

IRS Hot Topics

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Penalty relief for delinquent FBARs and international information returns

In January 2012, the IRS announced a third, now permanent, 2012 Offshore Voluntary Disclosure Program (2012 OVDP). On June 26, 2012, the IRS released detailed guidance for participating in the 2012 OVDP, including Frequently Asked Questions (“FAQs”). While the 2012 OVDP focuses on taxpayers who owe tax, similar to the two prior temporary offshore voluntary compliance initiatives, the 2012 OVDP FAQs also include penalty relief for delinquent TD F 90-22.1, *Report of Foreign Bank and Financial Accounts* (“FBARs”) and international information returns. More information about this penalty relief is provided below. For details on the January announcement of the 2012 OVDP, see [***IRS Hot Topics: IRS reopens offshore OVDI program for indefinite time period.***](#)

FBAR penalty relief

The penalty for failure to disclose reportable foreign financial accounts on a timely filed FBAR can be as high as 50 percent of the total balance of the unreported foreign financial accounts. FAQ 17 of the 2012 OVDP provides penalty relief to filers of delinquent FBARs if the filer properly reported and paid all tax with respect to the foreign financial accounts and the filer has not been previously contacted regarding an income tax examination or a request for delinquent returns. A statement explaining why the reportable accounts were not timely disclosed must be attached to the delinquent FBAR, but no explanation of why reasonable cause exists is needed.



This FBAR penalty relief should help a variety of delinquent filers come into compliance, including officers and employees who have signature authority but no financial interest in company-owned foreign financial accounts.

International information return penalty relief

Significant penalties may apply if international information returns are not timely filed. FAQ 18 of the OVDP

provides penalty relief to taxpayers who failed to file tax information returns, such as Form 5471 for controlled foreign corporations ("CFC") or Form 3520 for foreign trusts, but who reported and paid tax on all their taxable income with respect to all transactions related to the CFCs or foreign trusts. To obtain penalty relief, taxpayers should file the delinquent information returns with the appropriate IRS service center according to the instructions for each form and attach a statement explaining why the information returns are late, but no explanation of why reasonable cause exists is needed. The statement explaining why the form was not timely filed must be included with a "zero" amended return.

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