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GAO

Report to Congressional Requesters

March 2013

OFFSHORE TAX EVASION

IRS Has Collected Billions of Dollars, but May be Missing Continued Evasion

GAO

Accountability * Integrity * Reliability

GAO-13-318

Highlights of GAO-13-318, a report to congressional requesters

March 2013

OFFSHORE TAX EVASION

IRS Has Collected Billions of Dollars, but May Be Missing Continued Evasion

Why GAO Did This Study

Tax evasion by individuals with unreported offshore financial accounts was estimated by one IRS commissioner to be several tens of billions of dollars, but no precise figure exists. IRS has operated four offshore programs since 2003 that offered incentives for taxpayers to disclose their offshore accounts and pay delinquent taxes, interest, and penalties. GAO was asked to review IRS's second offshore program, the 2009 OVDP. This report (1) describes the nature of the noncompliance of 2009 OVDP participants, (2) determines the extent IRS used the 2009 OVDP to prevent noncompliance, and (3) assesses IRS's efforts to detect taxpayers trying to circumvent taxes, interests, and penalties that would otherwise be owed. To address these objectives, GAO analyzed tax return data for all 2009 OVDP participants and exam files for a random sample of cases with penalties over $1 million; interviewed IRS Offshore officials; and developed and implemented a methodology to detect taxpayers circumventing monies owed.

What GAO Recommends

Among other things, GAO recommends that IRS (1) use offshore data to identify and educate taxpayers who might not be aware of their reporting requirements; (2) explore options for employing a methodology to more effectively detect and pursue quiet disclosures and implement the best option; and (3) analyze first-time offshore account reporting trends to identify possible attempts to circumvent monies owed and take action to help ensure compliance. IRS agreed with all of GAO's recommendations.

View GAO-13-318. For more information, contact James R. White, (202) 512-9110 or whitej@gao.gov.

What GAO Found

As of December 2012, the Internal Revenue Service's (IRS) four offshore programs have resulted in more than 39,000 disclosures by taxpayers and over $5.5 billion in revenues. The offshore programs attract taxpayers by offering a reduced risk of criminal prosecution and lower penalties than if the unreported income was discovered by one of IRS's other enforcement programs. For the 2009 Offshore Voluntary Disclosure Program (OVDP), nearly all program participants received the standard offshore penalty—20 percent of the highest aggregate value of the accounts—meaning the account value was greater than $75,000 and taxpayers used the accounts (e.g., made deposits or withdrawals) during the period under review. The median account balance of the more than 10,000 cases closed so far from the 2009 OVDP was $570,000. Participant cases with offshore penalties greater than $1 million represented about 6 percent of all 2009 OVDP cases, but accounted for almost half of all offshore penalties. Taxpayers from these cases disclosed a variety of reasons for having offshore accounts, and more than half of them had accounts at Swiss bank UBS.

Using 2009 OVDP data, IRS identified bank names and account locations that helped it pursue additional noncompliance. Based on a review of cases, GAO found examples of immigrants who stated in their 2009 OVDP applications that they were unaware of their offshore reporting requirements. IRS officials from the Offshore Compliance Initiative office said they have not targeted outreach efforts to new immigrants. Using information from the 2009 OVDP, such as the characteristics of taxpayers who were not aware of their reporting requirements, to increase education and outreach to those populations could promote voluntary compliance.

IRS has detected some taxpayers with previously undisclosed offshore accounts attempting to circumvent paying the taxes, interest, and penalties that would otherwise be owed, but based on GAO reviews of IRS data, IRS may be missing attempts by other taxpayers attempting to do so. GAO analyzed amended returns filed for tax year 2003 through tax year 2008, matched them to other information available to IRS about taxpayers' possible offshore activities, and found many more potential quiet disclosures than IRS detected. Moreover, IRS has not researched whether sharp increases in taxpayers reporting offshore accounts for the first time is due to efforts to circumvent monies owed, thereby missing opportunities to help ensure compliance. From tax year 2007 through tax year 2010, IRS estimates that the number of taxpayers reporting foreign accounts nearly doubled to 516,000. Taxpayer attempts to circumvent taxes, interest, and penalties by not participating in an offshore program, but instead simply amending past returns or reporting on current returns previously unreported offshore accounts, result in lost revenues and undermine the programs' effectiveness.

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Abbreviations

AGI	Adjusted Gross Income
CDW	Compliance Data Warehouse
CI	Criminal Investigation
CIMIS	Criminal Investigation Management Information System
DOJ	Department of Justice
EIN	Employer Identification Number
ERIS	Enforcement Revenue Information System
FATCA	Foreign Account Tax Compliance Act
FBAR	Report of Foreign Bank and Financial Accounts
FinCEN	Financial Crimes Enforcement Network
IRS	Internal Revenue Service
NAICS	North American Industry Classification System
OVDP	Offshore Voluntary Disclosure Program
PAIR	Planning, Analysis, Inventory and Research
PFIC	Passive Foreign Investment Company
SOI	Statistics of Income

United States Government Accountability Office
Washington, DC 20548

March 27, 2013

The Honorable Max Baucus
Chairman
The Honorable Orrin G. Hatch
Ranking Member
Committee on Finance
United States Senate

The Honorable Dave Camp
Chairman
Committee on Ways and Means
House of Representatives

By law, U.S. citizens are required to report worldwide income from all sources, including income from offshore accounts.[1] While taxpayers can hold offshore accounts for a number of legitimate reasons, some use them to illegally reduce their tax liabilities, often by not reporting the income earned on these accounts. There is no precise estimate of how much money the U.S. Treasury loses due to unreported income from offshore accounts. Former Internal Revenue Service (IRS) Commissioner Charles O. Rossotti said at a congressional hearing in 2002 that he believed offshore noncompliance to be several tens of billions of dollars, but did not have a precise number.[2] IRS has been limited in its ability to uncover and pursue taxpayers with unreported offshore accounts by traditional means, in part because the reporting requirements that apply to domestic financial institutions do not generally apply to foreign institutions.[3]

Since 2003, IRS has carried out four offshore voluntary disclosure programs, collectively referred to in this report as “offshore programs,”

[1]For purposes of this report, offshore refers to any foreign jurisdiction outside of the United States.

[2]U.S. Senate Committee on Finance, “Schemes, Scams and Cons: The IRS Strikes Back,” hearing on April 11, 2002.

[3]U.S. financial institutions are required to report account earnings to IRS. For years, IRS has compared this information to the information taxpayers report on their tax returns to ensure accuracy.

that offer incentives for taxpayers to disclose their offshore accounts and pay delinquent taxes, interest, and penalties.[4] Generally, the programs offered somewhat reduced penalties and no risk of criminal prosecution if eligible taxpayers fully disclosed their previously unreported offshore accounts and paid taxes due plus interest. As of December 2012, these offshore programs have resulted in more than 39,000 disclosures and over $5.5 billion in revenues.

Some taxpayers with unreported foreign accounts may have chosen not to participate in one of IRS's offshore programs, and attempted to circumvent some taxes, interest, and penalties owed. One technique, which IRS calls a "quiet disclosure," is to file amended tax returns that report offshore income from prior years. Another technique is for taxpayers to declare existing offshore accounts for the first time with their current year's tax return, but not amend prior year returns. If successful, these techniques result in lost revenue for the Treasury, and undermine the offshore programs' fairness and effectiveness.

You asked us to review IRS's 2009 Offshore Voluntary Disclosure Program (OVDP)—IRS's second offshore program and the most recent program with enough closed cases for analysis. In this report we (1) describe the nature of the noncompliance of taxpayers participating in the 2009 OVDP, (2) determine the extent to which IRS used data from the 2009 OVDP in order to better prevent and detect future noncompliance, and (3) assess IRS's efforts to identify taxpayers who may have attempted quiet disclosures or other ways of circumventing some of the taxes, interest, and penalties that would otherwise be owed.

To describe the characteristics of the population of taxpayers participating in the 2009 OVDP, we analyzed six years of tax return data from all participants. To get additional information about taxpayers with large offshore accounts, we analyzed IRS's case files from a random sample of closed 2009 OVDP cases with penalties of $1 million or greater. To determine the extent to which IRS used data from the 2009 OVDP to better prevent and detect future noncompliance, we reviewed changes that IRS made to subsequent offshore programs. We also interviewed IRS officials from the Offshore Compliance Initiative office about actions

[4]The first three programs occurred in 2003, 2009, and 2011. The fourth program, which started in 2012, remains open.

taken to identify and target additional offshore noncompliance. To assess IRS's efforts to detect quiet disclosures, we used IRS tax return data from the tax years covered by the 2009 OVDP, tax year 2003 through tax year 2008, to identify potential quiet disclosures and compared our results with those from IRS. We also used tax return data from tax year 2003 through tax year 2010 from IRS and Report of Foreign Bank and Financial Accounts (FBAR) data from the Financial Crimes Enforcement Network (FinCEN) to assess other ways taxpayers may be circumventing some of the taxes, interest, and penalties owed.[5] For the purposes of this review, we determined that the data used in our analyses were reliable. Our data reliability assessment included reviewing relevant documentation, conducting interviews with IRS officials knowledgeable about the data, and conducting electronic testing of the data to identify obvious errors or outliers. See appendix I for more information on our scope and methodology.

We conducted this performance audit from June 2011 to March 2013 in accordance with generally accepted government auditing standards. Those standards require that we plan and perform the audit to obtain sufficient, appropriate evidence to provide a reasonable basis for our findings and conclusions based on our audit objectives. We believe that the evidence obtained provides a reasonable basis for our findings and conclusions based on our audit objectives.

Background

Reporting Requirements for Offshore Accounts

U.S. taxpayers can hold offshore accounts for a number of non-tax reasons, including access to funds while living or working overseas, asset protection, investment portfolio diversification, enhanced investment opportunities, and to facilitate international business transactions. U.S.

[5]FinCEN is a bureau of the U.S. Department of the Treasury. FinCEN's mission is to enhance the integrity of the financial systems by facilitating the detection and deterrence of financial crime. FinCEN carries out its mission by receiving and maintaining financial transactions data; analyzing and disseminating that data for law enforcement purposes and building global cooperation with counterpart organizations in other countries and with international bodies. The Bank Secrecy Act requires that U.S. taxpayers file FBARs if they have a financial interest in or signature authority over offshore accounts with an aggregate value exceeding $10,000, a threshold set by the Secretary of the Treasury. 31 U.S.C. § 5314; 31 C.F.R. § 1010.350.

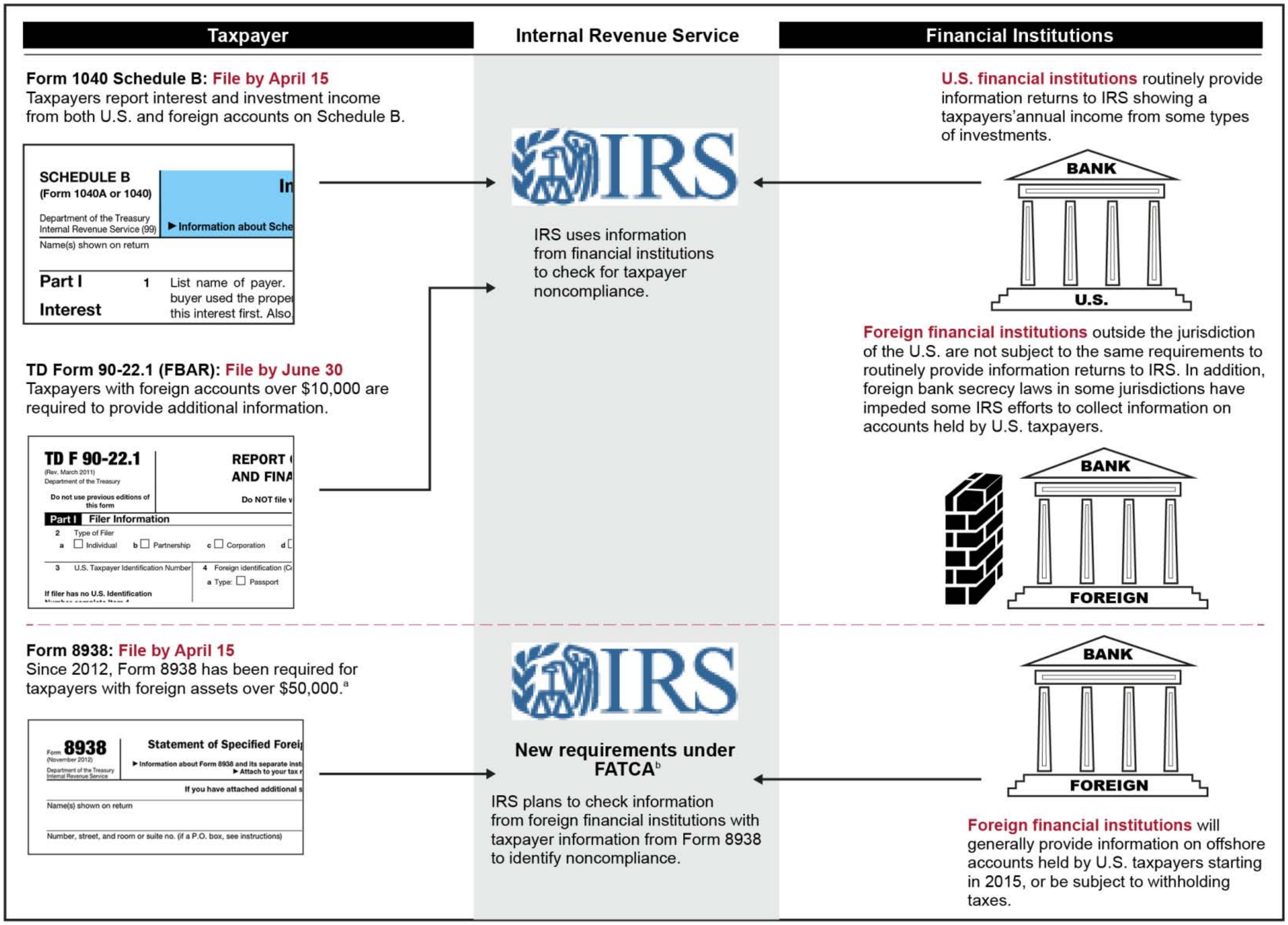
taxpayers must report whether they have offshore accounts on Schedule B of IRS Form 1040 and pay taxes on income from the offshore accounts at their individual tax rates. Some taxpayers with large offshore account balances are also required to report additional account information, such as the name and location of their bank, by filing a form TD F 90-22.1, Report of Foreign Bank and Financial Accounts (FBAR). Failure to report the existence of offshore accounts or pay taxes on these accounts can lead to civil and criminal penalties.

U.S. financial institutions are required to submit to IRS information returns that report income earned by account holders.[6] IRS uses the information to check whether taxpayers are reporting investment earnings and other income correctly. Unlike the reporting requirements for U.S. financial institutions, there has been no reporting regime for foreign financial institutions, and this lack of information has limited IRS's ability to ensure taxpayers were reporting offshore income accurately (see fig. 1). IRS has begun implementing provisions of the Foreign Account Tax Compliance Act (FATCA), which requires, beginning in 2015, U.S. financial institutions to withhold a portion of certain payments made to foreign financial institutions that have not entered into a specific agreement with IRS to report information on their U.S. clients.[7] It is expected that IRS will use this information to identify noncompliant taxpayers. While IRS officials do not anticipate that FATCA will replace the offshore programs, they do believe that future programs may shift in focus to identifying promoters of offshore tax schemes that are not associated with the financial institutions that will be subject to FATCA reporting requirements.

[6]26 U.S.C. § 6049. An information return is a return filed with the IRS by a person or other entity to report some economic information other than the tax liability of the filing person or entity.

[7]Subtitle A of title V of the Hiring Incentives to Restore Employment Act is commonly referred to as FATCA. Pub. L. No. 111-147, 124 Stat. 71, 97–117 (2010). We issued a report on IRS's implementation of FATCA in April 2012. See GAO, *Foreign Account Reporting Requirements: IRS Needs to Further Develop Risk, Compliance, and Cost Plans*, GAO-12-484 (Washington, D.C.: April 16, 2012).

Figure 1: Illustration of Taxpayer and Information Reporting on Offshore Accounts



Source: GAO analysis of foreign account filing requirements.

