets.

Statute of Limitations

The Service (YOU) must protect the statute of limitations on every case.

- **IRC § 6501: Limitations on assessment and collection**
- **IRM § 25.6: Statute of Limitations**

- Statute protection remains critically important Although working with barred years, open statute protection is the same as for any examination case
- In 2011 OVDI, as in regular examination cases, IRC Section 6501 is the authority for determination of the SOL's for these cases.
- And as with any examination case, IRM Section 25.6 provides the procedural information concerning Statutes of Limitations

Statute of Limitations

Question: How are we assessing tax in barred years?

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- We have mentioned working barred years which leads to this question
- For most of these case years included in the 2011 OVDI program, such as case years 2003 through 2007, the 3-year statute of limitation has expired.

Statute of Limitations

Question: How are we assessing tax in barred years?

Answer: The Taxpayer will execute a Closing Agreement (Form 906) waiving any defense that the statute of limitations is expired.

- **Reference: IRM Section 8.13.1: Closing Agreements**

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- Here is the answer to how and why we are using your time to work years with barred statutes
- Because we anticipate closing with Form 906, a Closing Agreement, under which the barred years' tax may be assessed
- For more information on using the Closing Agreement language for the taxpayer to waive defenses that the Statute of Limitations is expired, you can refer to these resources:
- IRM Section 8.13.1 provides information on Closing Agreements in general.

Statute of Limitations

- In 2011 OVDI when an income tax year is opened and there is a barred statute, Alpha code “YY” will be used.

Example: Timely filed 2004 Form 1040 with an ASED of 04/15/2008 will be updated to 04/YY/2008 on ERCS and AIMS.

- After Form 906 is fully executed (Taxpayer and IRS signatures), the Technical Services function will update the Alpha code from “YY” to “AB” which enables CCP to make the 2011 OVDI income tax assessments.
- IRM Exhibit 25.6.23-3

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- The administrative procedures are in place to reflect the barred years using the Alpha code “YY”; procedures for updating these ASED’s to “YY” will be covered in Area workshops.
- Generally, the process will work this way: after Form 906 is fully executed by all parties, the ASED will be updated to “AB” which allows the assessment because we cannot assess tax under the “YY” Alpha code.
- The “YY” Alpha code may also be used in 2011 OVDI situations where there is an unexpired statute. A decision may be made to allow the ASED to expire on an open year, such as in the case of a deceased taxpayer for which no authorized representative is identified to sign a statute extension consent. In these cases you will use a “YY” memo to document the reasons for the decision. Approvals by your manager and the TM are required for the YY memo.
- IRM Exhibit 25.6.23-3 explains the use of the Alpha code AB to hold open the SOL for assessment through the use of a Closing

Agreement

Statute Procedures

Question: What special 2011 OVDI procedures are in place for open statutes?

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- Now that we've explained the use of the Form 906 terms to allow an assessment in closed years, this question may arise

Statute Procedures

Question: What special 2011 OVDI procedures are in place for open statutes?

Answer: YOU MUST PROTECT 2011 OVDI OPEN STATUTES as you would in any examination case. There are no special 2011 OVDI procedures for protecting open, “Live”, statutes.

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- Without regard to F906, open Statutes of Limitations must be protected as in any examination case
- It is our job as RA's to protect all open statutes, even if there is a high likelihood that the Form 906 Closing Agreement will eliminate expired SOL defenses. Furthermore, if the taxpayer opts out of OVDI, regular examination procedures will be instituted (not just certifications) and we will need to keep as many years open for examination as possible.
- Also, in the instance of an opt out examination, you will need to be aware of the statute of limitations rules for claiming a refund of an overpayment. IRC Section 6511 is the source for those rules.

