

# PCS Tax Insight

Private Company Services Publication

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## Penalty relief for delinquent FBARs and international information returns adds certainty for private companies

*Failure to file FBARs and international information returns may result in significant penalties.*

*The FAQs of the 2012 Offshore Voluntary Disclosure Program (OVDP) include penalty relief for delinquent FBARs and international information returns.*

### Background

The IRS recently released detailed guidance for participating in the 2012 Offshore Voluntary Disclosure Program ([2012 OVDP](#)), including Frequently Asked Questions ([FAQs](#)) that will add certainty to a compliance matter affecting many private companies and their owners.

The 2012 OVDP, announced in January, is the IRS's third offshore voluntary compliance initiative. The 2012 OVDP is now permanent. Similar to the two prior initiatives, the 2012 OVDP includes penalty relief for delinquent Forms TD F 90-22.1, *Report of Foreign Bank and Financial Accounts* (FBARs), and certain international information returns.

For prior coverage of the January announcement of the 2012 OVDP, see ["PCS Tax Insight : IRS reopens offshore OVDI program for indefinite time period"](#).

### FBAR penalty relief

Private companies and individuals may be required to file FBARs to report signature authority over, or a financial interest in, foreign financial accounts. The rules for who must file an FBAR and which accounts must be reported are quite complex. 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.



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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 of private companies who have signature authority over, but no financial interest in, company-owned foreign financial accounts.

### *International information return penalty relief*

Private companies and individuals may be required to file international information returns, such as Form 5471 for controlled foreign corporations (CFCs), Form 5472 for transactions with related parties, or Form 3520 for foreign trusts. The rules regarding when these forms are required to be filed can be complex and significant

penalties may apply if they are not timely filed.

FAQ 18 provides penalty relief to taxpayers, including private companies and individuals, that failed to file international information returns, such as Form 5471, Form 5472, or Form 3520, if the taxpayer properly reported and paid tax with respect to all transactions involving the CFCs, related parties, or foreign trusts.

To obtain FAQ 18 penalty relief, private companies and individuals 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.

### *How PwC can help*

PwC's Tax Controversy and Dispute Resolution (TCDR) practice can help private companies and individuals in understanding how to file late FBARs and international information returns and assist them in seeking penalty relief when available, including relief under FAQ 17 and FAQ 18.

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*For more information, please do not hesitate to contact:*

<i>Kevin Curran</i>	<i>(202) 312-7730</i>	<i>kevin.curran@us.pwc.com</i>
<i>Rochelle Hodes</i>	<i>(202) 312-7859</i>	<i>rochelle.hodes@us.pwc.com</i>
<i>Richard Stovsky</i>	<i>(216) 875-3111</i>	<i>richard.p.stovsky@us.pwc.com</i>
<i>Gregg Muresan</i>	<i>(216) 875-3504</i>	<i>gregg.g.muresan@us.pwc.com</i>

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