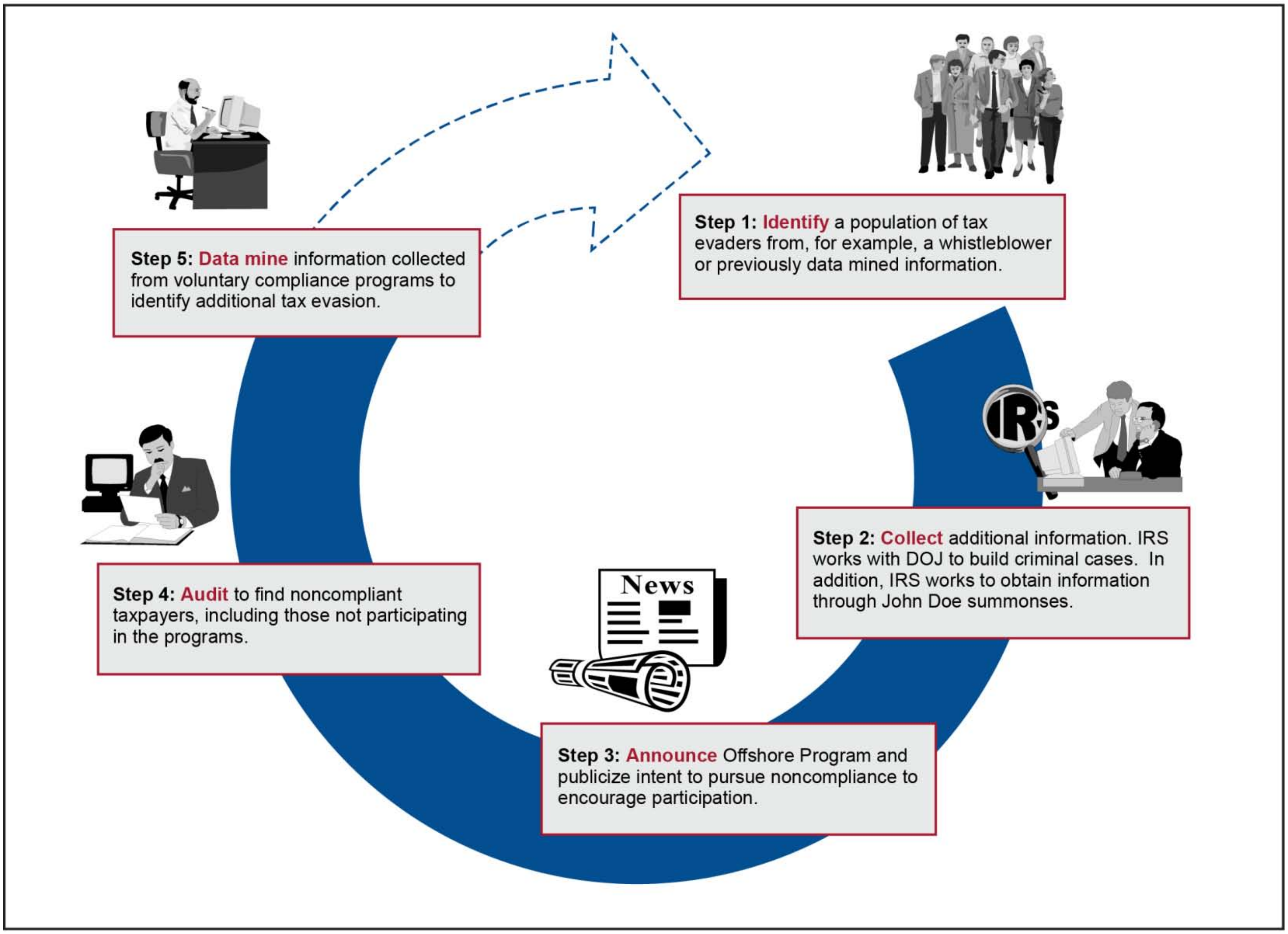
[a]Different thresholds apply based on whether a filer files a joint income tax return or resides outside the United States, and whether asset values exceed a certain threshold at any point during the year. If the end of year aggregate value filing threshold is not met, a higher threshold applies during the year. 26 U.S.C. § 6038D; 26 C.F.R. § 1.6038D-0T to 1.6038D-8T.

[b]FATCA stands for the Foreign Account Tax Compliance Act.

Key Features of IRS's Offshore Programs

IRS's offshore programs were designed to encourage taxpayers with undisclosed income from offshore accounts to become current with their tax liabilities. Although the offshore programs differed in details, all four followed a cycle similar to the one illustrated in figure 2. The offshore programs fit into IRS's larger compliance efforts, which are intended to both detect noncompliance and to encourage voluntary compliance, in part by minimizing the burden for taxpayers to understand their tax obligations and file tax returns every year.

Figure 2: IRS Process for Developing Offshore Disclosure Programs



Source: GAO analysis of IRS information on offshore filing requirements and process information provided by IRS's Offshore Compliance Initiative office; and Art Explosion clip art.

Step 1: Identifying a Population of Taxpayers with Suspected Offshore Account Noncompliance

While open and intended to attract all noncompliant taxpayers with offshore accounts, the four offshore programs to date all started with IRS identifying a particular group of taxpayers suspected of having unreported offshore accounts. The group might be account holders at a particular bank or in a particular country. Sometimes IRS obtains such information from whistleblowers.[8] In 2007, a whistleblower provided details to the U.S. government about how his employer, Swiss bank UBS, was actively assisting and facilitating U.S. taxpayers' concealment of taxable income.[9] (See app. II for more information on the UBS whistleblower.) IRS may also use information gathered through prior offshore programs to identify other banks or countries where U.S. taxpayers may be hiding offshore income.

Step 2: Identifying Some Specific Individuals from the Step 1 Population

The next step is to learn the identities of some of the taxpayers suspected of noncompliance. One technique is to use John Doe summonses.[10] In 2008, prior to the announcement of the 2009 OVDP, a federal court granted IRS permission to serve a John Doe summons to UBS for information on its U.S. customers. As a result of the summons, and subsequent government negotiation and agreement, UBS turned over information on approximately 4,450 accounts held in Switzerland by U.S. persons. This was a partial list of all U.S. UBS account holders with accounts in Switzerland. In other cases, IRS has been able to get client lists from promoters of offshore tax evasion schemes.

Step 3: Publicizing Steps 1 and 2 and Offering an Offshore Disclosure Program

In order to encourage program participation, IRS publicizes the fact that it knows, or soon will know, the names of some offshore account holders. IRS also publicizes the terms of its offshore programs, which offer incentives to taxpayers who voluntarily disclose their accounts before IRS learns about them. As described later, the offshore programs offer a reduced risk of criminal prosecution, and lower penalties than taxpayers could receive if unreported offshore accounts were discovered in an audit. In this report we refer to the reduced penalty offered as part of an

[8]The Internal Revenue Code provides whistleblowers with a significant financial incentive to report noncompliance. It provides for awards up to 30 percent of the collected proceeds that arise from the whistleblower's information. 26 U.S.C. § 7623.

[9]Although not publicly confirmed by IRS, attorneys for the UBS whistleblower reported that he was awarded $104 million.

[10]A John Doe summons is a court ordered summons that allows IRS to seek information about all taxpayers in a certain group, such as those with accounts at a certain financial institution, without knowing individual identities beforehand. The law authorizing a John Doe summons requires IRS to establish in a federal court proceeding that the summons relates to the investigation of a particular person or ascertainable group or class of persons; there is a reasonable basis to believe that the targeted person or group may fail or may have failed to comply with tax laws; and that the information is not readily available from other sources. 26 U.S.C. § 7609(f).

offshore program as the "offshore penalty." In the 2009 OVDP the offshore penalty was typically 20 percent of the highest aggregate value of the unreported offshore accounts between 2003 and 2008.

Step 4: Review Case Files of Offshore Program Participants and Audit Nonparticipants

Provided that they meet certain criteria, taxpayers are accepted into one of IRS's offshore programs by responding to IRS questions about the nature of their offshore noncompliance in an application letter and filing amended or late tax returns and FBARs.[11] (See app. III for sample application letters.) Investigators from IRS's Criminal Investigation division generally review applications to verify that taxpayers are not already under investigation, that the offshore income was from legal sources, and that the taxpayer has made a complete and truthful disclosure. Taxpayers' amended or late returns that are submitted as part of an offshore program are reviewed and certified by IRS examiners who calculate the delinquent taxes, interest, and penalties, and who may request additional documents and information from taxpayers.

Taxpayers who did not participate in an offshore program but are known to IRS (perhaps because they were on the list of names IRS identified in Step 2) run the risk of being audited outside of an offshore program. These taxpayers could be subject to substantially greater penalties and increased risk of criminal prosecution. Since 2009, IRS and the Department of Justice (DOJ) have publicized more than 40 prosecutions of UBS clients and UBS bankers.

Step 5: Data Mining Information Collected in Step 4

Through data mining, or analyzing, information from offshore program application letters, and reviewing the case files of program participants and auditing nonparticipants, IRS is able to identify new groups of taxpayers suspected of hiding income offshore. IRS can then choose to continue offering offshore programs and encourage these newly identified groups of taxpayers, as well as all taxpayers with unreported offshore accounts, to disclose their accounts voluntarily, repeating the cycle illustrated in figure 2. For example, taxpayers that participated in the 2009 OVDP named other Swiss banks and financial advisors who had assisted them with hiding offshore income. As a result, IRS and DOJ took actions to compel other Swiss banks to name their U.S. customers. To date, some Swiss banks have announced that they are cooperating with U.S.

[11] In the 2009 OVDP, the application letter was optional, and taxpayers could provide alternate documentation containing similar information; the letter was required for subsequent programs.

government investigations. One Swiss bank ceased operating after it pleaded guilty to helping U.S. taxpayers hide income offshore and agreed to pay approximately $74 million in fines, restitution, and civil forfeiture. IRS and DOJ are also pursuing other banks in Liechtenstein, Israel, and India, which had been named by 2009 OVDP participants.

Terms of IRS's Offshore Programs

Each of IRS's four offshore programs had a slightly different structure, including a higher standard offshore penalty rate for each subsequent program, as shown in table 1. In the 2009 OVDP, the standard offshore penalty was 20 percent. The offshore programs offer participating taxpayers a lower penalty than they could have been subject to if IRS had discovered their offshore account outside of the program. According to IRS, the offshore penalty is in lieu of all other liabilities for tax, interest, and penalties that IRS would not pursue. Taxpayers that do not participate in an offshore program could potentially face penalties that total more than 100 percent of the value of their unreported offshore accounts. These penalties could include FBAR, accuracy-related and/or delinquency, fraud, and foreign information return penalties.[12]

Most of the offshore programs also offered taxpayers mitigated penalties at lower rates, generally for taxpayers with small accounts or accounts that were not accessed, also shown in table 1.

Many offshore accounts were presumably open for decades, something that we confirmed in our review of 2009 OVDP cases, but practical reasons prevented IRS from auditing and collecting unpaid taxes from all of those years. The standard 2009 OVDP 20 percent offshore penalty was calculated based not on additional taxes assessed, but on the highest aggregate value of the offshore accounts. As a result, the penalty has been described by tax practitioners as "rough justice," in part because the amount in an account might include decades of tax-free buildup. (See app. IV for hypothetical examples illustrating tax-free build up and penalties for accounts of different ages.)

[12]A taxpayer who willfully fails to properly file an FBAR may be subject to a penalty equal to the greater of $100,000 or 50 percent of the balance in the account at the time of the violation, for each year of violation. Willful violations may also be subject to criminal penalties. For a full list of potential penalties for taxpayers with unreported offshore accounts or activities who do not participate in an offshore program see Internal Revenue Service, "Voluntary Disclosure: Questions and Answers," accessed March 13, 2013, http://www.irs.gov/uac/Voluntary-Disclosure:-Questions-and-Answers, Q15.

Under the 2003, 2009, and 2011 programs, taxpayers had a specified period of time to join a program. The 2012 program is, at present, open ended. In each program, delinquent taxes and interest were assessed and collected for a limited number of prior years, which varied from four to eight tax years. Taxpayers were typically assessed accuracy-related and/or delinquency penalties for the delinquent taxes assessed in an offshore program, in addition to the offshore penalty described earlier.

Table 1: Comparison of IRS's Offshore Voluntary Disclosure Programs

	2003 Offshore Voluntary Compliance Initiative	2009 Offshore Voluntary Disclosure Program	2011 Offshore Voluntary Disclosure Initiative	2012 Offshore Voluntary Disclosure Program
Factors that influenced participation	Promoters identified and John Doe summons for information on taxpayers who used bank cards to access hidden offshore income	John Doe summons for UBS accounts in Switzerland	IRS actions against many foreign banks, including HSBC, which provided IRS information on accounts in India	FATCA and increased actions against a number of foreign financial institutions
Application period	January 14, 2003, to April 15, 2003	March 23, 2009, to October 15, 2009[a]	February 8, 2011, to September 9, 2011	January 9, 2012, to present[b]
Tax years for which delinquent taxes were collected	4 years (1999 to 2002)	6 years (2003 to 2008)	8 years (2003 to 2010)	8 years[c]
Standard offshore penalty rate[d]	No offshore penalty	20%	25%	27.5%
Mitigated offshore penalty rate	No offshore penalty	5% for passive account holders.[e] Beginning in February 2011, 2009 OVDP participants could receive 2011 OVDI mitigated penalties, which they were allowed to apply for retroactively.	12.5% for accounts valued less than $75,000. 5% for passive account holders.[e]	12.5% for accounts valued less than $75,000. 5% for passive account holders.[e]
Other penalties	Accuracy-related penalty (up to 20% of unpaid taxes) and/or Delinquency penalty (up to 25% of unpaid taxes)			
IRS reported number of disclosures	1,321	15,000	18,000	Approximately 5,000 to date
Total collected (unpaid taxes, penalties and/or fees) as reported by IRS	$200 million	$4.1 billion (as of December 31, 2012)	$1.4 billion (as of December 31, 2012	Not available

Source: GAO analysis of IRS offshore voluntary disclosure program information.

[a]The IRS granted a one-time extension of the original September 23, 2009, deadline for certain voluntary disclosures. Those taxpayers had until October 15, 2009.

[b]The 2012 OVDP has no set deadline for taxpayers to apply. Additionally, IRS stated that the terms of the program could change at any time. For example, IRS could increase penalties associated with the

program for all or some taxpayers or a defined class of taxpayers, or decide to end the program at any point.

[c]Tax years covered are determined by the last closed tax year when the taxpayers apply to the program, plus the seven previous tax years.

[d]The offshore penalty rate is applied to the highest aggregate account balance during the calendar years that correspond to the tax years covered by the program.

[e]A 5 percent penalty rate was generally allowed if taxpayers did not open or cause the account to be opened, had no account use, and had paid all applicable U.S. taxes on funds deposited to the accounts, with only account earnings having escaped U.S. taxation. In later program years, minimal account activity was allowed, for example, to update address information, or to withdraw a minimal amounts of funds, defined as less than $1,000 in any program year for which the taxpayers was noncompliant. This limit did not include transfers back to the United States upon closing an offshore account.

Attempts to Circumvent Some of the Taxes, Interest, and Penalties that Otherwise Would Be Owed in Offshore Programs

Despite the significant risks of not coming forward through one of IRS's offshore programs, some taxpayers decide to do nothing and remain noncompliant. Other taxpayers have attempted to disclose their offshore accounts without paying all the delinquent taxes, interest, and penalties required by the programs. In a quiet disclosure, taxpayers file amended tax returns for all or some of the tax years covered by an offshore program, and report the income from the previously unreported accounts. The taxpayers would generally pay interest and either accuracy-related or delinquency penalties on the newly reported income, but would avoid the higher offshore penalty.[13] At the same time, taxpayers attempting quiet disclosures would file late FBARs, if they had not previously filed FBARs, or amended FBARs, if they had, to disclose the offshore accounts that they had not previously reported. Taxpayers might also try to circumvent some of the taxes, interest, and penalties that would otherwise be owed in offshore programs by reporting the existence of any offshore accounts and any income from the accounts on their current year's tax return, without amending prior years' returns. These taxpayers would also likely disclose the existence of the accounts by filing FBARs for the current calendar year. This filing would appear similar to the opening of a new account. Such a taxpayer would avoid paying any delinquent taxes, interest, or penalties, unless audited. As described earlier, taxpayers who are caught disclosing offshore accounts outside of one of IRS's offshore programs risk steeper penalties and criminal prosecution, based on the facts and circumstances of their cases.

[13]The offshore penalty is not a penalty established by statute that taxpayers with undisclosed foreign accounts are required to pay by law. It is an amount voluntary participants in the offshore programs agree to pay in exchange for the benefits associated with participation in those programs, and its collection is authorized by the IRS's settlement authority conferred in IRC sections 7121 and 7122.