Statute Protection in 2011 OVDI

- **By Consent: IRC § 6501(c)(4)**
- **Exceptions to IRC § 6501(a) and FATCA**
- **Quick Assessments of signed 1040X's**

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•2011 OVDI statutes may be impacted by exceptions you are not now familiar with, as well as the procedures you routinely use for statute protection in any examination case

•Let's focus on the major 3-year ASED exception tools we anticipate in OVDI

•The consent process is the same as for general exam. However, in OVDI you may see a proportionally higher number of decedents. This will also require you to familiarize yourself with other documents such as Letters Testamentary and Form 56. Counsel and your Area TA's are available to help you with those cases where the IRM does not address your specific issues and fact patterns.

•We will talk about "FATCA". FATCA is the acronym for the Foreign Account Tax Compliance Act. This is a 2010 law which provides several new and revised exceptions to the 3-year ASED rules.

•Also, because Taxpayer's participating in OVDI are required to submit 1040X's, we may assess the additional tax reported on the signed 1040X's (rather than allowing the SOL to expire without assessment.)

Extension by Agreement (Consent)

- **IRC § 6501(c)(4)**
- **Form 872**
- **IRM 25.6.22**

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- We should all be familiar with the consent process as authorized by IRC section 6501(c)(4).
- You will utilize the same IRM procedural guidance for OVDI cases as with any income tax case, including properly preparing and processing Forms 872 and statute control procedures within your group.
- A key element of the voluntary disclosure is the taxpayer's cooperation. This encompasses agreements to sign consents to extend assessment statute of limitations. FAQ 7 explicitly lists cooperation in signing consents as a term of cooperation.

Exceptions to IRC § 6501(a) and FATCA

- **IRC § 6501(a) provides for the 3-year statute period for assessment**
- **Exceptions to the 3-year statute period**
 - **No return filed: IRC § 6501(c)(3)**
 - **False/Fraudulent returns: IRC § 6501(c)(1) and (2)**
 - **25% Omission of gross income: IRC § 6501(e)(1)(A)(i)**
 - **FATCA exceptions: IRC § 6501(c)(8) and IRC § 6501(e)(1)(A)(ii)**

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- You are also probably familiar with most of these other exceptions to the general 3-year rule found at 6501(a).
- In 2010, FATCA provided additional exceptions and broadened some existing exceptions

Foreign Account Tax Compliance Act (FACTA)

Enacted in 2010

- New rules for reporting foreign financial assets (IRC § 6038D and Form 8938) effective for tax years beginning after 03/18/2010.
- Revisions and additions to IRC § 6501 to provide for extended statute of limitations dates related to foreign accounts/assets and entities.
- Requires foreign financial institutions (“FFIs”) to report directly to the IRS certain information about financial accounts held by U.S. taxpayers, or by foreign entities in which U.S. taxpayers hold a substantial ownership interest.

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- To put these statute provisions in context, let's discuss FATCA
- In addition to the statute-related changes, several other important provisions were enacted
- The IRC Section 6038D requirement was added: FBAR-like information reports (Form 8938) are to be filed with 1040. This requirement ties back to an additional SOL exception added with FATCA.
- Although not specifically tied to the SOL exceptions, the additional reporting requirements for FFI's is often in the recent news and FATCA is the source of those requirements.
- Here, however, we are most concerned with the FATCA impact on SOL's

FACTA and 3-year ASED Exceptions

- **March 18, 2010 revisions to IRC § 6501 impacting taxpayers with foreign financial assets/accounts and/or foreign entities**
- **IRC §6501(e): \$5,000 of unreported income from a foreign financial asset (as described at IRC § 6038D) and an ASED still open on 03/18/2010, then statute extended by 3 additional years (“NN”)**
- **IRC § 6501(c)(8): If an information reporting requirement is not met for foreign entities/transactions, statute extended to 3 years from the date information provided to IRS; may now apply to whole return, not just the missing information items (“UU”)**

