2011 Offshore Voluntary Disclosure Initiative Frequently Asked Questions and Answers

As of June 2, 2011

FAQ Updates:

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25.1	What if I cannot make a complete submission by August 31, 2011?	A taxpayer may request an extension of the deadline to complete his or her submission if the taxpayer can demonstrate a good faith attempt to fully comply with FAQ 25 on or before August 31, 2011. The good faith attempt to fully comply must include the properly completed and signed agreements to extend the period of time to assess tax (including tax penalties) and to assess FBAR penalties. Requests for up to a 90 day extension must include a statement of those items that are missing, the reasons why they are not included, and the steps taken to secure them. Requests for extensions must be made in writing and sent to the Austin Campus on or before August 31, 2011: Internal Revenue Service 3651 S. I H 35 Stop 4301 AUSC Austin, TX 78741 ATTN: 2011 Offshore Voluntary Disclosure Initiative
32.	If a taxpayer's violation includes unreported individual foreign accounts and business accounts (for an active business), does the 25 percent offshore penalty include the business accounts?	Yes. Assuming that there is unreported income with respect to all the accounts, they all will be included in the penalty base. No distinction is drawn based on whether the account is a business account or a savings or investment account.
35.	What kinds of assets does the 25 percent offshore penalty apply to?	The offshore penalty is intended to apply to all of the taxpayer's offshore holdings that are related in any way to tax non-compliance, regardless of the form of the taxpayer's ownership or the character of the asset. The penalty applies to all assets directly owned by the taxpayer, including financial accounts holding cash, securities or other custodial assets; tangible assets such as real estate or art; and intangible assets such as patents or stock or other interests in a U.S. or foreign business. If such assets are indirectly held or controlled by the taxpayer through an entity, the penalty may be applied to the taxpayer's interest in the entity or, if the Service determines that the entity is an alter ego or nominee of the taxpayer, to the taxpayer's interest in the underlying assets. Tax noncompliance includes failure to report income from the assets, as well as failure to pay U.S. tax that was due with respect to the funds used to acquire the asset. See FAQ 52, category 3, for a limited exception to this rule.
51.	If, after making a voluntary disclosure, a taxpayer disagrees with the application of the offshore penalty, what can the taxpayer do?	If the offshore penalty is unacceptable to a taxpayer, that taxpayer must indicate in writing the decision to withdraw from or opt out of the program. Once made, this election is irrevocable. An opt out is an election made by a taxpayer to have his or her case handled under the standard audit process. It should be recognized that in a given case, the opt out option may reflect a preferred approach. That is, there may be instances in which the results under the applicable voluntary disclosure program appear too severe given the facts of the case. There will be other instances where this is less clear. In the latter cases, the Service will look to ensure that the best interests of the Service and the integrity of the voluntary disclosure program remain intact. In these cases, it is expected that full scope examinations will occur if opt out is initiated. It is expected that opt out will be appropriate for a discrete minority of cases. Moreover, to the extent that issues are found upon a full scope examination that were not disclosed by the taxpayer, those issues may be the subject of review by Criminal Investigation. In either case, opting out is at the sole discretion of the taxpayer and the taxpayer should not be treated in a negative fashion merely because he or she chooses to opt out. The specific procedures for opting out are set forth in a separate guide titled Opt Out and Removal Guide for the 2009 OVDP and 2011 OVDI. The guide is posted to the website. Taxpayers are reminded, that even after opting out of the Service's civil settlement structure, they remain within Criminal Investigation's Voluntary Disclosure Practice. Therefore, taxpayers are still required to cooperate fully with the examiner by providing all requested information and records and must still pay or make arrangements to pay the tax, interest, and penalties they are ultimately determined to owe. If a taxpayer does not cooperate and make payment arrangements, or if after examination, issues exist that were not disclosed prior to opt out, the case may be referred back to Criminal Investigation.
51.1	Under what circumstances might a taxpayer consider opting out of the civil settlement structure of the 2011 OVDI?	The following scenarios are provided to illustrate the effect of a taxpayer opting out of the civil settlement structure. Opting out of the civil settlement structure does not affect the status of a taxpayer's voluntary disclosure under Criminal Investigation's Voluntary Disclosure Practice, so long as the taxpayer is fully cooperative in the examination process, by providing all requested foreign records and submitting to interviews, as requested, and as long as no new issues are uncovered that were previously not disclosed. The facts of each example were chosen to illustrate particular issues and do not represent a full analysis of a taxpayer's particular situation. Consequently, they may not be relied upon in dealing with any taxpayer's actual case. For all of the following examples, assume a 35% tax rate on all unreported income. Example 1 – Unreported Income But No Tax Deficiency The taxpayer, a U.S. citizen who worked and resided in Country A, had a brokerage account in Country A that he opened in 1999. The account had a high balance of $2 million and generated income of $150,000 each year. The taxpayer did not report any of the income on his U.S. return because he mistakenly assumed he only had to report it on a Country A tax return. The taxpayer's amended Form 1040 returns showed that, after applying the foreign tax credit for taxes paid to the government of Country A, he had no tax deficiency with respect to the unreported income. Because the taxpayer had unreported income, he does not qualify for FAQ 17. In addition, assume the taxpayer does not otherwise qualify for a reduced penalty under FAQ 52 or 53.

