



DEPARTMENT OF THE TREASURY
INTERNAL REVENUE SERVICE
WASHINGTON, D.C. 20224

DEPUTY COMMISSIONER

March 1, 2011

MEMORANDUM FOR COMMISSIONER, LARGE BUSINESS AND INTERNATIONAL
DIVISION
COMMISSIONER, SMALL BUSINESS/SELF-EMPLOYED
DIVISION

FROM: 
Steven T. Miller
Deputy Commissioner for Services and Enforcement

SUBJECT: Authorization to Apply Penalty Framework to Voluntary
Disclosure Requests with Offshore Issues

The purpose of this memorandum is to set forth a penalty framework to be applied to voluntary disclosure requests containing offshore issues, the 2011 Offshore Voluntary Disclosure Initiative (2011 OVDI). All voluntary disclosure requests under this initiative are mandatory work.

As Criminal Investigation (CI) makes preliminary determinations that taxpayers are eligible to make voluntary disclosures, it will forward voluntary disclosure requests with offshore implications to Examination for processing. Those requests will be distributed to and worked by examiners who specialize in offshore examinations. All resulting closing agreements will be reviewed and executed as prescribed by existing delegation orders.

Effective as of the date of this memorandum for all offshore voluntary disclosures received after the close of the 2009 Offshore Voluntary Disclosure Program (2009 OVDP), you are authorized until further notice to execute agreements to resolve the tax liabilities related to offshore issues of taxpayers who make voluntary disclosure requests in the following manner:

- (1) Assess all taxes and interest due for the years 2003 through 2010 (exception: for accounts opened or received within this period, assess all taxes and interest due starting with the year the account opened or was received). Require the taxpayer to file or amend all returns, including information returns and Form TD F 90-22.1, Report of Foreign Bank and Financial Accounts, commonly known as an "FBAR", and all other documents set forth in the Submission Requirements.

- (2) Assess an accuracy-related penalty on all years (no reasonable cause exception may be applied), and assess failure to file and failure to pay penalties when applicable.
- (3) In lieu of all other penalties that may apply, including FBAR and information return penalties, assess an offshore penalty equal to 25% (or 12.5% or 5% if the required conditions are met) of the amount in foreign financial accounts/entities and the value of foreign assets acquired with untaxed funds or producing untaxed income in the year with the highest aggregate account/asset value.
- (4) If a taxpayer meets all four of the following conditions, then the offshore penalty is reduced to 5%: (a) did not open or cause the account to be opened (unless the bank required that a new account be opened, rather than allowing a change in ownership of an existing account, upon the death of the owner of the account); (b) has exercised minimal, infrequent contact with the account, for example, to request the account balance, or update accountholder information such as a change in address, contact person, or email address; (c) has, except for a withdrawal closing the account and transferring the funds to an account in the United States, not withdrawn more than \$1,000 from the account in any year covered by the voluntary disclosure; and (d) can establish that all applicable U.S. taxes have been paid on funds deposited to the account (only account earnings have escaped U.S. taxation). For funds deposited before January 1, 1991, if no information is available to establish whether such funds were appropriately taxed, it will be presumed that they were.
- (5) If a taxpayer is a foreign resident who was unaware that he or she was a U.S. citizen, then the offshore penalty is reduced to 5%.
- (6) If a taxpayer's highest aggregate account balance (including the fair market value of assets in undisclosed offshore entities and the fair market value of any foreign assets that were either acquired with improperly untaxed funds or produced improperly untaxed income) in each of the years covered by the 2011 OVDI is less than \$75,000, then the offshore penalty is reduced to 12.5 percent.

Examiners and their managers have no authority to negotiate different offshore penalty percentages for 2011 OVDI cases.

The terms outlined herein are only applicable to taxpayers that make voluntary disclosure requests, and who fully cooperate with the IRS, both civilly and criminally.

Cases involving offshore issues, whether under standard examination or subject to certification under the 2011 OVDI, must be assigned and worked on a priority basis. In addition, to foster taxpayer confidence and to encourage taxpayers to come forward voluntarily to self-correct prior tax non-compliance, it is incumbent on the Service to insure that similarly-situated taxpayers are treated in a fair and consistent manner within the 2011 OVDI. Key to the success of the 2011 OVDI is the involvement of front-line managers in all aspects of the process as well as the application of the guidance in this memo.

Taxpayers who participated in the 2009 OVDP (whose cases have been resolved and closed with a Form 906 closing agreement) who believe the facts of their case qualify them for the 5% or 12.5% reduced penalty criteria of the 2011 OVDI, but who paid a higher penalty amount under the 2009 OVDP, should provide a statement to this effect including all pertinent contact information (name, address, SSN, home/cell phone numbers), the name of the Revenue Agent assigned to their case, and a copy of their closing agreement. This information should be sent to:

Internal Revenue Service
3651 S. I H 35
Stop 4301 AUSC
ATTN:2009 OVDP Determination
Austin, TX 78741

Upon receipt of this information, the case must be assigned to an examiner to review and make a determination. If a 2009 OVDP case is still open and the facts meet the criteria for the reduced 5% or 12.5% penalty of the 2011 OVDI, the examiner will assert the reduced penalty as appropriate. More guidance will be forthcoming regarding applications of the 2011 OVDI rules to 2009 OVDP cases.

cc: Chief Counsel
Commissioner, Tax Exempt and Government Entities
Chief, Criminal Investigation
Chief, Appeals