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- So, here is how FATCA impacts Statute expiration dates. As of March 18, 2010, FATCA provided revisions to IRC Section 6501 impacting taxpayers with foreign financial assets and accounts and/or foreign entities.
- A new provision was added to 6501(e). In addition to the 25% omission exception at 6501(e), now there is the ability to extend the statute expiration date by an additional 3-years, for a 6 year total SOL period; this exception applies to returns for which there is \$5,000 of unreported income from assets and accounts subject to reporting under the new section 6038D. This new exception applies to any return for which the statute of limitations was open on 03/18/2010. Therefore, 2006 and subsequent years may have extended statutes under this new provision.
- FATCA also broadened the scope of IRC § 6501(c)(8).
- This section lists the information reporting code sections to which this statute exception applies. For instance, if the taxpayer has failed to file Form 3520 regarding a foreign trust as required under IRC section 6048, then 6501(c)(8) will apply because section 6048 is one of the information reporting sections specified under 6501(c)(8).
- Prior to FATCA, only return items related to the information reports were subject to the extended statute period. 6501(c)(8) was updated to provide that: With FATCA, the updated assessment statute expiration date which is 3 years from the date the information is provided may apply to the whole return, if the failure to provide the information is due to willful neglect (and there is no reasonable cause for the failure.)
- More detailed information on the impact of FATCA provisions on exceptions to the 3-year general statute rule can be found in the Director of Examination's memo of August 17, 2011
- If these provisions are relied upon to let the 3-year statute expire, TM advanced approval is required after you and your manager make this decision.
- The IRM explains the use of the alpha codes for 6501(e) which is NN. For 6501(c)(8) updates you will use UU (If UU is used under the pre-FATCA 6501(c)(8) provisions, the alpha update also requires treatment as a restricted consent because it only applies to the missing info items, not the whole return.)

Quick Assessment of Signed 1040X's

**If the taxpayer tells us what the tax liability is,
no Statutory Notice of Deficiency (SND) has
to be issued:**

- Original return**
- Amended return**
- Taxpayer waives receipt of SND (Forms 870;
4549; Manko v Commissioner, 126 T.C. 9
(2006))**

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- Another statute protection procedure which you will encounter in working these cases is a Quick Assessment. In the OVDI program, quick assessments may be possible from submitted 1040X's.
- If the taxpayer has provided a valid 1040X (with complete signatures), we may assess tax from that return if the assessment statute date has not expired. More information on Quick and prompt assessments will be discussed in the Case and Penalty Development CENTRA session.
- Although this procedure protects the tax assessment, we are not able to assess any return-related penalties.
- So, keeping the Assessment Statute Expiration Date open, by consent or an exception to the 3-year period, until conclusion of the case, remains the preferable way to go.

2011 OVDI Submission Requirements for SOL Extensions

All applicants: Properly completed and signed agreements to extend the period of time to (1.) assess tax (including tax penalties) and (2.) to assess FBAR penalties.

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- The planners of 2011OVDI anticipated the statute protection needs and signed consents were included as part of the submission package requirements.
- Each taxpayer preliminarily accepted into 2011 OVDI program should have submitted consents, Not only for income tax, but for FBAR penalties as well.

2011 OVDI Submissions Requirements for SOL Extensions

2011 OVDI Submissions required to include properly completed and signed Form 872 for periods 2003-2008 extending the ASED to 12/31/2012.

Submitted 872's, if properly executed by the taxpayer, will extend the ASED for any period listed on Form 872

- **for which the statute was open at the time the taxpayer signed and**
- **for which the statute was open at the time the Service executed.**

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- The 872 posted at irs.gov included the 2003-2008 OVDI years, some of which may have expired SOL's. (In fact most years for the range of 2003-2008 were most likely expired by the time of the program announcement and/or submission dates.)
- As long as the ASED was open at the time the consent was executed by the taxpayer and IRS, the SOL will be properly extended for that year. The listing of barred years on the consent form does not invalidate the consent for the properly extended year or years.

2011 OVDI Submission Requirements for SOL Extensions

- 2011 OVDI Submissions required to include properly completed and signed consent forms to extend the period for FBAR penalty assessments for 2004 and 2005 to **12/31/2012**.

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- The taxpayers were also required to provide a consent to extend the SOL for assessing FBAR penalties.