The Offshore Penalty under 2011 OVDI is $500,000 (i.e., 25% of $2 million), even though there was no tax owed to the U.S. Government and no other indication of wrongdoing.

If the taxpayer elected to opt out and, upon examination, IRS determined that the FBAR violation was not willful, he would be subject to an FBAR penalty of up to $10,000 per year ($60,000 total for six years). If IRS determines that the violation was due to reasonable cause (for example, the taxpayer reasonably acted on the written advice of an independent legal advisor after having disclosed the account to the advisor), the taxpayer would be subject to no FBAR penalty.

The penalty for a nonwillful failure to file an FBAR would apply with respect to FBARs that were due on or after June 30, 2005. For this example, this would include FBARs that were filed to report foreign financial accounts maintained during calendar years 2004 through 2009.

	Civil Settlement Structure	Opt out and 6 years nonwillful FBAR penalty
Income Tax Due (not including interest)	0	0
20% Accuracy-related penalty	0	0
25% Offshore Penalty	$500,000	0
FBAR Penalty	0	$60,000
Total	$500,000	$60,000

Example 2 - Unreported Income and Failure to File FBAR

The taxpayer is a U.S. citizen, who lived abroad in 2007, 2008 and 2009. While living abroad, the taxpayer opened an account in 2007 with a bank located in Country X. Assume that the highest account balance during the three years (2007, 2008 and 2009) was $200,000. The taxpayer filed U.S. income tax returns for all years but only filed an FBAR for 2008 and 2009, not for 2007. The taxpayer was unaware of his FBAR filing obligation until having his return professionally prepared in 2008. The taxpayer failed to report approximately $2,000 of interest income from the account, and, is therefore, unable to simply file a delinquent FBAR for 2007 as provided in FAQ 17. The tax deficiency was $700. In addition, assume the taxpayer does not otherwise qualify for a reduced penalty under FAQ 52 or 53.

The Offshore Penalty under 2011 OVDI will be $50,000 (i.e., 25% of $200,000). The taxpayer would also be required to pay the tax deficiency for each year, interest on the deficiency, and the 20% accuracy-related penalty on the deficiency.

If the taxpayer elected to opt out, the taxpayer will be subject to tax, penalties, and interest on the unreported income and, if, upon examination, IRS determines that the failure to file the FBAR was not willful, the taxpayer will be subject to a non-willful FBAR penalty of no more than $10,000 for failing to file an FBAR for 2007. If IRS determines that the FBAR violation was due to reasonable cause, then no FBAR penalty will be imposed.

