

PUBLICATION

Foreign Financial Account Update: IRS Gives Taxpayers Third Chance to Report Unreported Foreign Accounts and Assets

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On January 9, 2012, the Internal Revenue Service (IRS) announced that it has reopened the offshore voluntary disclosure program (2012 OVDP), giving U.S. citizens and resident aliens one more opportunity to disclose foreign financial accounts and assets with reduced penalties. Failure to report overseas income or failure to file foreign informational returns may result in severe civil or criminal penalties, so the 2012 OVDP should be a welcome opportunity for taxpayers who missed the IRS's two prior offshore voluntary compliance initiatives: [the 2009 Offshore Voluntary Disclosure Program](#) (2009 OVDP); and [the 2011 Offshore Voluntary Disclosure Initiative](#) (2011 OVDI), which resulted in 33,000 voluntary disclosures and collections of over \$4.4 billion so far.

Although the IRS will provide additional details of the 2012 OVDP over the next month, its announcement stated that the 2012 OVDP will be similar to the 2011 OVDI, with at least two significant changes. Key aspects of the 2012 OVDP include:

- Unlike the prior programs, the 2012 OVDP has no set deadline for participation and the terms can be changed or the program can be terminated at any time.
- The standard penalty is 27.5 percent of the highest aggregate balance in foreign bank accounts/entities or value of foreign assets during the eight full tax years prior to the disclosure (increased from 25 percent in the 2011 OVDI), but the eligibility requirements for reduced penalties of 5 percent or 12.5 percent in certain situations have not been changed.
- Participants are still required to file all Forms TD F 90-22.1 (Report of Foreign Bank and Financial Accounts, and commonly referred to as an "FBAR"), original and amended tax returns, and include payment for back taxes and interest for the eight full tax years prior to the disclosure, and will still be required to pay accuracy-related penalties on any understatements of income and any applicable late filing and late payment penalties.
- Participants can still opt out of the program.
- Taxpayers who submitted voluntary disclosures to the IRS after the 2011 OVDI closed on September 9, 2011 will be able to be treated under the provisions of the 2012 OVDP.

Taxpayers with unreported foreign financial accounts should also keep in mind that the [Foreign Account Tax Compliance Act](#) (FATCA) requirements are now in effect, requiring individual taxpayers with an interest in a "specified foreign financial asset" to attach a Form 8938 disclosing those assets to their 2011 U.S. federal income tax returns if the aggregate value of all such assets during any year is greater than \$50,000. "Specified foreign financial assets" include depository and custodial accounts at foreign financial institutions, stock or securities issued by foreign persons, any other financial instrument or contract held for investment that is issued by or has a counterparty that is not a U.S. person, and any interest in a foreign entity. These FATCA disclosure requirements are in addition to, not in lieu of, the FBAR requirements.

Baker Donelson attorneys have represented taxpayers who took part in the 2009 OVDP and 2011 OVDI, and also represented taxpayers who sought to reduce the applicable penalties. If you are interested in taking part in the 2012 OVDP or otherwise wish to discuss the reporting and filing requirements related to offshore assets, accounts, and income, please contact any attorney in the Firm's Tax Department.

