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THE TAX LAWYER

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### Does IRS Amnesty Go Beyond Foreign Accounts?



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There's been almost unending press about the IRS foreign account amnesty. Dubbed the 2011 Offshore Voluntary Disclosure Initiative (or [OVDI](#)), it provides a much needed programmatic approach to avoid a raft of civil and even [criminal penalties](#) for foreign income and account transgressions. Since it was [announced](#) February 8, 2011, the IRS's come-on-down foreign account amnesty has brought thousands of taxpayers into

its net.

The program runs through August 31, 2011. While it is available, it generally promises limited amnesty for foreign account noncompliance. But the system is imperfect and [inflexible](#), causing some taxpayers to find it ill-suited to their situations. For instance, many immigrants who came to the U.S. with assets and accounts in a foreign land that was once their home are finding it downright unfathomable that, because of a little known foreign account filing glitch, they could lose up to 25% of their assets. See [Is Foreign Account Ignorance Bliss?](#)

The OVDI is a clean wash-your-hands kind of way to correct past tax filings and come clean in an area the IRS views as very important. Under the OVDI, taxpayers are subject to a penalty equal to 25% of the highest aggregate account balance on their undisclosed account(s) between 2003 and 2010. There are limited ways of paying a lower than 25% penalty.

If the value of the undisclosed account(s) was less than \$75,000 at all times during the tax years in question, the penalty is cut in half to only 12.5%. Moreover, in limited inheritance situations, a penalty of only 5% may be imposed. These account balance penalties are in lieu of the Report of Foreign Bank and Financial Accounts ([FBAR](#)) penalties that would otherwise apply.

On top of the FBAR penalties, participants in the OVDI are required to pay taxes and interest on any monies (such as interest income on foreign accounts) they previously failed to report. Finally, on top of the taxes and interest, they must pay an accuracy-related penalty equal to 20% of the underpayment of tax, plus interest. Some taxpayers could even owe failure to file and failure to pay penalties.

**Eight Long Years.** The OVDI covers 8 long years, 2003 through 2010, not the 6 years covered by the IRS's [2009 voluntary disclosure program](#). Another difference between the current program and the 2009 program: the penalty is 25% rather than 20% under the 2009 OVDI.

**Other Transgressions?** As long as you are filing amended tax returns, you may find that other corrections unrelated to your foreign accounts are necessary. Should you make them? I'm seeing this question arise over and over again and the answer is nuanced.

Clearly, before you sign amended tax returns under penalties of perjury you should make sure they are accurate. That means if you failed to report the interest on a domestic bank account or failed to take into income a \$10,000 consulting fee you should include it on your amended return. But exactly how that fits into the OVDI is a little surprising.

By its terms, the OVDI applies only to ***foreign account*** matters. See [It's Not Too Late For IRS Amnesty](#). If you failed to report income associated with foreign assets or investments, you can clean them up under the OVDI. But if you failed to report other income or overstated your deductions, any corrections are technically not part of the OVDI.

Technically, that means that the IRS could pursue these items outside the scope of the OVDI. In reality, though, they seem to be doing what makes sense: if you have other unrelated corrections to your returns, by all

means make them. If there's a problem, the Service will presumably tell you, but I've seen no sign that is likely to occur.

For more, see:

[Ten Tips for Amending Your Tax Return](#)

[How the Statue of Limitations Impacts Your Taxes](#)

[Beware Amending Tax Returns](#)

[Can You Fix The Tax Return You Just Filed?](#)

[Getting a Tax Refund? Ten Things to Know](#)

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