- Read slide

Consents for FBAR Penalty Assessment Statute Extensions

- FBAR penalty ASED's are 6 years from the due date for FBAR filing whether the Form TDF 90-22.1 was filed or not, or late-filed.

Example: The filing due date for 2005 FBAR's was 06/30/2006. Whether the FBAR was filed or not, or late-filed, the ASED for the penalty is 06/30/2012, unless extended by consent.

A few comments about FBAR penalty assessment SOL's. READ Slide

- Remember, Unfiled or late-filed FBAR's have no impact on the penalty assessment statute date and The SOL remains at 6 years after the due date for the FBAR (transaction date), unless extended by consent

Consents for FBAR Penalty Assessment Statute Extensions

- **Submitted FBAR penalty assessment extension consents properly executed by the taxpayer will extend the ASER for any period listed on the consent.**
 - **The Service may execute after the assessment date has expired.**

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• Proper execution of the consent means that it has a valid taxpayer or representative's signature. If signed by the representative, you must ensure that there is a properly completed F2848 authorizing the representative to act on the behalf of the taxpayer on FBAR matters.

• A difference from income tax statute extension consents is that the time of execution of the consent by IRS does not impact the validity of the consent.

• We hope this presentation has provided you with the resources to help you better understand statute of limitation issues you will see in 2011 OVDI cases. As the issues arise in your cases, please involve your Technical Advisor, if you encounter any statute issues that you need assistance in resolving.

Now, you will learn more about Offshore information returns and penalties from the next presenter, (b) (6)

(b) (6)

Midwest Exam Area

Applicable Information Returns & Associated Penalties for Noncompliance

Taxpayers engaged in offshore transactions, investments or account holdings have a responsibility to ensure all relevant information returns and disclosures involving these activities are properly filed and reported as required.

As discussed in previous modules, taxpayers participating in OVDI must abide by the terms of the program and the FAQ's developed to describe various scenarios.

(Provide a general overview of the module including information returns that may be required of some of the taxpayers participating in OVDI. Also point out that under terms of OVDI program, taxpayers are expected to fully cooperate and file complete and accurate information returns as necessary to be in full compliance with tax laws.)

Applicable Information Returns & Associated Penalties for Noncompliance

- **FAQ 5 provides detail of some of the information returns and disclosure requirements that accompany certain offshore investments and financial activities as well as the penalties that may apply should taxpayers fail to fulfill their obligations.**
- **This information is provided to taxpayers to ensure taxpayers understand the penalties that might apply outside of OVDI if they didn't come in under voluntary disclosure or if they were later removed or opt-out of OVDI.**
- **This information also provides examiners an overview of some of the disclosure statements and information returns that taxpayers may need to provide to be in compliance with the terms of OVDI.**

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(Discuss FAQ 5 and purpose of module to provide a general overview of the information reporting requirements of certain taxpayers. It's not necessary for revenue agents to have a full and complete understanding at this point of all the disclosures and associated penalties for non-compliance included in this module. Rather, the purpose is to provide a general overview to allow agents to understand what information may be required from certain taxpayers when performing OVDI certifications.

Information contained in this module is reflected not only in the respective IRC sections but an overview is also provided in FAQ 5.)

Form TD F 90-22.1 Report of Foreign Bank and Financial Accounts – commonly known as an “FBAR”

- U.S. citizens, residents and certain other persons must annually report their direct or indirect financial interest in, or signature authority over, a financial account that is maintained with a financial institution located in a foreign country if, for any calendar year, the aggregate value of all foreign accounts exceeded \$10,000 at any time during the year.

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(It's important to point out that FBAR statements are required by both account holders as well as persons who have signature authority over a financial account in a foreign jurisdiction. Also, if the aggregate value of ALL foreign accounts exceeds \$10,000 at any time during the year, FBAR reporting obligations are triggered.)

Form TD F 90-22.1 Report of Foreign Bank and Financial Accounts – commonly known as an “FBAR” (continued)

- Generally, the civil penalty for willfully failing to file an FBAR can be as high as the greater of \$100,000 or 50 percent of the total balance of the foreign account per violation. 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 (typically per year).