	Civil Settlement Structure	Opt out and 1 year nonwillful FBAR penalty	Opt out and assume the civil fraud penalty applied
Income Tax Due (not including interest)	$700	$700	$700
20% Accuracy-related penalty	$140	$140	0
25% Offshore Penalty	$50,000	0	0
Civil Fraud Penalty	0	0	$525
FBAR Penalty	0	$10,000	$10,000
Total	$50,840	$10,840	$11,225

Example 3 - Unreported Controlled Foreign Corporation

The taxpayer, a U.S. citizen who lives in the United States, owns a 100% interest in a foreign corporation that has substantial operations in Country A and a foreign bank account. The foreign corporation is not required to file an FBAR and does not file one. The taxpayer also has signature authority over the foreign bank account. The taxpayer did not file an FBAR to report his financial interest in, or signature authority over, the foreign bank account of the corporation that he controls. The interest income earned on the foreign account was $5,000 for each year. The tax deficiency for each year was $1,750. The balance in the foreign bank account during the calendar years 2003 through 2010 was a constant $1 million. The value of the taxpayer's controlling interest in the foreign corporation is determined to be $100 million (including the value of the $1 million foreign bank account).

The taxpayer did not file a Form 5471 to report his interest in the controlled foreign corporation. Instead, he wrongly treated the foreign corporation as a disregarded entity and reported the corporation's income on a Schedule C. The income he reported from the foreign corporation did not include interest income earned on the corporation's foreign bank account. Otherwise, the individual was fully compliant in reporting all other taxable income, including income from the controlled foreign corporation. The statute of limitations for assessing tax and tax penalties with respect to the controlled foreign corporation remained open under IRC § 6501(c)(8) because the Form 5471 was not filed.

	Civil Settlement Structure	Opt out and 6 years of the § 6038(a) penalty plus 6 years of the FBAR nonwillful penalty	Assume the civil fraud penalty applied for six years and the FBAR willful penalty applied for 6 years
Income Tax Due (not including interest)	$14,000	$14,000	$14,000

20% Accuracy-related penalty	$2,800	$2,800	0
25% Offshore Penalty	$25,000,000	0	0
§ 6038(a) Penalty	0	$60,000	$60,000
Civil Fraud Penalty	0	0	$10,500
FBAR Penalty	0	$60,000	$3,000,000
Total	$25,016,800	$136,800	$3,084,500

51.2

Under what circumstances might opting out of the civil settlement structure of the 2011 OVDI be a disadvantage for the taxpayer? Total

The following scenarios are provided to illustrate the effect of a taxpayer opting out of the civil settlement structure. Opting out of the civil settlement structure does not affect the status of a taxpayer's voluntary disclosure under Criminal Investigation's Voluntary Disclosure Practice, so long as the taxpayer is fully cooperative in the examination process, by providing all requested foreign records and submitting to interviews, as requested, and as long as no new issues are uncovered that were previously not disclosed. The facts of each example were chosen to illustrate particular issues and do not represent a full analysis of a taxpayer's particular situation. Consequently, they may not be relied upon in dealing with any taxpayer's actual case. For all of the following examples, assume a 35% tax rate on all unreported income.

Example 4 - Large Unreported Gain

The taxpayer, a U.S. citizen, opened a bank account in Country A in 2008 with funds upon which U.S. taxes were paid. The taxpayer discloses that he had failed to report the sale, in 2008, of an apartment building in Country A that he owned. The apartment building was valued at $10 million and the taxpayer's unreported gain on the sale was $6 million. The related tax deficiency was $2,100,000. The taxpayer deposited the entire $10 million in the checking account with the foreign bank and, the next day, transferred the funds to his bank account in the U.S. The apartment building that was sold was held in a foreign trust that was a grantor trust (with the taxpayer as the grantor). The taxpayer established the trust in 2008, just prior to the sale of the apartment building, and transferred the building to the trust. The taxpayer did not file a Form 3520 to report the creation of the trust and the transfer of property.

The Offshore Penalty under 2011 OVDI will be $2,500,000 (i.e., 25% of $10 million). The taxpayer would also be required to pay the $2,100,000 tax deficiency, interest, and a 20% accuracy-related penalty. A 20% penalty on a $2,100,000 deficiency is $420,000.

If the taxpayer elected to opt out, he could face an FBAR penalty with respect to the 2008 calendar year of $5,000,000 (i.e., a 50% willful FBAR penalty on the checking account, which included $10 million in sale proceeds). Taxpayer will also owe tax, penalties, and interest with respect to the $2,100,000 deficiency. The taxpayer would also be subject to FBAR penalties for all other open years, if the aggregate balance in the checking account exceeded $10,000 during each year.