Almost All 2009 OVDP Participants Received the Maximum Offshore Penalty, Almost Half Had Accounts in Switzerland, and About Half of the Revenue Collected Came from a Small Percentage of High Penalty Cases

Summary of All 2009 OVDP Closed Cases

Participants in IRS's 2009 OVDP had offshore accounts that varied considerably in size. Of the 10,439 closed 2009 OVDP cases, we estimate based on penalty data that the bottom 10 percent of the participants had account balances of less than $79,000 and the top 10 percent had balances over $4 million, as shown in table 2.[14] The amount of offshore penalties also varied widely, which reflected the range of account balances. Some taxpayers were assessed an offshore penalty of a few thousand dollars while others were assessed several million dollars. The average offshore penalty assessed was about $376,000 while the median was approximately $108,000.

[14]We identified 19,337 total participants in IRS's 2009 OVDP. Those participants had 10,439 closed cases, as of November 29, 2012, that we could analyze. The 19,337 participants we identified as participating in IRS's 2009 OVDP differs from the number released publicly by IRS, which has been 15,000. The number released publicly by IRS reflects the total applicants accepted into OVDP by CI, while our figure represents the total number of taxpayers reviewed within the 2009 OVDP civil penalty structure, meaning that we added some spouses and other taxpayers that were assessed offshore penalties. See appendix I for more information on our methodology. Of the 19,337 participants that we identified, 200 (or 1 percent) were businesses. See appendix V for characteristics of these businesses.

Table 2: Selected Penalty Information for 2009 OVDP Individual Taxpayers with Closed Cases as of November 29, 2012

	Mean	10th percentile	25th percentile	Median	75th percentile	90th percentile
Offshore account(s) balance[a]	$1,923,310	$78,315	$190,365	$568,735	$1,595,805	$4,054,505
2009 OVDP penalty	375,879	13,320	35,670	107,949	310,476	793,166
Additional tax owed, tax years 2003-2008	97,681	103	1,661	12,748	60,449	190,399
Interest, tax years 2003-2008	29,645	52	482	3,486	17,398	57,129
Other penalties[b]	24,014	84	605	3,457	14,290	45,163
Total penalties, interest and taxes	$433,840	$2,318	$22,120	$95,982	$330,185	$923,300

Source: GAO analysis of IRS's Enforcement Revenue Information System (ERIS) and Individual Returns Transaction File.

Note: Totals may not equal sum of components due to variation in the component populations.

[a]2009 OVDP offshore account balance is an estimated number based on penalty amounts. It represents the highest aggregate balance of all offshore accounts between 2003 and 2008.

[b]Other penalties primarily included accuracy-related penalties and delinquency penalties.

Of the 10,439 closed cases, most were assessed offshore penalties and 96 percent of those assessed penalties received the standard offshore penalty—20 percent of the highest aggregate value of the offshore accounts, which was also the maximum offshore penalty rate in the 2009 OVDP. The 20 percent penalty was generally levied when the total account value was greater than $75,000 and when taxpayers used the accounts (e.g., made deposits or withdrawals) during the period under review (2003 to 2008). See table 3.

Table 3: Type and Amount of Offshore Penalties for 2009 OVDP Closed Cases (Individual Taxpayers) as of November 29, 2012

	Percent of closed cases with penalties	Total penalty dollars	Median penalty amount
20 percent penalty	96	$2.786 billion	$116,393
12.5 percent penalty	less than 1	0.002 billion	5,831
5 percent penalty	4	0.021 billion	18,478
All penalty rates		**$2.810 billion**	**$107,949**

Source: GAO analysis of IRS's ERIS.

Note: Total for penalty dollars may not equal sum of components due to rounding.

Fewer than 5 percent of 2009 OVDP participants received one of the mitigated offshore penalties, 12.5 percent or 5 percent, also shown in table 3. (See sidebars for representative examples of mitigated penalty cases.)

Consistent with IRS's enforcements efforts and the design of the 2009 OVDP, we found that the population of participants was more likely to report offshore accounts in Switzerland than the average foreign account holder who filed an FBAR (see fig. 3). Taxpayers with closed cases also had higher incomes than the average taxpayer, were older, and were more likely to use the married filing jointly status. (See app. VI.)

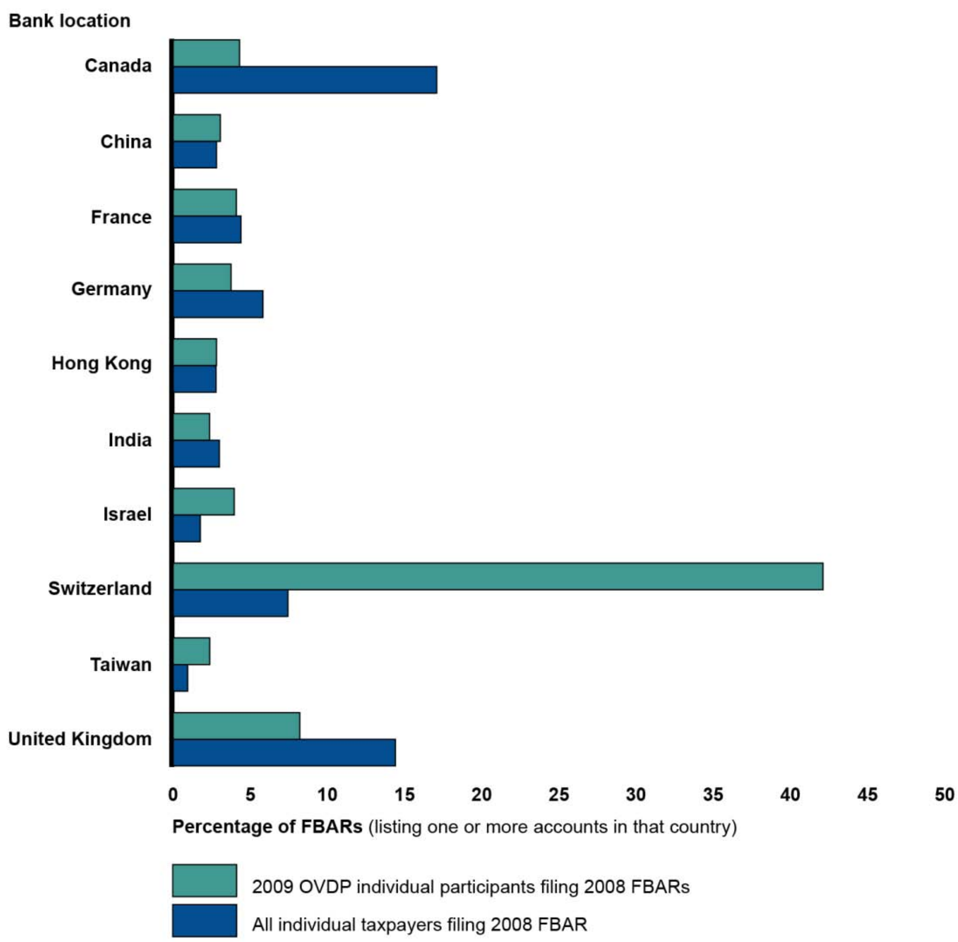
5 Percent Mitigated Penalty Case

A taxpayer and his wife inherited offshore accounts from the wife's parents who were not U.S. citizens or residents. The inherited funds in the accounts were from the parents' foreign savings and not from U.S. sources. The taxpayers did not make any deposits or withdrawals from the accounts after inheriting them. The taxpayers paid foreign taxes to the country where the accounts were located, but did not pay U.S. taxes on the income for some of the years covered by the offshore program. The taxpayers did not file a FBAR and claimed they did not know about the FBAR filing requirement.

12.5 Percent Mitigated Penalty Case

A U.S. citizen, married to a non-U.S. citizen, and living overseas for an extended period of time, maintained accounts in the taxpayer's country of residence for local banking needs. In aggregate, the accounts were less than $75,000. The taxpayer had not filed U.S. tax returns for a number of the tax years covered by the offshore program. By participating in the 2009 OVDP, the taxpayer paid delinquent taxes, interest, and delinquency penalties, in addition to the mitigated offshore penalty.

Figure 3: Top Ten Locations of Offshore Accounts on 2008 FBARs Filed by 2009 OVDP Participants Compared to All 2008 Individual FBAR Filers



Source: GAO analysis of FinCEN data.

Note: OVDP stands for Offshore Voluntary Disclosure Program and FBAR stands for Report of Foreign Bank and Financial Accounts.

Results from Sample of Large Penalty Cases

About half of the revenues collected through the 2009 OVDP, as of March 30, 2012, came from 378 cases where taxpayers received offshore penalties of $1 million or greater, meaning they had account balances of $5 million or greater. This group, which we refer to as "large penalty cases", accounted for about 6 percent of the closed 2009 OVDP cases, but the penalties they received amounted to 49 percent of the total $1.9 billion in offshore penalties that had been assessed by IRS at that time.[15] Given this group's high share of penalties assessed, we selected a random sample of 30 of them for further examination and to obtain a better understanding taxpayers' noncompliance.

More than Half of Taxpayers Receiving Large Penalties Had Accounts at Swiss Bank UBS and Some First Transferred Funds from UBS to Other Swiss Banks before Entering the 2009 OVDP

For large penalty cases, we estimate that more than 50 percent of taxpayers had one or more bank accounts with Swiss bank UBS.[16] (See app. VII for detailed information on the location of these taxpayer's offshore accounts, including country and bank names.) Some of these taxpayers with UBS accounts transferred funds from Swiss bank UBS in 2008—the time when the U.S. government was actively trying to compel UBS to name its U.S. account holders. The funds were often transferred to other, smaller Swiss banks that generally did not operate in the United States. A few taxpayers claimed that they transferred funds at the recommendation of their UBS financial advisors. Taxpayers transferring funds to other banks may have been attempting to keep their offshore accounts hidden before deciding to participate in the 2009 OVDP.

[15]Throughout the rest of our report, we use an updated November 29, 2012, figure. As of that date, 56 percent of the total $2.8 billion in offshore penalties assessed were from cases with penalties of $1 million or greater.

[16]The 95 percent confidence interval for the estimated 70 percent of taxpayers receiving large penalties with accounts at Swiss bank UBS is 51 percent to 85 percent. See appendix I for more information on our scope and methodology and appendix VII for more counts by case file.

Taxpayers Receiving Large Penalties Disclosed a Variety of Reasons for Having Offshore Accounts

Moving U.S. Funds Offshore

A taxpayer and his wife first opened financial accounts in a Caribbean country in the early 1990s to protect their assets from potential professional services claims (malpractice) in the United States. They reported that Swiss bankers met them in the United States and helped them open these accounts. Several years later, the same bankers met them again in the United States and recommended they close the Caribbean accounts and transfer the funds to Switzerland. In 2008, the bankers recommended that the taxpayers close their accounts at one Swiss bank and transfer the funds to other Swiss banks, which they did before ultimately applying to the 2009 OVDP.

Use of Sham Foreign Entities

A taxpayer and her siblings inherited offshore accounts in Switzerland from their father. The family's Swiss bank accounts were first opened by another family member decades ago before the family immigrated to the United States. Over time, the family continued to make contributions to the accounts from family businesses in the United States and overseas. To transfer money from Switzerland to the United States, the family used a series of foreign accounts and sham foreign entities to disguise the flow of funds. The transfer route for the family's funds typically went from banks in Switzerland through banks in other countries associated with the various foreign entities, before eventually being deposited in the United States and split among the taxpayer and other family members.

Political/War Refugees

A taxpayer and her late husband immigrated to the United States in the 1980s. Prior to a revolution in their native country, the taxpayers opened bank accounts in Europe to safeguard the family's business assets from potential seizure. The taxpayer applied to the 2009 OVDP after her husband's death.

Many taxpayers in the 30 large penalty cases that we reviewed had resided outside the United States for extended periods of time—either as U.S. citizens or prior to obtaining U.S. citizenship.[17] Many taxpayers who disclosed extended periods of non-U.S. residency reported that they had opened their offshore accounts with income earned outside of the United States. A few of these taxpayers had been living and working overseas as U.S. citizens for decades. Others within this group opened accounts before immigrating to the United States. Although some taxpayers in these cases became U.S. residents decades ago, they maintained their offshore accounts and did not disclose them on tax returns or FBARs. Some taxpayers reported opening bank accounts in Switzerland as a means of protecting family assets during periods of war or instability in their native country. Further, a few taxpayers who immigrated to the United States reported that they had been unaware of their FBAR reporting requirements, that they had to state that they had foreign accounts on the Form 1040, Schedule B, or that the United States taxes the worldwide income of its residents, including overseas investment income. (See sidebars for representative examples from our case file reviews.)

Taxpayers in some of the cases that we reviewed disclosed that the original source of funds for their offshore accounts came from post-tax U.S. source income. A few of these taxpayers cited family histories or personal fears about the safety of U.S. banks as their reasons for moving savings offshore. Others reasons cited included the need to protect or shelter assets from possible U.S. lawsuits.

We estimate that 47 percent of taxpayers receiving large penalties inherited offshore accounts from a parent, spouse, or other relative—some of whom were not U.S. citizens or residents.[18] In many instances, taxpayers reported inherited accounts that were jointly owned or managed by extended family members, such as siblings and cousins, who also applied to the 2009 OVDP and sometimes split the penalties. Regardless of how taxpayers in the large penalty cases came to own offshore accounts, many maintained but did not disclose offshore account

[17] Under the U.S. worldwide tax system, U.S. citizens and residents generally must report income, wherever it is earned, including income from foreign bank accounts, to the IRS.

[18] The 95 percent confidence interval for the estimated 47 percent of taxpayers receiving large penalties who inherited offshore accounts is 29 percent to 65 percent.

Long-term Expatriates

A taxpayer and his wife (both U.S. citizens) had been living and working in a foreign country since the 1980s. When applying to the 2009 OVDP, they reported several foreign financial accounts valued at over a million dollars; some were opened for their personal local banking needs, while others were related to the couple's businesses. The taxpayers had reported some, but not all, of their income from these accounts on their tax returns, and they had not filed FBARs.

Multiple Family Members

A taxpayer was one of several family members to participate in the 2009 OVDP. Together they had inherited foreign financial accounts from older-generation family members, who owned and operated a family business with operations in the United States and several European countries. Their family had set up family foundations, trusts, and corporations to manage the family finances decades ago. These entities were located in offshore tax havens, but the entities' bank accounts remained at banks in Switzerland. The younger-generation family members, including the taxpayers, continued to modify the ownership structures and create new investments, after inheriting the accounts.

Inheritance from Non-U.S. Person

A taxpayer reported that she had received monetary gifts from a parent who was not a U.S. citizen or resident. The taxpayer's parent had opened accounts in the taxpayer's name at Swiss banks decades ago. At the time, the taxpayer was not yet a U.S. citizen. The taxpayer reported that her parent made regular deposits to the Swiss accounts over a long period, but that she, herself, did not access the account. After the death of her parent, she became the sole account holder, but still did not report the account for tax purposes.

balances of several million dollars for many years. Some of these taxpayers did not pay U.S. taxes on income earned from these accounts for decades.

We estimate that 40 percent of 2009 OVDP participants receiving large penalties used complex arrangements to indirectly own or manage their offshore accounts.[19] These arrangements involved the use of foreign corporations, foundations, trusts, and other entities in jurisdictions that have been designated as offshore tax havens and financial privacy jurisdictions, some of which were recommended by the taxpayers' foreign financial advisors.[20] In some cases, the entities were "sham" entities—i.e., entities created to conceal ownership from U.S. tax authorities—which participants in some case files that we reviewed used to conceal the ownership of accounts or disguise the repatriation of offshore funds back to the United States. Another complex arrangement present in several large penalty cases was passive foreign investment companies (PFIC). A PFIC is a type of mutual fund or investment company held outside of the United States.[21] Some foreign bank accounts disclosed through OVDP were in the form of simple interest bearing accounts, but others were foreign mutual funds that would be treated as PFICs under the Internal Revenue Code. PFICs may, in some cases, receive less favorable tax treatment than U.S. entities holding similar assets or earning similar income.[22] Taxpayers who did not disclose PFICs may not have paid the additional taxes on such investments. In many cases, a number of previously unreported investment entities were disclosed through the

[19]The 95 percent confidence interval for the estimated 40 percent of taxpayers disclosing the use of complex arrangements to indirectly own or manage their offshore accounts ranged from 23 percent to 59 percent.