(Brief discussion on the penalty applications for willful versus non-willful failure to file FBAR statements. This may be among the most relevant of the information return penalties since it is likely most, if not all, taxpayers in OVDI will have an FBAR filing requirement.)

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 the creation of a foreign trust by a United States person, transfers of property from a U.S. person to a foreign trust and receipt of distributions from foreign trusts under IRC § 6048.
- This information return also reports the receipt of gifts from foreign entities under IRC § 6039F.

(Discuss the general purpose of the form and taxpayers who are required to file.)

Form 3520

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

- The penalty for failing to file each one of these information returns, or for filing an incomplete return, is 35 % of the gross reportable amount, except for returns reporting gifts, where the penalty is five percent of the gift per month that the form is delinquent, up to a maximum penalty of 25 % of the gift.

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(Discuss general penalty provisions for non-compliance related to this disclosure.)

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 U.S. person who is the owner of a portion of the foreign trust has responsibility for filing Form 3520-A.

The penalty for failing to file each one of these information returns or for filing an incomplete return, is five percent of the gross value of trust assets determined to be owned by the United States person.

(Discuss the general purpose of the form and taxpayers who are required to file.)

Discuss general penalty provisions for non-compliance related to this disclosure.)

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.

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(Discuss the general purpose of the form and taxpayers who are required to file.)

Form 5471

Information Return of U.S. Persons with Respect To Certain Foreign Corporations

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 \$60,000 per year per foreign corporation.

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(Discuss general penalty provisions for non-compliance related to this disclosure.)

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 % 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.

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(Discuss the general purpose of the form and taxpayers who are required 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

The penalty for failing to file each one of these information returns, or to keep certain records regarding reportable transactions, is \$10,000, with an additional \$10,000 added for each month the failure continues beginning 90 days after the taxpayer is notified of the delinquency, up to a maximum of \$60,000 per year per foreign corporation.

(Discuss general penalty provisions for non-compliance related to this disclosure.)

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 10 % 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.

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(Discuss the general purpose of the form and taxpayers who are required to file.)

Discuss general penalty provisions for non-compliance related to this disclosure.)

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.

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(Discuss the general purpose of the form and taxpayers who are required to file.)

Form 8865

Return of U.S. Persons With Respect to Certain Foreign Partnerships

- Penalties under IRC § 6046A 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 \$60,000 per year per foreign partnership.
- Additionally, 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.

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(Discuss general penalty provisions for non-compliance related to this disclosure.)

Fraud Penalties

- **IRC § 6651(f) Fraudulent Failure to File**
- **IRC § 6663 Civil Fraud**

(Discuss the relevant code sections applicable to civil fraud penalties. The government bears the burden of proving fraud in order to sustain penalties under the stated code sections.)

Fraud Penalties

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 % of the unpaid tax.

(When the government is able to show by clear and convincing evidence that fraud has been committed by the taxpayer, penalties up to 75 percent of the unpaid tax may be applicable.)

Failure to File

- **IRC § 6651(a)(1)**

Generally, taxpayers are required to file income tax returns. If a taxpayer fails to do so, a penalty of 5 % of the balance due, plus an additional 5 % for each month or fraction thereof during which the failure continues may be imposed. The penalty shall not exceed 25 %.

(Penalty applications under this code section may apply within OVDI program depending on the facts of the case.)

Failure to Pay

- **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 % of the amount of tax shown on the return, plus an additional .5 % for each additional month or fraction thereof that the amount remains unpaid, not exceeding 25 %.

(Penalty applications under this code section may apply within OVDI program depending on the facts of the case.)

Accuracy Penalties

- **IRC § 6662**

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 % or 40 % penalty.

(Penalty applications under this code section will likely apply to most of the cases in the OVDI to the underpayment of tax reflected on the Form 4549-A. This disclosure in FAQ 5 simply informs taxpayers that in addition to other possible penalty applications they may be subject to outside of OVDI, accuracy penalties may be applicable in addition to the other penalty amounts.)

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