Upon examination, the revenue agent may determine that the nonreporting was due to fraud. In that case, the civil fraud penalty on the $2.1 million tax deficiency attributable to fraud would be $1,575,000 (i.e., 75% of $2,100,000). The IRC § 6677 penalty for failing to file the Form 3520 information return would be an additional $3.5 million (i.e., 35% of $10 million).

	Civil Settlement Structure	Opt out and 1 year willful FBAR penalty	Opt out and assume the civil fraud penalty applied
Income Tax Due (not including interest)	$2,100,000	$2,100,000	$2,100,000
20% Accuracy-related penalty	$420,000	$420,000	0
25% Offshore Penalty	$2,500,000	0	0
Civil Fraud Penalty	0	0	$1,575,000
§ 6677 Penalty	0	$3,500,000	$3,500,000
FBAR Penalty	0	$5,00,000	$5,000,000
Total	$5,020,000	$11,020,000	$12,175,000

Example 5 – Civil Fraud Penalty Warranted

In 2002, Taxpayer sold a building located in Country X for $400,000 short term capital gain, which he intentionally failed to report on his 2002 Form 1040. Assume the taxpayer's basis in the building was zero. He deposited the sales proceeds in an offshore account with a bank located in Country Y. The account with the bank in Country Y is in the name of a trust the taxpayer established in Country Z in 2000. The account earned $12,000 in interest each year from 2003 through 2010. The taxpayer closed the account with the bank in Country Y in 2010 and brought the funds back into the United States, disguising the funds as a loan from an allegedly unrelated entity.

The highest balance in the foreign account was $496,000. The Offshore Penalty under 2011 OVDI is $124,000 (i.e., 25% of $496,000). The total of the tax deficiencies for the years 2002 through 2010 was $173,600. This consisted of a tax deficiency of $140,000 for the 2002 year (for the unreported gain of $400,000) and a total of $33,600 for the tax years 2003 through 2010 (for the unreported interest income). The 75% civil fraud penalty would otherwise apply with respect to the related tax deficiencies. There is no statute of limitations for assessments of tax attributable to fraud.

The total of the IRC § 6677 penalty for failing to file a Form 3520 to report the $400,000 transfer to the account (35% of $400,000) and the failure to file Forms 3520-A (5% of the $400,000 plus the interest income added each year) was $495,200.

The statute of limitations for assessing FBAR penalties for willful violations in each year is open for the 2004 through 2010 calendar years. The total amount of willful FBAR penalties that may be assessed is $1,362,000 (50% of the balance in the account for each year, including the $12,000 in interest income added to the account each year).

	Civil Settlement Structure	Opt out and 8 years § 6677 penalty and 6 years FBAR Penalty
Income Tax Due (not including interest)	$33,600	$173,600
75% Civil Fraud Penalty	0	$130,200
20% Accuracy Related Penalty	$5,040	0
25% Offshore Penalty	$118,000	0
§ 6677 Penalty	0	$495,200
FBAR Penalty	0	$1,362,000
Total	$156,640	$2,161,000

51.3 If I opt out of the 2011 OVDI and undergo a regular examination, is there a chance my case could be referred back to Criminal Investigation for penalties or prosecution?

Yes. Criminal Investigation's Voluntary Disclosure Practice provides a recommendation that you not be prosecuted for violations up to the date of your disclosure. If your disclosure is ultimately determined to have not been complete, accurate, and truthful, or if you commit a crime after the date of your voluntary disclosure, you are subject to penalties and prosecution. The facts of the example were chosen to illustrate particular issues and do not represent a full analysis of a taxpayer's particular situation. Consequently, the example may not be relied upon in dealing with any taxpayer's actual case. For the following example, assume a 35% tax rate on all unreported income.

Example 6 - IRS Learns of Unreported Income and False Statements After Opt Out

Taxpayer made a voluntary disclosure for tax years 2003 through 2010 under the 2011 OVDI to report a foreign bank account he opened while working outside the United States. The highest aggregate balance in the account was $1,000,000. The account earned a total of $350,000 over the 8 years that was not reported on his tax returns.

On his voluntary disclosure application, the taxpayer stated that he worked full-time overseas as a consultant from 1989 through 1999, but he had to return to the United States permanently after a medical condition prevented him from continuing to work. He stated that he currently lives on his savings from the foreign account and a small disability pension.