[20]For a list of tax havens and financial privacy jurisdictions sourced to the Organization for Economic Co-operation and Development, the National Bureau of Economic Research and a U.S. District Court order granting leave for IRS to serve a John Doe summons, see Table 1 in GAO, *International Taxation: Large U.S. Corporations and Federal Contractors with Subsidiaries in Jurisdictions Listed as Tax Havens or Financial Privacy Jurisdictions,* GAO-09-157 (Washington, D.C.: Dec. 18, 2008).

[21]Generally, a foreign corporation is considered to be a PFIC if certain percentages of the corporation's income or assets are passive. 26 U.S.C. § 1297.

[22]Joint Committee on Taxation, *General Explanation of the Tax Reform Act of 1986,* JCS-10-87, May 4, 1987. Also see GAO, *Cayman Islands: Review of Cayman Islands and U.S. Laws Applicable to U.S. Persons' Financial Activity in the Cayman Islands,* GAO-08-1028SP an E-supplement to GAO-08-778 (Washington, D.C.: July 24, 2008).

2009 OVDP, and IRS decided to accept an alternative tax on all their associated PFIC gains—20 percent of the gain—potentially a much lower tax rate than would otherwise have been available to those taxpayers.

IRS Generally Has Used 2009 OVDP Data Strategically, But Has Not Used the Data to Identify Additional Opportunities to Educate Taxpayers on Offshore Filing Requirements

IRS Used 2009 OVDP Data to Identify Noncompliance Involving Additional Banks and Countries and to Improve Subsequent Offshore Voluntary Disclosure Programs

As previously discussed, one of the intended purposes of the 2009 OVDP was mining, or analyzing, data collected from OVDP applications and audits of participants and nonparticipants to identify entities and individuals who promoted or otherwise helped U.S. citizens hide assets and income offshore.[23] We found that IRS collected the names of offshore financial institutions, financial advisors, bankers, attorneys, and other promoters from the 2009 OVDP that were involved in hiding U.S. taxpayers' offshore income, and used the names to (1) identify patterns of noncompliance, (2) encourage banks and other promoters to cooperate with IRS and provide the names of U.S. taxpayers hiding income overseas, and (3) build cases for John Doe summonses.

IRS officials from the Offshore Compliance Initiative office told us that publicity from the John Doe summonses has been the most effective tool to increase participation in its offshore programs. They based their conclusion on the correlation between country specific or bank specific John Doe summonses and the locations of 2009 OVDP participants'

[23]Internal Revenue Service, "FY 2011 Congressional Budget Submission," February 1, 2010.

accounts. Our case file analysis discussed previously in this report supports IRS's conclusion.

However, IRS officials also determined that data mining the 2009 OVDP applications would not provide IRS with all of the useful information it could get from participants. For taxpayers accepted into the program, responses on the 2009 OVDP applications varied widely in degree of detail, which we confirmed in our case file review. For example, some application letters included very detailed account information, such as the original source of funds, bank name, banker name, and country name, while other case files we reviewed did not contain any optional letter like the one suggested by IRS in its 2009 OVDP Questions & Answers. As a consequence, IRS sent surveys to 2009 OVDP participants to obtain more details about the offshore accounts. The survey included detailed questions about the taxpayer's financial institutions, bankers, advisors, attorneys, or other promoters' involvement in hiding offshore income. IRS program officials stated that the additional information they received from the surveys was useful and that they were using it, along with various analyses of voluntary disclosures, to identify particular banks, promoters, professionals, and others who promote, facilitate, or enable U.S. taxpayers in avoiding or evading payment of required U.S. taxes through the use of offshore accounts. According to IRS, these analyses have also been used to identify the foreign countries where the offshore accounts were maintained as well as the schemes being used and offshore structures.

Based on data that IRS collected from mining the 2009 OVDP case files and the survey, IRS

- obtained information on offshore accounts held by U.S. taxpayers at HSBC (India);
- continued investigations of additional foreign financial institutions in Switzerland, Asia, and the Caribbean;
- built cases for additional John Doe summonses, should they become necessary;
- expanded its investigations of non-bank entities, such as merchant accounts, which are a type of bank account that allows a business to

accept payments by payment cards, such as credit or debit cards;[24] and

- improved subsequent offshore programs.

One lesson that IRS learned from the 2009 OVDP was that the applications sometimes did not contain enough information to allow IRS to understand the nature of the noncompliance. To obtain better information going forward, and as a condition of being accepted into the 2011 and 2012 programs, IRS required applicants to submit additional documents related to their offshore accounts.[25] This included additional account information about the original source of funds. In addition, applicants to the 2011 and 2012 programs that had offshore accounts with an aggregate balance of $1 million or more were required to submit a separate statement for each foreign financial institution. These applicants were also required to submit a separate statement for each foreign account or asset listed in their voluntary disclosure. (See app. III for sample 2009 and 2012 application letters and, the new required attachment to the 2012 application letter.) IRS officials from the Offshore Compliance Initiative office told us that they have begun to use data from these additional submissions to improve offshore compliance.

Based in part on its experience with the 2009 OVDP, IRS introduced streamlined offshore program filing procedures. These were, in part, intended to provide a less burdensome process for taxpayers with unreported offshore accounts that were small. As shown earlier in table 2, for the 10,439 2009 OVDP cases that we had data for, the account value for the 10th percentile was about $78,000. According to IRS, some of these taxpayers with smaller accounts, and thus relatively low unpaid-tax obligations, were U.S. residents residing overseas, including dual citizens, who most likely did not owe substantial amounts of unpaid taxes, and who indicated to IRS that they did not understand their filing requirements. The standard offshore penalty for such taxpayers would likely be disproportionately high. The streamlined filing procedures that

[24] According to IRS officials, some foreign banks have facilitated U.S. taxpayers in setting up merchant accounts offshore, in countries other than their countries of business, to hide income.

[25] Additional required documents can be found on IRS's website, "Offshore Voluntary Disclosure Program Submission Requirements," http://www.irs.gov/Individuals/International-Taxpayers/Offshore-Voluntary-Disclosure-Program-Submission-Requirements, accessed February 8, 2013.

began in September 2012 allow taxpayers with “low compliance risk” to become current with their offshore tax obligations without facing offshore penalties or additional enforcement action. IRS defined “low compliance risk” as taxpayers with simple tax returns, owing less than $1,500 in taxes for each of the years covered by the streamlined procedures.[26]

Despite the Successes of IRS’s Overall Strategy, IRS Might Benefit from Additional Information to Better Target Outreach and Education

IRS efforts to publicize the 2009 OVDP included notices published in seven languages and outreach to professional tax practitioners. IRS officials from the Offshore Compliance Initiative office told us that they had not formally evaluated the success of these outreach efforts. We recently reported concerns about the complexity of foreign account reporting requirements, and that tax practitioners and taxpayers are confused about what foreign account information should be reported and how.[27]

The offshore programs are part of IRS’s larger compliance efforts, which are intended to both detect noncompliance and to encourage voluntary compliance, in part by minimizing the burden for taxpayers to understand their tax obligations and file tax returns every year. Obtaining information on how taxpayers found out about IRS’s offshore voluntary disclosure programs could help IRS better identify populations that could benefit from additional taxpayer education and outreach and potentially improve voluntary compliance by taxpayers with new offshore accounts. Such information could also help IRS evaluate the success of its current outreach efforts. IRS’s 2009 OVDP application, however, did not contain a question on how the taxpayer became aware of the program. IRS made changes to the applications for subsequent programs, as described earlier, but did not consider adding questions on how participants became

[26]In order to use the streamlined filing procedures, taxpayers must file amended or late tax returns for the previous three years, and file any delinquent FBARs for the previous six years. If taxpayers self-determine they are a low compliance risk, they can submit returns through these new procedures, and not through the current, ongoing offshore voluntary disclosure program. If IRS later determines any of these taxpayers have a higher compliance risk, the taxpayers are subject to a more thorough review, potentially subject to an audit outside of the offshore program, and subject to potentially steeper FBAR penalties. According to IRS officials, these new procedures will assist many U.S. taxpayers who are nonresident, nonfilers with relatively low additional taxes owed, and taxpayers with certain foreign retirement accounts.

[27]GAO, *Reporting Foreign Accounts to IRS: Extent of Duplication Not Currently Known, but Requirements Can Be Clarified*, GAO-12-403 (Washington, D.C.: Feb. 28, 2012).

aware of the program. IRS officials from the Offshore Compliance Initiative office told us that this information would be useful in terms of allocating future resources, and that they would be open to considering a question on how taxpayers found out about the offshore programs. Presently, IRS has not decided to include this question in the 2012 program application.

In our case file review, we found examples of immigrants who stated in their 2009 OVDP applications that they were unaware of their FBAR filing requirements. We found they had often opened banks accounts in their home country prior to immigrating to the United States. IRS officials from the Offshore Compliance Initiative office stated that although there are several FBAR education programs, none are specifically targeted at new immigrants. Furthermore, these IRS officials were unaware of any IRS work with other federal agencies such as the State Department or the Department of Homeland Security to educate recent immigrants about their foreign account filing requirements. These officials stated that one of the challenges that they face in their office, which is part of IRS's Large Business and International Division, is that taxpayer education and outreach is the responsibility of IRS's Wage and Investment Division and that issues concerning FBARs fall under IRS's Small Business/Self-Employed Division.

IRS officials from the Offshore Compliance Initiative office agree that more could be done to improve taxpayer education and outreach about offshore reporting requirements. They, like us, recognize that multiple outreach efforts could help to draw additional taxpayers into the offshore programs, and that data mining information from the program applications can help identify these groups.

IRS May Not Be Identifying a Large Number of Quiet Disclosures or Other Attempts to Circumvent Some of the Taxes, Interest, and Penalties that would be Otherwise Owed by Not Participating in an Offshore Program

Taxpayer Use of Quiet Disclosures to Avoid Offshore Penalties Involves Significant Risk

Quiet disclosures matter because if IRS does not identify them, it undermines the incentive to participate in the offshore programs. IRS's offshore compliance enforcement efforts, including the offshore programs, deter taxpayers with noncompliance related to current offshore accounts, or offshore accounts that might be opened in the future. If taxpayers are able to quietly disclose and pay fewer penalties than they would have in an offshore program, the incentive for other noncompliant taxpayers to participate in a program is reduced. When quiet disclosures remain undetected, they also result in lost revenue for the government. Further, if quiet disclosures remain undetected, then IRS will not have information on the characteristics of these taxpayers and their accounts—characteristics such as bank names, country names, and promoter names—used to build cases against others.

IRS May Not Be Detecting Some Quiet Disclosures

Quiet Disclosure Detected

According to the criminal information and plea agreement, a taxpayer held an account at HSBC Bank Bermuda. With the assistance of a business partner, the taxpayer arranged to have investment income in the amount of $297,816 wired to his business partner's secret account at UBS in Switzerland. From there, the taxpayer's share of the investment ($99,273) was transferred to his HSBC Bank Bermuda account. The taxpayer did not report this taxable income, or the interest income that accrued in the account, thereby avoiding $40,624 in taxes. Following the widespread media coverage of UBS's disclosure of account records to IRS, the taxpayer made a quiet disclosure by preparing and filing FBARs and amended Forms 1040 for tax year 2003 to tax year 2008, in which he reported the existence of the previously undeclared account. As part of the plea agreement, the taxpayer agreed to pay an FBAR penalty of $76,283, which was 50 percent of the high balance in the account. The taxpayer also faces up to 5 years in prison and a $250,000 fine.

We identified 10,595 potential quiet disclosures, a number much higher than the potential quiet disclosures identified by IRS.[28] In a series of Questions & Answers that IRS first released on February 8, 2011 to announce the 2011 offshore program, IRS reported that it had identified, and will continue to identify, taxpayers attempting quiet disclosures.[29] In the Questions & Answers, IRS stated that it would be closely reviewing amended tax returns to determine whether enforcement action is appropriate. (See sidebar for one example of a quiet disclosure being detected.[30])

IRS officials told us that the Offshore Compliance Initiative office tested several different methodologies to identify quiet disclosures. First, IRS looked at amended returns during tax year 2003 to tax year 2008, the period covered by the 2009 OVDP, and removed any non-offshore related adjustments, such as filings status changes and additional exemptions. IRS also looked at amended returns with increased tax assessments over an established threshold during tax year 2003 to tax year 2010.

The effectiveness of a third effort was questioned by IRS. In this effort IRS compared taxpayers with a history of filing FBARs in non-secrecy jurisdictions between tax year 2003 and tax year 2008 who filed delinquent FBARs processed in 2009 involving a secrecy jurisdiction along with an amended return.[31]

[28]Only an IRS examination can determine actual quiet disclosures and there are many reasons why a potential quiet disclosure may turn out to be something else. According to IRS, these include taxpayers who had legally paid taxes on their offshore income, but had not previously filed FBARs, and who were paying additional taxes with their amended returns for reasons unrelated to the offshore accounts and newly filed FBARs.

[29]Internal Revenue Service, "2011 Offshore Voluntary Disclosure Initiative Frequently Asked Questions and Answers," accessed February 5, 2013, http://www.irs.gov/Businesses/International-Businesses/2011-Offshore-Voluntary-Disclosure-Initiative-Frequently-Asked-Questions-and-Answers.

[30]Unlike the other sidebars presented in this report, this is not drawn from an amalgamation of multiple cases in our case file review, but from publicly available information on one specific case.

[31]A secrecy jurisdiction refers to a jurisdiction, or country, that offers financial secrecy laws in an effort to attract investment from outside its borders.

In 2012, a fourth effort, which was not designed to detect quiet disclosures, but to reroute misaddressed amended returns sent in by participants in the 2011 offshore program, was the most successful effort to find them.

Together, these four efforts led to the review of several thousand tax returns. Of those, several hundred returns were identified as quiet disclosures. An IRS official told us that the tax returns that were identified as part of a quiet disclosure will be examined and that cases already examined had penalties assessed. Because they were quiet disclosures, the official said the taxpayers did not receive the reduced offshore penalty.

Given the importance of IRS's ability to detect quiet disclosures and evidence that they exist, we tested a different methodology to identify potential quiet disclosures, and found many more than IRS detected. Unlike IRS, we looked at all taxpayers who, for the tax years covered by the 2009 OVDP

- filed amended or late returns, **and**
- filed amended or late FBARs.

We then excluded 2009 OVDP participants from this population. While only an IRS examination can determine whether a potential quiet disclosure is an actual quiet disclosure, the 10,595 taxpayers that we identified have an unlikely combination of characteristics that could indicate that taxpayers are quietly disclosing. IRS agreed with our methodology as reasonable and appropriate. (See app. I for additional details about our methodology and app. VIII for a full breakout of our results.)

Although any of the 10,595 potential quiet disclosures could be actual quiet disclosures, certain subpopulations raised more questions. First, we found 3,386 taxpayers that filed amended or late returns, and filed amended or late FBARs for multiple years. Second, we found that 94 of these taxpayers met the same criteria for all six tax years covered by the 2009 OVDP.

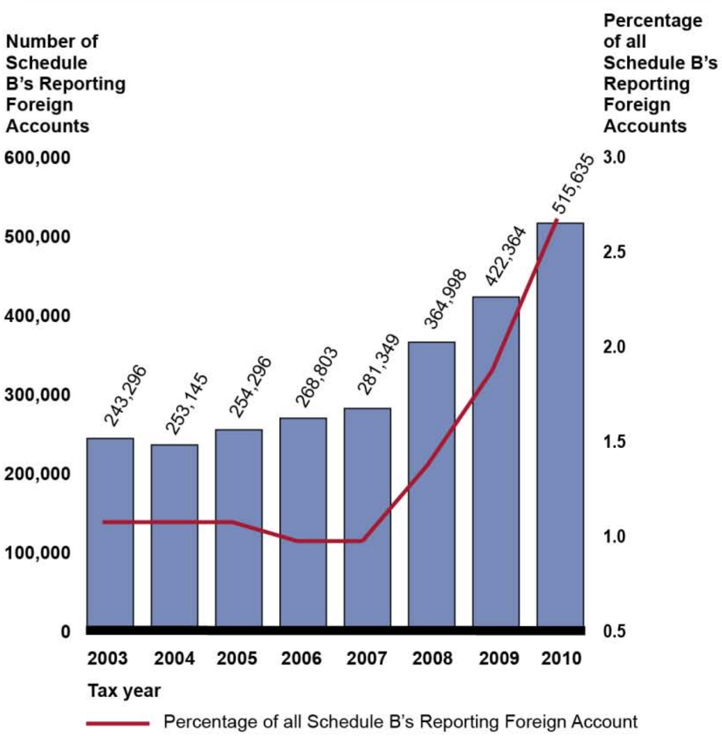
IRS officials from the Offshore Compliance Initiative office told us that they had no additional work planned to identify potential quiet disclosures and had not yet decided to broaden the methodologies that they had tested, but they expressed strong interest in researching our methodology to identify taxpayers attempting quiet disclosures. We recognize that there are additional costs to using a methodology such as the one we used, but IRS has already committed resources to identifying quiet disclosures. Moreover, without rigorously and systematically searching for potential quiet disclosures, IRS does not have reasonable assurance that it is controlling such disclosures and collecting the delinquent taxes, interest, and penalties due. Exploring different methodologies that include a systematic evaluation of amended returns or late filed returns, along with amended or late filed FBARs, without too narrowly restricting either the amended return or the FBAR populations, and implementing the best option could provide this assurance.

