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IRS Voluntary Disclosure A Mistake For Some

Since it was [announced](#) February 8, 2011, the IRS has ramped up its [2011 Offshore Voluntary Disclosure Initiative](#) (or OVDI) program in a big way. The program runs through August 31, 2011, and while it's available, generally promises limited amnesty for foreign account noncompliance. But the system is imperfect and inflexible. That inflexibility means it's ill-suited for some taxpayers, yet there's not much of an alternative.

Under the OVDI, taxpayers are subject to a penalty equal to 25 percent of the highest aggregate account balance on their undisclosed account(s) between 2003 and 2010. 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 percent. Moreover, in limited inheritance situations, a penalty of only 5 percent may be imposed.

These account balance penalties are in lieu of the [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 percent 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 percent rather than 20 percent under the 2009 OVDI.

One-Size Doesn't Fit All? There's been some grumbling from taxpayers and practitioners about the one-size fits all nature of the OVDI. As this label suggests, it's not a good fit for everyone. Yet there are some high points.

For example, if you inherited the foreign account and never touched it, you may end up with only a 5 percent penalty, not 25 percent. Furthermore, if the only activity you had with the account was to get the account put into your name, it appears that you may still be able to qualify for the 5 percent penalty.

Examine Me! What can you do if you think the treatment you're receiving isn't fair? Not much, it turns out. With no rights to the IRS Appeals and no flexibility in the voluntary disclosure program, the only way the IRS can consider your arguments (for example, that you should only pay a 5 percent or 12.5 percent penalty rather than 25 percent), is to opt out of the voluntary disclosure program and ask for an examination. But there, the stakes will be high.

True, you might end up paying less than the 25 percent programmatic penalty. But you could also pay much more. The penalties for failure to file an FBAR are severe. Failing to file an FBAR can carry a civil penalty of \$10,000 for each non-willful violation. But if your violation is found to be **willful**, the penalty is the greater of \$100,000 or 50 percent of the amount in the account for **each** violation. Each year you didn't file is a separate violation.

For more, see:

[2011 Voluntary Disclosure Initiative FAQs](#)

[Tax Amnesty: IRS Voluntary Disclosure Part Deux](#)

[IRS Offshore Amnesty: Second \(Last\) Chance](#)

[IRS: Tax evaders can avoid jail if they come clean](#)

[IRS Offers New Amnesty For Offshore Tax Cheats](#)

[IRS' Latest Offshore Accounts Voluntary Disclosure Program Wrong For Many Taxpayers](#)

[IRS Announces Amnesty to Declare Offshore Accounts](#)

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