The taxpayer elected to opt out of the 2011 OVDI because he believed the total tax, interest, and penalties were too high. Particularly, the taxpayer stated that the $250,000 offshore penalty (25% of $1,000,000) was too severe. He would rather take his chances being audited so he could argue reasonable cause and that he did not willfully fail to file the FBARs.

The assigned examiner placed tax years 2003 through 2010 under regular examination. As part of the examination, the examiner performed the gross income tests required by the Internal Revenue Manual. The analysis disclosed that the income reported by the taxpayer from 2003 through 2010 was much less than his expenditures during the same period. The examiner's analysis disclosed that over the 8 year period, the taxpayer spent approximately $750,000, roughly $50,000 per year more than he earned during the same period.

When the examiner asked the taxpayer how he was able to support himself, the taxpayer stated that because he was unable to be gainfully employed due to his medical condition, he received gifts and help from family members and friends. He could not, however, provide any proof of the gifts or even recall the names of the family members and friends who helped him.

Ultimately, through third-party contacts the examiner located a business owner for whom the taxpayer performed consulting services. The business owner admitted that he paid the taxpayer approximately $50,000 a year "under the table."

Due to the pattern of significant amounts of unreported income over an 8 year period and the false statements made by the taxpayer in his application and to the examiner, the case could be referred to Criminal Investigation for investigation and possible prosecution and assertion of the civil fraud penalty.

The income tax due is computed on the unreported offshore interest income ($350,000) and the unreported wages ($400,000). $750,000 at a 35% tax rate = $262,500	Civil Settlement Structure assuming the taxpayer had voluntarily disclosed all unreported income [1]	Opt out and the civil fraud penalty and willful FBAR applied
Income Tax Due (not including interest)	$262,500	$262,500
20% Accuracy-related penalty	$24,500	0
25% Offshore Penalty	$250,000	0
Civil Fraud Penalty [2]	$105,00	$196,875
FBAR Penalty ($500,000/yr 2004-2009)	0	$3,00,000
Total	$642,000	$3,459,375

52. Under what circumstances would a taxpayer making a voluntary disclosure under this initiative qualify for a

Unless the taxpayer would owe a lesser amount under FAQ 50, taxpayers making voluntary disclosures who fall into one of the three categories described below will qualify for a 5 percent offshore penalty. Examiners have no authority to negotiate a different offshore

reduced 5 percent offshore penalty?

penalty percentage.

1. Taxpayers who meet all four of the following conditions: (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) have 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) have, 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 for which the taxpayer was non-compliant; 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.

   Example 1: When the taxpayer's father died, the taxpayer inherited two offshore accounts. His father's last deposit to the accounts was more than 30 years ago. The taxpayer provided his email address to the bank to receive bank statements by email and indicated an investment approach as required by the bank to open the account in the taxpayer's name. Twice he has been to the foreign jurisdiction and talked to a banker—during one of those visits he withdrew $1,000 from one of the accounts. Otherwise, he did not withdraw any money from the accounts until last year, when he closed the accounts and repatriated the money to a U.S. bank. He never reported earnings on the accounts on his U.S. tax returns and he never filed an FBAR. He is entitled to the reduced 5% offshore penalty.

   Example 2: The facts are the same as in example 1, except that $40,000 of the funds were deposited to one of the accounts in 1995. The taxpayer would have to identify the source of the deposit and, if the source was taxable in the U.S., prove that U.S. income tax was paid on those funds. In the absence of such proof, the taxpayer is not entitled to the reduced 5% offshore penalty.

   Example 3: The facts are the same as in example 1, except that subsequent to opening the account, the taxpayer voluntarily provided instructions to the bank concerning the investment of funds. The taxpayer is not entitled to the reduced 5% offshore penalty.

2. Taxpayers who are foreign residents and who were unaware they were U.S. citizens.

   Example 1: The taxpayer was born in the U.S. to parents of foreign citizenship. She grew up in a foreign jurisdiction, unaware that she had been born in the U.S. She has a $60,000 account in the foreign jurisdiction. She has never filed U.S. returns or FBARs. She became aware she was a U.S. citizen when she had to get a birth certificate in order to obtain a passport from the foreign jurisdiction where she resides. She is entitled to the reduced 5% offshore penalty. Subsequent to learning of her U.S. citizenship, taxpayer took no action with respect to her foreign accounts that would disqualify a U.S. taxpayer from the 5 percent penalty under paragraph 1, above.