Increases in Taxpayers Reporting Offshore Accounts May Also Indicate Attempts to Circumvent Some Taxes, Interest, and Penalties that Would Otherwise be Owed

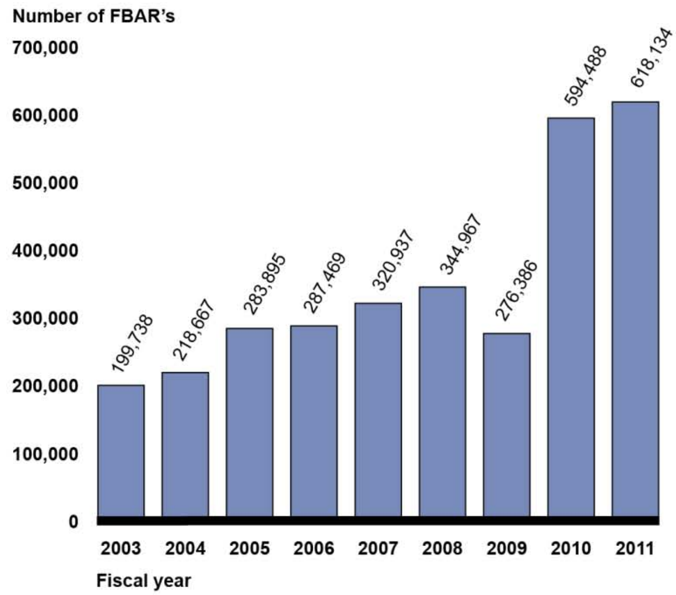
Data from IRS's SOI division and from FinCEN show that the number of taxpayers reporting offshore accounts on Form 1040, Schedule B and the number of taxpayers filing FBARs has increased significantly in recent years. From tax year 2007 to tax year 2010 (the most recent data available), IRS estimated that the number of taxpayers reporting offshore accounts on Form 1040, Schedule B nearly doubled to 516,000, as shown in figure 4. From tax year 2003 through tax year 2007, only about 1 percent of all taxpayers filing Form 1040, Schedule B checked a "yes" box in response to the question asking if they owned or controlled a foreign financial account, but that share increased to more than 2.5 percent by tax year 2010. Furthermore, FinCEN has reported that the number of FBARs filed more than doubled, as shown in figure 4. Both the increase in the number of foreign accounts reported on Form 1040, Schedule B and the increase in FBAR filings are significantly larger than the approximately 39,000 taxpayers that came forward in one of IRS's offshore programs.

There could be legitimate reasons for these trends. For example, taxpayers could be reporting new offshore accounts or taxpayers who had always reported income from offshore accounts on their tax returns could be filing FBARs and reporting the accounts on Form 1040, Schedule B for the first time. This could be an indication of more taxpayers coming into compliance as a result of IRS's efforts to combat offshore tax evasion.

Figure 4: Taxpayers Reporting Foreign Financial Accounts



Source: GAO analysis of IRS Estimated Data Line Counts Individual Income Tax Returns for tax years 2003 through 2010.



Source: GAO analysis of FinCEN annual reports.

Note: IRS Form 1040, Schedule B, Line 7a includes a yes/no question asking taxpayers if, at any time during the tax year, they had an interest in or a signature or other authority over a financial account in a foreign country, such as a bank account, securities account, or other financial account. The figure contains IRS estimates of the number of forms in which a taxpayer answered "yes" to this question.

Under the Bank Secrecy Act, U.S. residents or citizens with a financial interest or signature authority over one or more foreign financial accounts with a total of more than $10,000 are required to annually file form TD F 90-22.1 Report of Foreign Bank and Financial Accounts (FBAR) with Treasury. The FBAR must be filed for the calendar year by June 30 of the following year. The figures above are the number of FBARs filed during a fiscal year as reported in FinCEN annual reports.

However, such a sharp increase in foreign account reporting amidst the global economic recession and the publicity surrounding IRS's offshore programs raises the question whether some of these taxpayers may have attempted to circumvent some of the taxes, interest, and penalties that would otherwise be owed in the offshore programs. Unlike taxpayers attempting a quiet disclosure, who would still pay taxes plus interest on previously unreported income covered by the programs, and possibly an accuracy-related or delinquency penalty, these taxpayers would only be paying taxes on the offshore income earned for the year reported.[32]

An IRS official from the Offshore Compliance Initiative office told us that although the office has coordinated with IRS's Planning, Analysis, Inventory, and Research (PAIR) office, they had not discussed Form 1040, Schedule B or FBAR filing trends, and that he was not aware of the sharp increase. As of January 2013, no projects were planned to research Form 1040, Schedule B filing trends. However, the Offshore Compliance Initiative office has asked PAIR to determine whether taxpayers who reported their offshore income properly, but had not filed FBARs, recently started filing delinquent FBARs, as directed by the 2009 OVDP instructions.[33] This effort may not capture first time FBAR filers who are reporting existing offshore accounts as new.

Because the increase in recent years in Form 1040, Schedule B and FBAR reporting of foreign accounts is measured in the hundreds of thousands, we recognize that it may be too costly for IRS to audit all of those filings. A less costly approach could involve, for example, IRS drawing a random sample of those cases and auditing them to understand whether taxpayers are trying to circumvent some of the taxes, interest, and penalties that would otherwise be owed in the offshore programs. One of the things that IRS could look for in such an audit is the date that the offshore account was opened. Such a sample could provide an estimate of the magnitude of any problem. As was the case with quiet disclosures, without such information, it will be difficult for IRS to provide reasonable assurance that taxpayers are not reporting, for the first time, offshore accounts that had been open for years to avoid paying delinquent taxes, interest, and penalties.

Conclusions

Despite challenges in detecting offshore accounts, IRS's offshore programs have been effective in compelling taxpayers to disclose their

[32]In a similar situation, taxpayers might be filing the new IRS Form 8938 for offshore accounts that are not in fact new, without fulfilling their FBAR filing requirement, if applicable. IRS Form 8938 resulted from a FATCA provision requiring certain taxpayers, beginning in 2012, to report foreign financial accounts.

[33]See Internal Revenue Service, "Voluntary Disclosure: Questions and Answers," accessed February 8, 2013, http://www.irs.gov/uac/Voluntary-Disclosure:-Questions-and-Answers, Q9.

unreported offshore income. Through these programs, IRS has collected more than $5.5 billion to date, brought tens of thousands of taxpayers into compliance, and gained increased information on offshore noncompliance. It is unclear how many additional U.S. taxpayers have undeclared foreign accounts and how much unreported income is associated with those accounts. However, the number of quiet disclosures IRS was able to find (some by accident), the number of potential quiet disclosures we identified, and the sharp upswing in Form 1040, Schedule B and FBAR filings all suggest that the amount of revenue to be collected from previously undisclosed offshore accounts could be significant.

We found two key issues that, if addressed, could make IRS's offshore programs even more successful.

- IRS has not used program information to identify populations of taxpayers that would benefit from education and outreach regarding their offshore tax reporting obligations. Such information could promote voluntary compliance and reduce the need for enforcement actions. Additionally, IRS does not obtain information on how taxpayers learned about offshore programs. Without this information, IRS cannot fully evaluate its efforts to promote taxpayer participation in offshore programs.
- IRS may have missed taxpayers attempting to circumvent some of the taxes, interest, and penalties that would otherwise be owed in its offshore programs. Our methodology to identify potential quiet disclosures found many more potential disclosures than IRS detected. IRS may also have missed other attempts at circumvention by not researching the upward trends of taxpayers reporting offshore accounts for the first time. While there would be costs to such efforts, the amount already collected by the offshore programs suggests that considerable additional revenue gains might be possible. By identifying taxpayers attempting to circumvent some of the taxes, interest, and penalties that would otherwise be owed in its offshore programs, and taking appropriate action, IRS could potentially increase revenues, bolster the overall fairness of the program, and have a more informed basis for improving voluntary compliance.

Recommendations for Executive Action

We recommend that the Acting Commissioner of Internal Revenue take the following four actions:

- Use data gained from offshore programs to identify and educate populations of taxpayers that might not be aware of their tax obligations related to offshore income and FBAR filing requirements.
- Obtain information that can help IRS test offshore program promotion strategies and identify new ones by adding a question to current and future programs to determine how participants found out about the program.
- Explore options for employing a methodology for identifying and pursuing potential quiet disclosures to provide more assurance that actual quiet disclosures are not being missed and then implement the best option.
- Conduct an analysis designed to measure the extent that taxpayers are reporting existing foreign accounts on the Form 1040, Schedule B or on FBARs for the first time and circumventing some of the taxes, interest, and penalties that would otherwise be owed, and take appropriate action based on the analysis.

Agency Comments and Our Evaluation

We provided a draft of this report to the Acting Commissioner of Internal Revenue for comment. In written comments, reproduced in appendix IX, IRS agreed with our four recommendations. IRS noted that it was pleased that we recognized the overall success of its offshore strategy and provided steps that they are taking to implement our recommendations and address any identified noncompliance, as warranted. IRS also provided technical comments on our draft report, which we incorporated, as appropriate.

As agreed with your offices, unless you publicly announce the contents of this report earlier, we plan no further distribution until 30 days from the report date. At that time, we will send copies to report to the Chairmen and Ranking Members of other Senate and House committees and subcommittees that have appropriation, authorization, and oversight responsibilities for IRS. We are also sending copies to the Acting Commissioner of Internal Revenue, the Secretary of the Treasury, the Chairman of the IRS Oversight Board, and the Deputy Director for Management of the Office of Management and Budget. In addition, the report will be available at no charge on the GAO website at http://www.gao.gov.

If you or your staffs have any questions about this report, please contact me at (202) 512-9110 or whitej@gao.gov. Contact points for our Offices of Congressional Relations and Public Affairs may be found on the last page of this report. GAO staff who made key contributions to this report are listed in appendix X.

James R. White

James R. White
Director, Tax Issues
Strategic Issues

Appendix I: Objectives, Scope and Methodology

The objectives of this report were to (1) describe the nature of the noncompliance of taxpayers participating in the 2009 Offshore Voluntary Disclosure Program (OVDP), (2) determine the extent to which Internal Revenue Service (IRS) used data from the 2009 OVDP in order to better prevent and detect future noncompliance, and (3) assess IRS's efforts to identify taxpayers who may have attempted quiet disclosures or other ways of circumventing some of the taxes, interest, and penalties that would otherwise be owed in its offshore programs.

To describe the characteristics of taxpayers participating in the 2009 OVDP, we relied on data for tax years 2003 through 2008 from four sources: (1) the Criminal Investigation Management Information System (CIMIS) managed by IRS's Criminal Investigation (CI) division; (2) the Currency and Banking Retrieval System managed by the Treasury Department's Financial Crimes Enforcement Network (FinCEN);[1] (3) IRS's Individual Master File and Business Master File; and (4) IRS's Compliance Data Warehouse (CDW). We used data from four databases in CDW: Enforcement Revenue Information System, Individual Returns Transaction File, Audit Information Management System, Individual, and Business Returns Transaction File. To determine the reliability of IRS's taxpayer data, we reviewed relevant documentation, conducted interviews with IRS officials knowledgeable of the data, and conducted electronic testing of the data to identify obvious errors or outliers. We determined that these data were sufficiently reliable for our purposes.

Using these sources, we identified 19,337 participants in the 2009 OVDP.[2] The 2009 OVDP population figure that we use in this report differs from the population number issued publicly by IRS. IRS's publicly reported numbers are from CI, the IRS division that initially received and processed the 2009 OVDP applications, and is generally a count of applicants. Our figure is larger, primarily because it includes some spouses that were not captured on the CI list. For example, we counted two participants (versus instances where IRS may have only counted

[1]FBAR forms are processed by the IRS, but FBAR information is managed by Treasury's FinCEN.

[2]This population includes 200 participants with an Employer Identification Number (EIN), which IRS uses to identify businesses, instead of an Individual Tax Identification Number or Social Security Number. Since these business entities represented less than 1 percent of the total OVDP participants identified, our use of the term "OVDP participants" in this report generally refers to individual taxpayers participating in the program.

one) in situations where only one spouse applied to the 2009 OVDP through CI, but both were liable for the delinquent taxes, interest, and penalties because of their married filing jointly filing status. From the 19,337 participants, we identified 10,439 closed examination cases as of November 29, 2012, which we use in this report for our analysis of penalties.

To obtain a better understanding of taxpayer noncompliance, we selected a random sample of 30 2009 OVDP case files for cases that were closed as of March 30, 2012, and that received a 2009 OVDP penalty of $1 million or greater.[3] As part of the 2009 OVDP application, taxpayers were asked to explain their reasons for establishing offshore accounts, the source of funds, the ownership structure, and the history of accounts. Many taxpayers in our sample submitted an IRS optional letter containing this information with their application (referred to in this report as the "application letter." See appendix III for sample application letters). Some taxpayers were interviewed by IRS investigators, and some responded to IRS follow-up requests for additional information. Additionally, other case file documents that provided key information were: (1) IRS Form 906, Closing Agreement On Final Determination Covering Specific Matters; (2) IRS Form 4549-A, Income Tax Discrepancy Adjustments; (3) OVDP Penalty Computation Workpaper; and (4) form TD F 90-22.1, Report of Foreign Bank and Financial Accounts (FBAR).

We used a standard data collection instrument to review each case file to ensure we consistently captured information about the 2009 OVDP participants, their offshore accounts, and their penalties, interest, and additional taxes owed. To ensure reliability, two analysts separately conducted this analysis, and a third analyst compared and reconciled any inconsistencies regarding the categorizations of 2009 OVDP cases. The analysts then tallied the number of observations for each topic or category and all information was traced and verified. We then analyzed the results of this data collection effort to identify main themes and develop summary findings. We determined that these data were sufficiently reliable for our purposes. (See app. VII for a summary of our data collection instrument results.)

[3]We focused on cases with an OVDP penalty of $1 million or greater because these "large penalty" cases accounted for about half of the total OVDP penalty dollars assessed. At the time we selected our sample of 30 cases in April 2012, we had identified a total population of 378 "large penalty" cases that were closed as of March 30, 2012.

To determine the extent to which IRS used data from the 2009 OVDP in order to better prevent and detect future noncompliance, we also interviewed IRS officials from the office of the Offshore Compliance Initiative to determine what data they collected from the 2009 OVDP effort and how, if at all, IRS used that data to create taxpayer profile data to identify additional offshore noncompliance and inform future offshore programs. In addition, we reviewed changes that IRS made to the 2011 and 2012 offshore programs.

To assess IRS's efforts to identify taxpayers who may have attempted quiet disclosures, we used the same datasets that we used to identify the 2009 OVDP population, as described above, plus FBAR data from FinCEN. To determine the reliability of FinCEN's FBAR data, we reviewed relevant documentation, conducted interviews with FinCEN officials knowledgeable of the data, and conducted electronic testing of the data to identify errors or outliers. We determined that these data were sufficiently reliable for our purposes. To identify potential quiet disclosures we conducted a three-step analysis. First, we used IRS tax return data to identify taxpayers who filed late or amended returns for the applicable 2009 OVDP period.[4] We then used FBAR data to identify taxpayers who filed late or amended FBARs during the same time period to create a combined list of taxpayers. Finally, we removed from this combined list any taxpayers that we had previously identified as 2009 OVDP participants. The remaining taxpayers constitute our population of taxpayers who potentially "quietly disclosed" offshore accounts. From this population, we used data from amended tax returns to identify whether the amended returns had positive adjustments to income, and whether taxpayers filed amended returns for multiple years. We confirmed this methodology with IRS officials. The results of our analyses are shown in appendix VIII. To assess other ways taxpayers might be circumventing some of the taxes, interest, and penalties that would be otherwise owed, we analyzed filing trends in FBAR data from FinCEN and in Schedule B, Interest and Ordinary Dividends, of IRS Form 1040, U.S. Individual

[4]This included individuals or businesses who filed one or more amended or late returns for any of the six tax years included in the 2009 OVDP (tax year 2003 through tax year 2008), and whose amended or late returns were posted in IRS's Individual Master File or Business Master File systems in calendar years 2009 and 2010. Taxpayers could apply to the 2009 OVDP program from March 23 through October 15, 2009, but they could still file amended returns after this period. We discussed our intended use of this data along with our methodology with IRS officials. They agreed with our use of the data and our methodology.

