

2012 Offshore Voluntary Disclosure Program

Are you a US taxpayer with undisclosed income from offshore accounts? The IRS is offering an opportunity for you to get current with your income tax returns. In January 2012, the IRS began an open-ended offshore voluntary disclosure program (OVDP) that offers clear benefits to encourage taxpayers to disclose foreign accounts now rather than risk detection by the IRS and possible criminal prosecution. **The IRS may end the 2012 program at any time** in the future so it is important to

Can I participate in the program?

The first step to participate in the program is to submit a "Pre-Clearance" letter to the IRS Criminal Investigation Lead Development Center requesting to join the program. Within 48-72 hours of receiving the pre-clearance letter, the IRS will notify the taxpayer or their representative whether or not they are cleared to make the offshore voluntary disclosure. Clearance can be denied if the taxpayer is already on the IRS's list of known owners of undeclared foreign assets. If accepted, they have 45 days to submit all required documents. Pre-clearance does not automatically guarantee acceptance into the program

What are the terms of the program?

To be accepted into the program, an applicant must submit the following items to the IRS for the eight year voluntary disclosure period.

- Copies of previously filed original 1040s (and any filed amended returns for the period)

- File amended returns for the period with all applicable schedules indicating the amount and type of previously unreported income
- Copies of completed FBARs
- A completed and signed copy of the Offshore Voluntary Disclosures letter and attachments
- A completed penalty computation worksheet
- Completed and signed agreement to extend the period of time to assess tax (including tax penalties) and to assess FBAR penalties
- Completed Foreign Account or Asset Statement if not included in the initial Offshore Voluntary Disclosure Letter
- A check for the tax, interest and penalties owed to the IRS
- If you are disclosing offshore financial accounts with an aggregate account balance in any year of \$500,000 or less, copies of your offshore financial accounts must be made available upon request
- If you are disclosing offshore financial accounts with an aggregate account balance in any year of \$500,000 or more, you must submit copies of your financial account statements reflecting all account activity. Differences between what is being reported and what is on the financial statements must be explained
- If you are disclosing
 - offshore entities,
 - unreported estate and gift tax returns,
 - Passive Foreign Investment Company (PFIC) or
 - applicants that have Canadian registered savings plans (RRSP) or registered retirement income funds (RRIF) who make late elections to defer US tax on earnings from those accounts

additional items must be submitted. [Contact us](#) for a list of those

items.

Are there penalties that I have to pay with the OVDI program?

Yes. In addition to any tax owed on the unreported income, penalties are imposed.

27.5% offshore penalty - If the aggregate balance of your offshore accounts exceeds \$75,000, the penalty will be calculated using your highest aggregate balance for the eight year period. This penalty is **reduced to 12.5%** if the aggregate balance of your accounts was less than \$75,000 for the period.

The offshore penalty can be reduced to 5% if:

1. the taxpayer was a foreign resident and was unaware of US citizenship **or**
2. the taxpayer did not open or cause the opening of an account, had minimal and infrequent contact with the account, did not withdraw more than a \$1,000 from the account in any noncompliant year (unless to close the account and send funds to the US), and can establish that all applicable US taxes have been paid **or**
3. for all years covered under the program, the taxpayer has resided in a foreign country, has timely complied with all reporting requirements in their country of residence and had \$10,000 or less of US source income each year

20% accuracy related penalty – bases on the total underpayment for the eight year period

Failure to pay and failure to file penalties may also be imposed, if appropriate.

What if I do not agree with the IRS conclusions?

If you find the offshore penalty unacceptable, you can opt out of the program. This means that you reject the IRS penalty proposal. When you have opted out, the

election is irrevocable. Your case will then be handled under the standard audit process. A full audit for the eight years will occur and if any information is discovered that is inconsistent with your OVDI submission, criminal proceedings could be started. Additionally, civil FBAR penalties can be assessed. The FBAR penalties can greatly exceed any OVDI penalties!