   Example 2: The facts are the same as in example 1, except that the taxpayer always knew she was a U.S. citizen and never inquired about her U.S. tax obligations. The taxpayer is not entitled to the reduced 5% offshore penalty, unless she qualifies under paragraph 1 or 3.

3. Taxpayers who are foreign residents and who meet all three of the following conditions for all of the years of their voluntary disclosure: (a) taxpayer resides in a foreign country; (b) taxpayer has made a good faith showing that he or she has timely complied with all tax reporting and payment requirements in the country of residency; and (c) taxpayer has $10,000 or less of U.S. source income each year. For these taxpayers only, the offshore penalty will not apply to non-financial assets, such as real property, business interests, or artworks, purchased with funds for which the taxpayer can establish that all applicable taxes have been paid, either in the U.S. or in the country of residence. This exception only applies if the income tax returns filed with the foreign tax authority included the offshore-related taxable income that was not reported on the U.S. tax return.

   Example 1: The taxpayer is a U.S. citizen who has lived and worked as a corporate executive in Country X since 1995. His income has included earnings in excess of $250,000 in each year, as well as bank interest and investment income on financial accounts that had a high aggregate balance of $1.2 million in 2009. He has paid all required taxes on his earnings and investment income in Country X in every year, but has filed no U.S. income tax returns since moving out of the United States. In addition to his financial accounts, the taxpayer has acquired a personal residence in Country X with an equity of $900,000 and an automobile worth $85,000, both financed with previously taxed savings from the U.S., as well as his salary and investment earnings in Country X.

   Because the taxpayer was fully tax compliant in Country X, he will be eligible for a reduced offshore penalty of 5 percent of the value of the financial accounts, or $60,000. The residence and automobile will not be included in the penalty base because the funds used to acquire them were fully taxed in the Country X.
   Example 2: The taxpayer is a U.S. citizen who has lived in Country X since 1995. He is an entrepreneur who developed his own software business, which he operated as a wholly owned corporation, ABC Corp., incorporated in Country X, until he took the corporation public in 2005. After the IPO, the taxpayer sold ABC stock at a capital gain of $5 million, and retained other ABC stock with a market value of approximately $20 million. He used $2 million of the stock proceeds to purchase a personal residence and put the remainder in his investment accounts. His income has included salary exceeding $250,000 in each year, the $5 million capital gain in 2005, and bank interest and investment income on financial accounts that had a high aggregate balance of $3.8 million in 2009. He has paid all required taxes on his earnings, capital gain, and investment income in Country X in every year, but has filed no U.S. income tax returns since moving out of the United States.

   Because the taxpayer was fully tax compliant in the country of residence, he will be eligible for a reduced offshore penalty of 5 percent of the value of the financial accounts, or $190,000. The ABC stock and the personal residence will not be included in the penalty base because the funds used to acquire them were fully taxed in the country of residence.

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% reduced penalty criteria of the 2011 OVDI, but 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
Austin, TX 78741
Attn: 2009 OVDP Determination

Upon receipt of this information, the case will be assigned to an examiner to review and make a determination.

35.	What kinds of assets does the 25 percent offshore penalty apply to?	The offshore penalty is intended to apply to all of the taxpayer's offshore holdings that are related in any way to tax non-compliance, regardless of the form of the taxpayer's ownership or the character of the asset. The penalty applies to all assets directly owned by the taxpayer, including financial accounts holding cash, securities or other custodial assets; tangible assets such as real estate or art; and intangible assets such as patents or stock or other interests in a U.S. or foreign business. If such assets are indirectly held or controlled by the taxpayer through an entity, the penalty may be applied to the taxpayer's interest in the entity or, if the Service determines that the entity is an alter ego or nominee of the taxpayer, to the taxpayer's interest in the underlying assets. Tax noncompliance includes failure to report income from the assets, as well as failure to pay U.S. tax that was due with respect to the funds used to acquire the asset. See FAQ 52, category 3, for a limited exception to this rule.