Income Tax Return, from IRS's Statistics of Income Division (SOI). To assess the reliability of the SOI data that we analyzed, we reviewed agency documentation and interviewed officials familiar with the data. We determined that these data were sufficiently reliable for our purposes.

Appendix II: Events that Influenced Participation in IRS's Offshore Programs

IRS's first offshore program started in 2003 as part of an ongoing, multipronged effort to counter offshore tax evasion. Related to the 2003 program was the Offshore Credit Card Program, which stemmed from a series of John Doe summonses issued to a variety of financial and commercial businesses to obtain information on U.S. persons who held credit, debit, or other payment cards issued by offshore banks. IRS used records from the summonses to trace the identities of taxpayers whose use of these payment cards may have been related to hiding taxable income; this drew many other taxpayers to the offshore program.[1] (See figure 5 for a timeline of key events.)

IRS's three subsequent offshore voluntary disclosure programs ran more frequently, starting in 2009. The 2009 Offshore Voluntary Disclosure Program (OVDP) coincided with events that helped attract a very large number of taxpayers to the program. On February 18, 2009, UBS AG, a global financial services firm headquartered in Switzerland, entered into a deferred prosecution agreement confirming the account of a whistleblower and acknowledging that its employees participated in a scheme to actively assist and facilitate U.S. taxpayers' concealment of taxable income.[2] As part of the deferred prosecution agreement, UBS agreed to turn over identities and account information on a limited number of clients. Later that month, the Department of Justice (DOJ) petitioned the U.S. District Court in Miami for an order enforcing a John Doe summons, seeking turnover of information on approximately 52,000 undisclosed accounts. By August 2009, IRS and DOJ announced they had reached a settlement agreement with Switzerland. The agreement required Swiss authorities to give IRS the names of approximately 4,450 U.S. clients with accounts at UBS, pursuant to a request under the USA-Switzerland income tax treaty. All parties agreed to keep confidential the

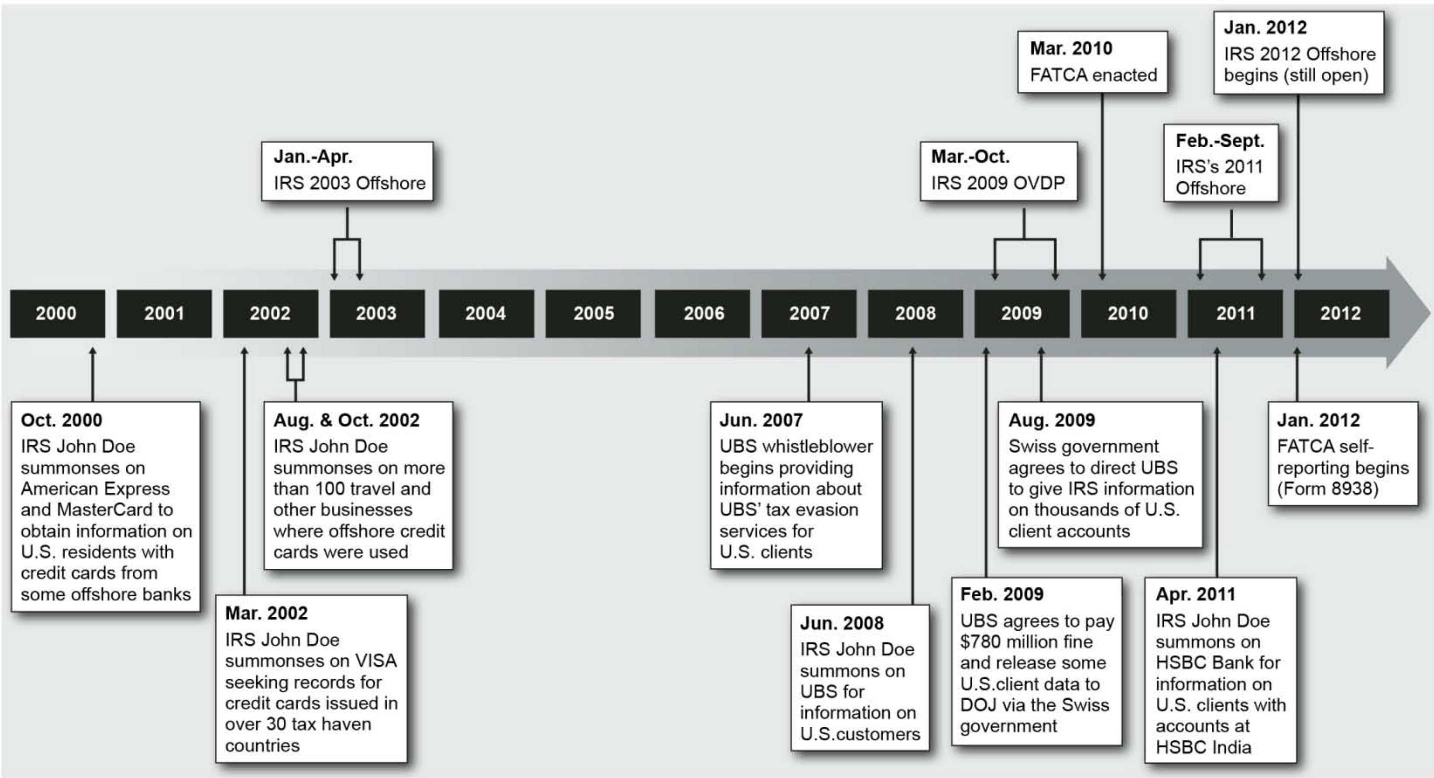
[1]We testified on IRS's 2003 offshore voluntary compliance program in 2009. See GAO, *Tax Compliance: Offshore Financial Activity Creates Enforcement Issues for IRS,* GAO-09-478T (Washington, D.C.: Mar. 17, 2009).

[2]The Internal Revenue Code provides whistleblowers with a significant financial incentive to report noncompliance. It provides for awards up to 30 percent of the collected proceeds that arise from the whistleblower's information. 26 U.S.C. § 7623. A whistleblower is someone who reports information on potential tax problems, such as fraud, to the IRS. Although not publicly confirmed by IRS, attorneys for the UBS whistleblower reported that he was awarded $104 million. For additional information on tax whistleblowers, see GAO, *Tax Whistleblowers: Incomplete Data Hinders IRS's Ability to Manage Claim Processing Time and Enhance External Communication*, GAO-11-683 (Washington, D.C.: Aug. 10, 2011).

specific criteria by which the 4,450 accounts would be selected until after the 2009 OVDP deadline passed. This created uncertainty among UBS account holders as to whether their names were on the list to be disclosed. IRS gave taxpayers until October 15, 2009, to enter the program. IRS publicity about the program, and correspondence sent by UBS to all U.S. account holders, emphasized the several criminal and civil penalties applicable to taxpayers who did not make voluntary disclosures before Switzerland turned over the account data.

The 2011 and 2012 programs had a similar draw for taxpayers. During the 2011 program, IRS and DOJ were building cases against tax evasion involving foreign banks in several countries, including Switzerland, Liechtenstein, Israel, and India. Many 2011 program participants came forward as a result of criminal enforcement activity and a John Doe summons issued to HSBC, a global banking and financial services firm headquartered in the United Kingdom, with significant business operations in Hong Kong and Asia. The 2012 program, which is still open and as of March 2013 does not have an end date, is expected to draw participants based on further criminal enforcement activity against foreign banks and opportunities for additional John Doe summonses that are being built by IRS and DOJ with information from past offshore programs. Also during this time, as the Foreign Account Tax Compliance Act (FATCA) becomes fully implemented, IRS expects to have increased information reporting from certain taxpayers and from foreign financial institutions on offshore accounts.

Figure 5: Events That Influenced Participation in IRS's Offshore Programs



Source: GAO analysis.

Note: OVDP refers to Offshore Voluntary Disclosure Program and FATCA refers to Foreign Account Tax Compliance Act.

Appendix III: Sample 2009 and 2012 Offshore Program Application Letters

2009 Application Letter

The 2009 application letter was optional for participants in the 2009 Offshore Voluntary Disclosure Program (OVDP).

Offshore Voluntary Disclosures – Optional Format

If taxpayer has domestic issues only, please have them contact their local Criminal Investigation office for a traditional voluntary disclosure.

<DATE>

Internal Revenue Service
Criminal Investigation
ATTN: Voluntary Disclosure Coordinator
<CITY Field Office>
<Address>
<CITY, ST ZIP CODE>

Re: Taxpayer Name
Tax Identification Number
Taxpayer Date of Birth
Taxpayer Address

Dear Voluntary Disclosure Coordinator:

To assist in a timely determination of my acceptance into the Voluntary Disclosure Program, (*for Voluntary Disclosures involving offshore accounts or assets)* I have addressed *all* of the following items:

- Please include your:
  - Complete name:
  - Social Security Number:
  - DOB:
  - Address:
  - Passport Number (and Country):
  - Current Occupation

- Taxpayer Representative and his/her contact information.

- Explain the source of the funds.

Revised 07-28-2009

- Disclose if you or any related entities are currently under audit or criminal investigation by the Internal Revenue Service or any other law enforcement authority.
  - Has the IRS notified you that it intends to commence an examination or investigation? **Yes No**
  - Are you under criminal investigation by any law enforcement authority? **Yes No**
  - If yes, please explain.

- Do you believe that the IRS has obtained information concerning your tax liability? **Yes No**
  - If yes, please specify.

- Please check the box to estimate the annual range of the highest aggregate *value* of your offshore accounts/assets.

Highest Aggregate Account/Asset Value	2003	2004	2005	2006	2007	2008
$0 to $100,000						
$100,000 to $1,000,000						
$1,000,000 to $2,500,000						
$2,500,000 to $10,000,000						
Greater than $10,000,000						
Greater than $100,000,000						

- Please check the box to estimate the potential total unreported *income* from the offshore account(s) during each disclosure period. If known, please enter exact amounts/assets.

Estimated Total Unreported Income	2003	2004	2005	2006	2007	2008
$0 to $100,000						
$100,000 to $1,000,000						
$1,000,000 to $2,500,000						
$2,500,000 to $10,000,000						
Greater than $10,000,000						

Revised 07-28-2009

- For accounts or assets where you have control or are a beneficial owner of the account or asset, list any and all financial institutions and the country where the institution is located. For accounts, please also list the dates the accounts were opened and/or closed. Provide your point of contact at each financial institution.

- Explain the purpose for establishing the offshore account or assets. For example: Holocaust Compensation or Restitution; inherited account; account established prior to World War II, etc.; if tax non-compliance – please explain.

- List each person or entity affiliated with the account, their formal structure (i.e., if a corporation, foundation, or trust), and the nature of their relationship to the account (i.e. owner, power of attorney, parent entity of corporate account holder, etc.).

- Explain all face to face meetings, and any other communications you had regarding the accounts or assets with the financial institution(s). Also include face to face meetings or communications regarding the accounts or assets with independent advisors/investment managers not from the financial institution(s) where the funds are held. Provide the names, locations and dates of these meetings and/or communications.

To be included with all letters:
By signing this document, I certify that I am willing to continue to cooperate with the Internal Revenue Service, including in assessing my income tax liabilities and making good faith arrangements to pay all taxes, interest, and penalties associated with this voluntary disclosure.

Under penalties of perjury, I declare that I have examined this document and accompanying statements, and to the best of my knowledge and belief, they are true, correct, and complete.

______________________	______________________	__________
Signature of Taxpayer	Print Name	Date

IRS reserves the right to make further contacts with the taxpayer to clarify his/her submission.

Revised 07-28-2009

2012 Application Letter and New Required Attachment

IRS revised the 2009 application letter for subsequent programs, and included an attachment that required a more detailed reporting from taxpayers on their previously unreported offshore accounts. The 2012 application letter was required for all participants in the 2012 offshore program.

Offshore Voluntary Disclosures

If taxpayer has domestic issues only, please have them apply for a traditional voluntary disclosure.

Date:

Internal Revenue Service
Voluntary Disclosure Coordinator
1-D04-100
2970 Market Street
Philadelphia, PA 19104

Re: Taxpayer Name
Tax Identification Number
Taxpayer Date of Birth
Taxpayer Address

Dear Voluntary Disclosure Coordinator:

To assist in a timely determination of my acceptance into the Voluntary Disclosure Program, (*for Voluntary Disclosures involving offshore accounts),* I have addressed *all* of the following items:

1. Please include:
   - Complete name:
   - Social Security Number:
   - Date of Birth:
   - Address:
   - Passport Number (and Country):
   - Current Occupation:
2. Taxpayer Representative and his/her contact information.
3. Type of Voluntary Disclosure

   ☐ **Offshore Only** ☐ **Offshore and Domestic**

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4. Identify the source of the funds.

5. Have any of the offshore accounts you are disclosing been identified by the IRS as ineligible for this program?

   ☐ **Yes** ☐ **No**

6. Has anyone, including a foreign government or a foreign financial institution, advised you that your offshore account records, which are the subject of this voluntary disclosure, were susceptible to being turned over to the US Government pursuant to an official request?

   ☐ **Yes** ☐ **No**

   - If yes, did you or anyone on your behalf submit documents in opposition?

     ☐ **Yes** ☐ **No**

   - If yes, were copies of those documents provided to the Attorney General of the United States as required by 18 USC § 3506?

     ☐ **Yes** ☐ **No**

7. Disclose if you or any related entities are currently under audit or criminal investigation by the Internal Revenue Service or any other law enforcement authority.
   - Has the IRS notified you that it intends to commence an examination or investigation?

     ☐ **Yes** ☐ **No**

   - Are you under criminal investigation by any law enforcement authority?

     ☐ **Yes** ☐ **No**

   If yes, please explain

8. Do you believe that the IRS has obtained information concerning your tax liability?

   ☐ **Yes** ☐ **No**

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If yes, please specify.

9. Please check the box to estimate the annual range of the highest aggregate *value* of your offshore accounts.

Highest Aggregate Account/Asset Value	Tax Year	Tax Year	Tax Year	Tax Year	Tax Year	Tax Year	Tax Year	Tax Year
$0 to $100,000	☐	☐	☐	☐	☐	☐	☐	☐
$100,000 to $1,000,000	☐	☐	☐	☐	☐	☐	☐	☐
$1,000,000 to $2,500,000	☐	☐	☐	☐	☐	☐	☐	☐
$2,500,000 to $10,000,000	☐	☐	☐	☐	☐	☐	☐	☐
$10,000,000 to $100,000,000	☐	☐	☐	☐	☐	☐	☐	☐
Greater than $100,000,000	☐	☐	☐	☐	☐	☐	☐	☐

10. Please check the box to estimate the range of potential total unreported *income* from the offshore account(s) during each disclosure period.

Estimated Total Unreported Income	Tax Year	Tax Year	Tax Year	Tax Year	Tax Year	Tax Year	Tax Year	Tax Year
$0 to $100,000	☐	☐	☐	☐	☐	☐	☐	☐
$100,000 to $1,000,000	☐	☐	☐	☐	☐	☐	☐	☐
$1,000,000 to $2,500,000	☐	☐	☐	☐	☐	☐	☐	☐
$2,500,000 to $10,000,000	☐	☐	☐	☐	☐	☐	☐	☐
Greater than $10,000,000	☐	☐	☐	☐	☐	☐	☐	☐

For each foreign financial account of which you have control or are a beneficial owner, complete the attached form entitled "Attachment to Offshore Voluntary Disclosures Letter." Please ensure all pages of the attachment include your name, the last four digits of your taxpayer identification number, the name of the foreign financial institution, and the account number for which you are responding.

To be included with all letters:
By signing this document, I certify that I am willing to continue to cooperate with the Internal Revenue Service, including in assessing my income tax liabilities and making good faith arrangements to pay all taxes, interest, and penalties associated with this voluntary disclosure.

Under penalties of perjury, I declare that I have examined this document, all attachments, and accompanying statements, and to the best of my knowledge and belief, they are true, correct, and complete.

____________________ ____________________ __________
Signature of Taxpayer | Print Name | Date

Page **3** of **4**

Signature of Taxpayer's Spouse	Print Name	Date

IRS reserves the right to make further contacts with the taxpayer to clarify his/her submission.

