

AN ALERT FROM THE BDO FEDERAL TAX PRACTICE

# BDO KNOWS: FEDERAL TAX



## ► SUBJECT

## IRS ANNOUNCES NEW OFFSHORE VOLUNTARY DISCLOSURE INITIATIVE

## ► AFFECTING

Taxpayers with Undisclosed Income from Hidden Offshore Accounts and  
Taxpayers with Certain Delinquent Tax Form Filings

## ► DETAILS

The Internal Revenue Service announced on February 8, 2011, a new voluntary disclosure initiative to encourage individuals with undisclosed income from hidden offshore accounts to get current with their federal tax obligations. Taxpayers who otherwise qualify for the voluntary disclosure initiative can avoid uncertain criminal or severe civil penalties by taking advantage of the Service's new initiative. The 2011 initiative expires August 31, 2011.

The 2011 initiative, referred to as the "2011 Offshore Voluntary Disclosure Initiative (OVDI)" includes several changes from the 2009 Offshore Voluntary Disclosure Program, which expired in October 2009. The overall penalty structure for the 2011 initiative is generally higher than the 2009 program. The 2011 initiative provides a new penalty framework that requires participants to pay a 25-percent penalty on the amount in the foreign bank accounts in the same year with the highest total balance covering the 2003 through 2010 time period, in addition to any unpaid taxes, interest, and accuracy-related penalties, by the August 31, 2011 deadline.

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In certain instances, however, taxpayers may be eligible for a five- or 12.5-percent penalty in lieu of the 25-percent penalty on the foreign bank account balance, where certain mitigating facts exist. The new 12.5-percent penalty generally will apply to taxpayers with offshore accounts or assets of \$75,000 or less in any calendar year covered by the initiative. The five-percent penalty generally may apply where taxpayers meet one of two mitigating scenarios, including taxpayers with effectively incidental ownership in the accounts (*e.g.*, through inheritance) and minimal account activity, and taxpayers who are foreign residents who were unaware they were United States citizens. Taxpayers who participated in the 2009 program and who believe they would have qualified for the five-percent penalty under the 2011 initiative may request reconsideration of the resolution of their prior case.

A comprehensive set of frequently-asked questions was issued concurrently with the announcement. Available at [www.irs.gov/businesses/international/article/0,,id=235699,00.html](http://www.irs.gov/businesses/international/article/0,,id=235699,00.html), the FAQs highlight the importance of covered individuals to consider the initiative as a way of avoiding potential criminal and severe civil penalties. The FAQs also describe who is eligible for the initiative and set forth the procedures for entering the initiative. The FAQs, along with other documents and forms related to the 2011 initiative, are available on the Service's Web site at [www.irs.gov/newsroom/article/0,,id=235584,00.html](http://www.irs.gov/newsroom/article/0,,id=235584,00.html).

The FAQs also provide a procedure for taxpayers with no underreported income who have inadvertently missed certain foreign information returns, such as Form TD F 90-22.1, Report of Foreign Bank and Financial Accounts (the so-called FBAR form); Form 5471, Information Return of U.S. Persons With Respect To Certain Foreign Corporations; and Form 3520, Annual Return To Report Transactions With Foreign Trusts and Receipt of Certain Foreign Gifts, to submit the delinquent forms without penalty.

The 2011 initiative presents an opportunity for taxpayers with unreported offshore assets and income to become complaint under a structured and certain penalty regime. For taxpayers with no underreported income who have inadvertently missed certain foreign information returns, such as FBAR, 5471, and 3520 forms, the 2011 initiative may allow for the penalty-free submission of any such delinquent returns.

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