Page **4** of **4**

Taxpayer Name:
Last Four Digits of Taxpayer Identification Number:
Foreign Financial Institution Name:
Account Number:

ATTACHMENT TO OFFSHORE VOLUNTARY DISCLOSURES LETTER

Please ensure all pages of the attachment include your name the last four digits of your taxpayer identification number, the name of the foreign financial institution, and the account number for which you are responding.

For <u>each</u> foreign financial account of which you have control or are a beneficial owner, provide the following information:

1. Name of the foreign financial institution.

2. Country, including address, where the <u>account</u> was established.
   - If different, country, including address, where the account is currently located.

3. Date the account was opened.

4. Is the account still open?

   ☐ **Yes** ☐ **No**

   If no, when was the account closed?

5. Identify the individual(s) and/or organization(s) (e.g., banks, independent financial advisors, trust or corporate service providers) who advised or assisted you in opening and using/maintaining the account.

   - Explain all communications you had regarding the opening and use/maintenance of the account. Identify the individuals (whether affiliated with the foreign financial institution or independent from the financial institution), dates, and form (e.g., face-to-face meeting, phone, email, fax, etc.) of the communication.
     - Did you hold any meetings or receive any phone calls, faxes, emails, or any other communications from these individuals to you in the U.S.?

       ☐ **Yes** ☐ **No**

       If yes, where?

   - Are any of the individuals a business person (advisor), accountant, attorney, or return preparer in the U.S.?

     ☐ **Yes** ☐ **No**

     If yes, identify which organization(s)

Page **1** of **4**

6. What documentation was received by or shown to you regarding opening and maintenance of the account (e.g., account statements, account opening documents, etc.)?

   Did you retain any of the documents?

   ☐ Yes ☐ No

   - If yes, identify the documents retained.
   - If no, explain why you did not retain them.

7. Were you able to make deposits to or withdrawals from your account through the use of a U.S. domestic branch office of the foreign financial institution?

   ☐ Yes ☐ No

8. Did you make deposits (beyond the initial opening deposit) or withdrawals from the account?

   ☐ Yes ☐ No

   If yes, respond to the following:

   - How did you make a deposit or withdrawal (e.g., in person, computer, phone, use of third-party, etc.)?
   - What form did the deposits or withdrawals take (e.g., cash, check, wire, traveler's check, etc.)?
   - What documents did you receive when a deposit or withdrawal was made (e.g., receipt, debit memo, credit memo, etc.)?

9. Were you able to access funds in your offshore account by the use of wire transfers made into the U.S.?

   ☐ Yes ☐ No

10. Were you able to access funds in your offshore account through the use of a debit or credit card?

    ☐ Yes ☐ No

11. Are there other individuals affiliated with the account?

    ☐ Yes ☐ No

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If yes, identify each person affiliated with the account, including the nature of their relationship to the account (e.g., owner, beneficial owner, power of attorney, etc.).

12. Is an entity affiliated with the account?

☐ **Yes** ☐ **No**

If yes, respond to the following for each entity:

- Identify the entity, including the nature of its relationship to the account (e.g., nominee owner, beneficial owner, power of attorney, parent entity of corporate account holder, etc.).
- Identify the entity's formal structure (e.g., corporation, foundation, trust, etc.).
- Identify the country where the entity was organized.
- Identify the individual(s) and/or organization(s) (e.g., the foreign bank, an outside professional, etc.) who suggested forming the entity and who formed the entity.
- Identify the individual(s) or organization(s) that managed the entity.
- Is the entity still in existence?

  ☐ **Yes** ☐ **No**
- Was a business person (advisor), accountant, attorney, or return preparer in the U.S. involved in setting up the entity or in advising its use?

  ☐ **Yes** ☐ **No**

  If yes, identify the individual(s).
- Was a U.S. bank, brokerage firm or other financial services company involved in setting up the entity or in advising its use?

  ☐ **Yes** ☐ **No**

  If yes, identify the bank, firm, or company.

13. With respect to communications you had about your foreign financial account, provide the following:

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- Did a representative of the foreign financial institution or advisor visit you in the United States regarding the offshore account?

  ☐ **Yes** ☐ **No**

- Did a representative of the foreign financial institution or advisor suggest to you the use of offshore accounts, offshore investments, offshore entities, or particular foreign countries as a way of avoiding the disclosure of your ownership of the account or avoiding taxes?

  ☐ **Yes** ☐ **No**

- Did a representative of the foreign financial institution or advisor suggest to you the use of practices, such as holding mail at the institution, using prepaid phone cards, using credit or debit cards, communicating via fax or email, bank storage of account documentation, or conducting face-to-face-meetings, to avoid the disclosure of your ownership of the account?

  ☐ **Yes** ☐ **No**

- Did a representative of the foreign financial institution, one of its U.S. subsidiaries, or advisor provide services in the U.S. related to offshore accounts (e.g., facilitating opening accounts, reviewing account activity, forwarding account statements, providing investment and/or tax advice, etc.)?

  ☐ **Yes** ☐ **No**

- Did a representative of the foreign financial institution or advisor suggest you meet in a jurisdiction outside the U.S. and other than where the institution is located?

  ☐ **Yes** ☐ **No**

- Did a representative of the foreign financial institution or advisor suggest you either not file a voluntary disclosure with the IRS or repatriate the foreign funds into the U.S.?

  ☐ **Yes** ☐ **No**

- Did an advisor or other person attempt to influence you to move funds from one foreign financial institution to another or from one foreign country to another?

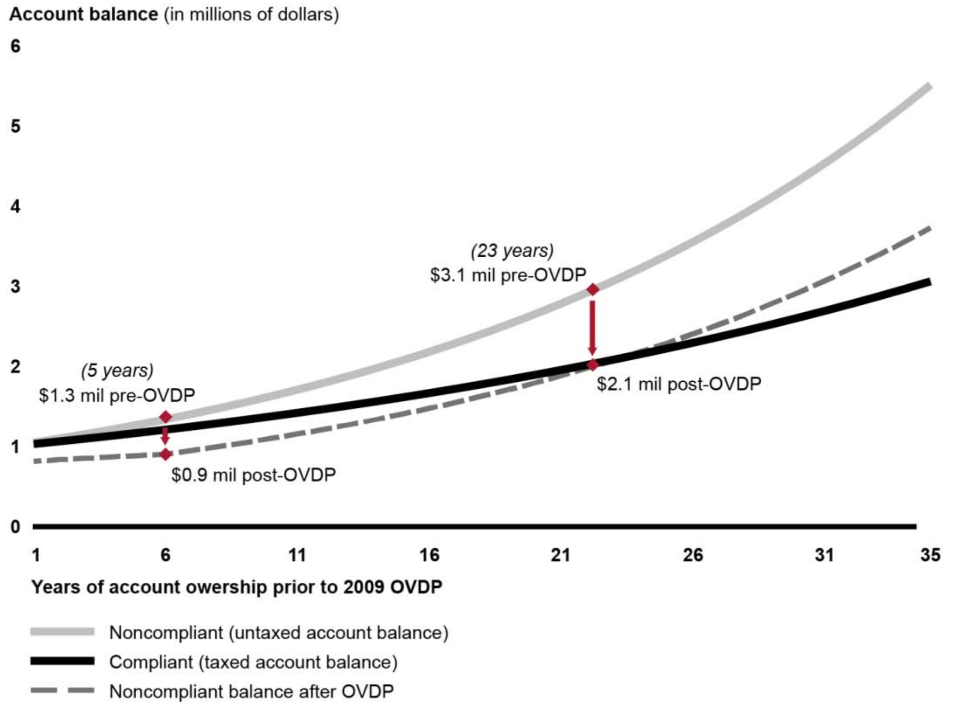
  ☐ **Yes** ☐ **No**

Page **4** of **4**

Appendix IV: Hypothetical Examples Comparing Account Balances, Length of Account Ownership, and Penalties

The 2009 Offshore Voluntary Disclosure Program (OVDP) penalties follow what some tax practitioners have called “rough justice” because of the relationship between the offshore penalties and the original taxes evaded. Figure 6 illustrates how two hypothetical offshore accounts bearing 5 percent interest might grow over time. One account is owned by a compliant taxpayer who reports the interest income and pays U.S. taxes at a 35 percent rate with earnings from the account. The other account is owned by a noncompliant taxpayer who does not report the interest income. Assuming both taxpayers deposited $1 million in 1986, the compliant taxpayer would accumulate a balance of approximately $2.1 million by 2009 and the noncompliant taxpayer would accumulate $3.1 million. The compliant taxpayer would have paid tax in each year the account was open, totaling about $585,000 in cumulative taxes on the reported account’s interest over 23 years. A noncompliant taxpayer who participated in the 2009 OVDP would, after disclosing the account, make a one-time payment in 2009 of about $993,000 in taxes, interest, and penalties. Although the 2009 OVDP participant would pay more in total taxes and penalties, the final account balances for both taxpayers would be roughly the same.

Figure 6: Hypothetical Comparison of Offshore Account Growth for Compliant (Reported and Taxed) and Noncompliant (Unreported and Untaxed) Taxpayers, and Changes in Account Balances by Participating in the 2009 OVDP



Source: GAO analysis.

Note: The following assumptions were used to construct the figure: (1) a $1 million opening account balance; (2) 5 percent annual rate of return on the offshore account; (3) 35 percent U.S. income tax rate and zero offshore tax rate; (4) 20 percent 2009 OVDP offshore penalty applied to the account balance; (5) 20 percent accuracy-related penalty on the taxes owed for tax year 2003 through tax year 2008; and (6) IRS interest of 5 percent on taxes owed for tax year 2003 through tax year 2008. The point at which the compliant taxpayer's account balance (solid black line) equals the 2009 OVDP participant's post-penalty balance (dashed grey line) is affected by changes in the assumptions. For example, a higher rate of return on the offshore account shortens this "rough justice" point, whereas a higher 2009 OVDP offshore penalty rate (greater than 20 percent) lengthens it.

Using the same hypothetical model from figure 6 can help illustrate how taxpayers with newer offshore accounts that have not accumulated decades of untaxed interest income are treated. Assuming the hypothetical accounts in figure 6 were opened in 2004 (instead of 1986), the compliant taxpayer would have paid about $93,000 in taxes on the interest income and accumulated a balance of about $1.2 million by 2009, and the noncompliant taxpayer paying no taxes would have accumulated about $1.3 million. If the noncompliant taxpayer came forward through the 2009 OVDP, the penalties, interest, and delinquent taxes would have totaled about $387,000. The 2009 OVDP participant's ending account balance would be about $890,000, which is less than the original opening deposit amount.

Appendix V: 2009 Offshore Voluntary Disclosure Program Participants with Employer Identification Numbers

We identified 200 2009 OVDP participants with an Employer Identification Number (EIN), which is used by IRS to identify a business entity. We did not have complete information on all of the businesses in our sample. In addition, not all of the businesses had filing requirements in every year covered by the 2009 OVDP. Table 4 shows the tax forms filed by some of the businesses in tax year 2008, and table 5 shows the self-reported North American Industry Classification System (NAICS) code.

Table 4: 2008 Business Filing Requirements for 2009 OVDP Business Participants

Filing requirement	Count of EINs[a]
Form 1041 and 1041A (estates and trusts)	27
Form 1065 (partnership income)	9
Form 1120 (U.S. corporation)	66

Source: GAO analysis of IRS's Compliance Data Warehouse and Business Returns Transactions File.

[a]Some 2009 OVDP businesses may not have a filing requirement or may not have filed during tax year 2008

Table 5: Self-Reported Industry Code on 2008 Tax Return for 2009 OVDP Businesses

NAICS category/CIMIS description	Count of EINs[a]	Percent of EINs
Agriculture, forestry, fishing and hunting	2	1.1
Mining, quarrying, and oil and gas extraction	2	1.1
Construction	6	3.3
Manufacturing	4	2.2
Wholesale trade	14	7.6
Retail trade	8	4.4
Transportation and warehousing	2	1.1
Information (publishing, newspaper, etc.)	3	1.6
Finance and insurance	12	6.5
Real estate and rental and leasing	9	4.9
Professional, scientific, and technical services	16	8.7
Management of companies and enterprises	4	2.2
Administrative and support and waste management and remediation services	2	1.1
Educational services	2	1.1
Health care and social assistance	5	2.7
Arts, entertainment, and recreation	6	3.3
Accommodation and food services	4	2.2

NAICS category/CIMIS description	Count of EINs[a]	Percent of EINs
Other services (except public administration)	4	2.2
Estate or trust based on CIMIS name description	66	35.9
NAICS unknown, not estate or trust	13	7.1

Source: GAO analysis of IRS's Compliance Data Warehouse and Business Returns Transactions File.

[a]Some 2009 OVDP businesses may not have a filing requirement or may not have filed during tax year 2008

Appendix VI: Additional 2009 Offshore Voluntary Disclosure Program Participant Characteristics

Taxpayers participating in the 2009 OVDP most often used the married filing jointly filing status, were most often age 55 and over, and had an average adjusted gross income of about $528,000, as show in table 6.

Table 6: Taxpayer and 2009 OVDP Participant Income and Demographics for Tax Year 2008

Returns filed for tax year 2008

	All tax returns		2009 OVDP returns	
Filing status	**Number of returns**	**Percent of all returns**	**Number of returns**	**Percent of all returns**
Single	64,896,521	46	2,890	27
Married filing jointly	53,655,844	38	6,708	64
Married filing separately	2,717,037	2	608	6
Head of household	21,098,890	15	332	3
Surviving spouse	82,276	<1	5	<1
Age				
65 and over	19,963,516	14	3,864	37
55 under 65	19,662,988	14	2,584	25
45 under 55	26,091,781	18	2,191	21
35 under 45	25,515,310	18	1,304	12
26 under 35	23,923,140	17	451	4
under 26	25,623,607	18	121	1
unknown	1,670,226	1	28	<1
Adjusted gross income (AGI)				
Mean AGI	$58,005		$527,610	
Median AGI	$32,261		$136,878	

Source: GAO analysis of IRS's Individual Returns Transaction File and Statement of Income databases.

Appendix VII: Data Collected from a Sample of 30 2009 Offshore Voluntary Disclosure Program Case Files with Large Penalties

As noted in appendix I, we used a standard data collection instrument to capture information from a sample of 30 2009 OVDP cases in which taxpayers received offshore penalties of $1 million or greater. We then analyzed the results to identify main themes, and develop the summary findings presented in this report. The information in this appendix contains information from our case file reviews.

Account Balances and Total Penalties, Taxes, and Interest

We calculated offshore account balances based on penalty information. For our sample of 30 cases, the average account balance was almost $15 million, as shown in table 7 with other key information.

Table 7: Selected Offshore Account Balances, Taxes, and Penalties from a Case Study of 30 2009 OVDP Cases with Penalties of $1 Million or Greater

	Mean	Median
Adjusted gross income, tax year 2008[a]	$2,550,043	$359,333
Offshore account(s) balance[b]	14,674,778	7,898,603
OVDP penalty assessed	2,934,956	1,579,721
Additional tax, tax years 2003-2008[c]	851,745	480,318
Interest, tax years 2003-2008	264,686	146,856
Other penalties[d]	196,754	102,877
Total penalties, taxes, and interest	**4,218,937**	**2,420,399**

Source: GAO analysis of IRS's Enforcement Revenue Information System, and Individual Returns Transaction File.

Note: The cases were randomly selected to the population with penalties of $1 million or greater, but due to the small number of cases, we do not recommend generalizing the mean and median to the population. The sum of components may not add to the total.

[a]Adjusted gross income is from original, not amended, returns.

[b]OVDP offshore account balance is an estimated number based on penalty amounts. It represents the highest aggregate balance of all offshore accounts between 2003 and 2008.

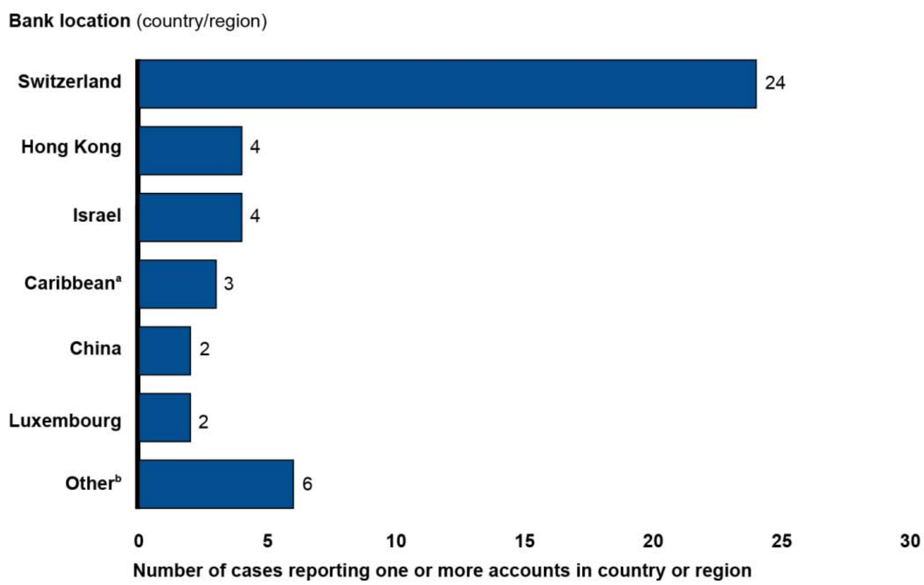
[c]For a few cases in our sample, no additional tax or interest was assessed.

[d]Other penalties include delinquency penalties and accuracy-related penalties, which most taxpayers in our sample received.

Bank Locations and Names

Most of the 30 cases we reviewed contained some information about the bank names and country locations of the offshore accounts. In some cases, 2009 OVDP participants disclosed dozens of offshore accounts with multiple banks and in multiple countries; in other cases, participants reported only one account. Only those offshore accounts that were open in tax year 2003 through tax year 2008 were included in the calculation of the 20 percent 2009 OVDP penalty. In compiling our profile, we only included information on accounts that were open during the 2009 OVDP applicable period and included in the penalty calculation. (Some participants disclosed additional offshore accounts that were closed prior to 2003 and not part of the 2009 OVDP penalty calculation.) Figure 7 illustrates the most commonly disclosed country locations. A total of 17 different locations were noted in the 28 cases that disclosed locations, with Switzerland being the most commonly reported location.

Figure 7: Locations of Offshore Accounts as Disclosed in a Sample of 30 2009 OVDP Cases with Penalties of $1 Million or Greater



Source: GAO analysis of 30 2009 OVDP case files with penalties of $1 million or greater.

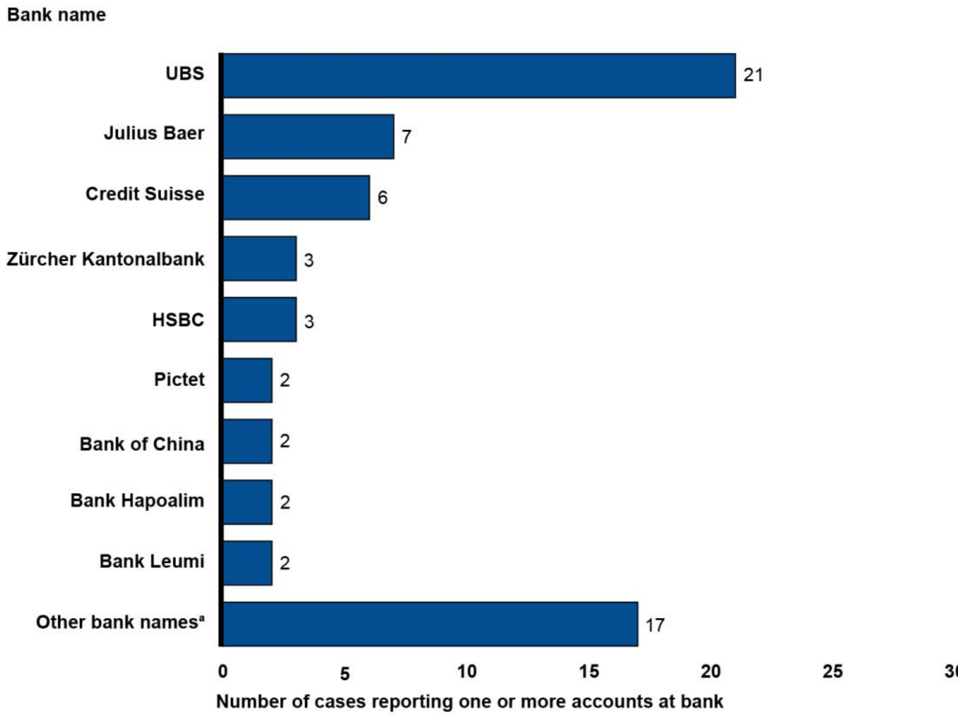
Note: The total number of countries exceeds the total number of case files we reviewed (30) because some taxpayers had accounts in multiple locations.

[a]Caribbean region could include Bermuda, British Virgin Islands, and Cayman Islands.

[b]Six cases disclosed offshore accounts in a total of nine other countries, and each country appeared once in our sample.

Figure 8 illustrates the most commonly disclosed bank names. A total of 42 different banks were reported in the 29 cases that contained bank name information, with UBS by far the most commonly disclosed bank name, followed by Swiss banks Julius Baer, and Credit Suisse.

Figure 8: Bank Names of Offshore Accounts as Reported in a Sample of 30 2009 OVDP Cases with Penalties of $1 Million or Greater



Source: GAO analysis of 30 2009 OVDP case files with penalties of $1 million or greater.

Note: The total number of bank names exceeds the total number of case files we reviewed (30) because some taxpayers had accounts in multiple banks.

[a]17 cases disclosed other bank names that appeared less frequently (only once) in our sample. In 9 of these cases, one or more accounts were with other Swiss banks not named above.

Age of Accounts

Twenty-two of the case files we reviewed contained information about the history of the accounts and the nature of the taxpayer's noncompliance. Many of the accounts had been opened decades ago. The median period of time that participants had owned but not reported income from these accounts, was 18 years, and the average period was 25 years. In four cases, the participants had owned offshore accounts for 50 years or longer.

Summary of Data Collection Instrument Results

Table 8 summarizes key information from the data collection instrument we used to collect information on the 30 offshore case files we reviewed.

Table 8: Selected Data Collection Instrument Questions and Response Counts from Sample of 30 2009 OVDP Case Files with Penalties of $1 Million or Greater

	Frequency		
	Yes	No	Not in file[a]
Citizenship, and residency			
Is the taxpayer (or spouse) a U.S. citizen?	23	1	6
If yes, is the taxpayer (or spouse) a naturalized citizen?	7	13	3
If yes, is the taxpayer (or spouse) a dual citizen?	3	20	0
Do the taxpayer(s) reside outside the U.S.?	3	26	1
Account(s) histories			
Were any of the offshore accounts with UBS?	21	8	1
Did the taxpayer (or spouse) open the offshore account(s) while a non-U.S. resident?	10	12	8
Did the taxpayer (or spouse) inherit the offshore account(s) from a spouse, parent, or other relative?	14	9	7
If inherited, did the prior owner open the account(s) while a non-U.S. resident?	11	0	3
If inherited, was the prior owner not a U.S. citizen?	6	7	1
If inherited, was the prior owner a Holocaust survivor?	5	5	4
Ownership types			
Did the taxpayer(s) jointly own or manage the account(s) with other family or relatives (other than spouses)?	7	16	7
Did other family or relatives also disclose offshore accounts?	10	0	20
Did the taxpayer(s) own or manage the account(s) through foreign corporations, trusts, foundations or other offshore entities?	12	0	18
Taxes paid			
Did the taxpayer(s) pay U.S. taxes on any of the funds originally deposited into the account(s)?	7	10	13
Did the case file indicate that the taxpayer paid foreign income taxes?	16	12	2
Source of funds			
Was the original source of funds deposited into the accounts:b			
an inheritance?	14	10	6
non-U.S. source income?	11	13	6
U.S. source income?	5	19	6

Source: GAO analysis of 30 2009 OVDP case files with penalties of $1 million or greater.

[a]In some cases, there was insufficient information in the case file to answer these questions.
[b]In some cases, taxpayers disclosed that funds in their offshore accounts came from a combination of sources including U.S. and non-U.S. sources.

Appendix VIII: Quiet Disclosure Analysis Results

Using a methodology that we designed to detect potential quiet disclosures, as described in appendix I, we identified the following.

Potential Quiet Disclosures Individuals

- 9,884 Taxpayers Identification Numbers (TIN) = Filed amended returns or late returns and FBARs in calendar year 2009 and calendar year 2010
    - 7,440 of the 9,884 TINs = Had non-zero change in tax liability, of which 6,668 TINs had a positive change (i.e., owed taxes based on the amended return), in at least one tax year between tax year 2003 and tax year 2008.
    - 3,240 of the 9,884 TINs = In calendar year 2009 and calendar year 2010, filed late or amended returns with FBARs for more than one tax year between tax year 2003 and tax year 2008

Potential Quiet Disclosures Businesses

- 711 Employee Identification Numbers (EIN) = Filed amended returns or late filed returns and FBARs in calendar year 2009 and calendar year 2010
    - 710 of the 711 EINs = Had non-zero change in tax liability, of which 427 had a positive change in tax liability (i.e., owed taxes based on the amended return) in at least one tax year between tax year 2003 and tax year 2008
    - 146 of the 711 EINs = In calendar year 2009 and calendar year 2010, filed late or amended returns with FBARs for more than one tax year between tax year 2003 and tax year 2008

Potential Quiet Disclosures Individuals and Businesses, Combined Totals

- 10,595 TINs and EINs = Filed amended returns or late returns and FBARs in calendar year 2009 and calendar year 2010.
    - 8,150 of the 10,595 TINs and EINs = Had non-zero change in tax liability, of which 7,095 had a positive change in tax liability (i.e., owed taxes based on the amended return) in at least one tax year between tax year 2003 and tax year 2008
    - 3,386 of the 10,595 TINs and EINs = In calendar year 2009 and calendar year 2010, filed late or amended returns with FBARs for more than one tax year between tax year 2003 and tax year 2008
    - Of the 3,386 TINs and EINs, 94 filed late or amended returns with FBARs for all tax years between tax year 2003 and tax year 2008

Appendix IX: Comments from the Internal Revenue Service

DEPARTMENT OF THE TREASURY
INTERNAL REVENUE SERVICE
WASHINGTON, D.C. 20224

COMMISSIONER

March 18, 2013

Mr. James R. White
Director, Tax Issues
Strategic Issues Team
U.S. Government Accountability Office
441 G Street, N.W. Washington, DC 20548

Dear Mr. White:

Thank you for the opportunity to review and provide comments on your draft report entitled, *OFFSHORE TAX EVASION: IRS Has Collected Billions of Dollars, but May Be Missing Continued Evasion* (GAO-13-318, Job Code 450914). We appreciate the time the GAO team spent reviewing the results of our offshore programs and the processes we used to develop them. Despite the challenges we have encountered detecting offshore accounts, we are pleased you recognized the overall success of our offshore strategy.

Global tax enforcement is a top priority at IRS, and we have made significant progress on multiple fronts, including ground breaking international tax agreements and increased cooperation with other governments. In addition, the IRS and the Justice Department have increased efforts involving criminal investigation of international tax evasion. This combination of efforts helped support the 2009 Offshore Voluntary Disclosure Program (2009 OVDP), the 2011 Offshore Voluntary Disclosure Initiative (OVDI), and the ongoing 2012 Offshore Voluntary Disclosure Program (2012 OVDP). The goal of these programs is to get individuals back into the U.S. tax system and to turn the tide against offshore tax evasion.

The Offshore Voluntary Disclosure Programs have:

- Given U.S. taxpayers with undisclosed assets or income offshore an opportunity to become compliant with the U.S. tax system, pay their fair share and avoid potential criminal charges;
- Been effective in encouraging taxpayers to disclose unreported offshore income and so far have resulted in the collection of more than $5.5 billion in back taxes, interest, and penalties from approximately 38,000 participants; and
- Provided the IRS with a wealth of information on various banks and advisors assisting people with offshore tax evasion, which the IRS is using to continue its international enforcement efforts.

2

The IRS agrees with the recommendations in your report. We continue to improve the use of data gathered through the offshore voluntary disclosure programs. For example, IRS uses the offshore voluntary disclosure data to identify noncompliance involving additional banks, advisors, and countries. We are also continuing our work to identify quiet disclosures. While there are many acceptable reasons for taxpayers to submit amended returns outside of the offshore voluntary disclosure programs, the IRS agrees that we must continue to explore additional methods for effectively identifying quiet disclosures submitted to circumvent the program. Since the completion of the GAO review, IRS has engaged LB&I Research to begin analyzing GAO methodology and quiet disclosure data.

The IRS response addressing your recommendations is enclosed. If you have any questions, please contact David W. Horton, Director, International Individual Compliance (IIC), at 630-493-5937.

Sincerely,

Steven T. Miller

Steven T. Miller
Acting Commissioner

Enclosure

Enclosure

The Commissioner of the IRS should take the following actions:

RECOMMENDATION 1:

Use data gained from the offshore programs to identify and educate populations of taxpayers that might not be aware of their tax obligations related to offshore income and Foreign Bank and Financial Accounts (FBAR) filing requirements.

MANAGEMENT RESPONSE:

We agree with this recommendation. The IRS recognizes that heightened public awareness is critical to reporting compliance, and a number of steps have already been taken to educate persons with foreign accounts about their filing obligations. For example, information has been posted to irs.gov outlining filing obligations, and fact sheets and public announcements outlining filing requirements have been issued. Additional information has been published through multiple channels, including the IRS Twitter account, the IRS Tax Attachés located in U.S. consulates and embassies, and the National Public Liaison's practitioner e-mail distribution list.

Recently, the IRS has also established a team to explore efforts that can increase assistance and awareness for U.S. taxpayers living overseas and other taxpayers facing international issues. This team is moving ahead with its work. In addition, the Director, International Individual Compliance will share general information about taxpayer problems gathered from the offshore programs with this team and with other appropriate functions within IRS (i.e., the International Taxpayer Assistance Team and Service wide FBAR Communication Strategy Team) for use in education and outreach programs.

RECOMMENDATION 2:

Obtain information that can help IRS test offshore program promotion strategies and identify new ones by adding a question to current and future programs to determine how participants found out about the program.

MANAGEMENT RESPONSE:

The IRS agrees with this recommendation. The Director, International Individual Compliance will explore new means of capturing information about how voluntary disclosure participants learned about the program and will work to identify additional means of enhancing voluntary disclosure program awareness.

RECOMMENDATION 3:

Explore options for employing a methodology for identifying and pursuing potential quiet disclosures to provide more assurance that actual quiet disclosures are not being missed, and then implement the best option.

MANAGEMENT RESPONSE:

The IRS agrees with this recommendation. The Director, International Individual Compliance has received the quiet disclosure data gathered through the GAO methodology outlined in this report. This data will be reviewed and analyzed and appropriate action will be taken including examinations, if warranted. The Director, International Individual Compliance will work with LB&I's research personnel to explore new methodologies for identifying quiet disclosure cases.

RECOMMENDATION 4:

Conduct an analysis designed to measure the extent that taxpayers are reporting existing foreign accounts on the Form 1040, Schedule B, or on FBARs for the first time and circumventing some of the taxes, interests, and penalties that would otherwise be owed, and take appropriate action based on the analysis.

MANAGEMENT RESPONSE:

The IRS agrees with this recommendation. The IRS is currently analyzing filed Forms 8938, Statement of Specified Foreign Financial Assets, to identify specific characteristics of the filing population and to assess filing behaviors indicating potential compliance issues. This analysis includes a statistical analysis of filers (e.g., income, age, filing status) and several measures of year-to-year filing behavior (e.g., taxable income changes, FBAR filing history, and Schedule B reporting patterns). This data will also be evaluated against other indicators of compliance risk.

The Director, International Individual Compliance will work with LB&I research personnel to explore means of analyzing Form 1040, Schedule B, and FBAR filings to identify first-time FBAR filers who may be improperly reporting offshore accounts as new accounts. The IRS will take the necessary actions to address any identified noncompliance including examinations, if warranted.

Appendix X: GAO Contact and Staff Acknowledgments

GAO Contact

James R. White, (202) 512-9110 or whitej@gao.gov.

Staff Acknowledgments

In addition to the contact named above, Mark Abraham, Tara Carter (Analyst-In-Charge), Andrew Ching, Leon Green, Mark Kehoe, and Libby Mixon (Assistant Director) made contributions to the report. Jeff Arkin, Chuck Fox, Robert Gebhart, George Guttman, Brian James, Sarah McGrath, Donna Miller, John Mingus, Ed Nannenhorn, Karen O’Conor, Robert Robinson, Cynthia Saunders, Andrew Stephens, Wayne Turowski, Jim Ungvarsky, and John Zombro provide key assistance.

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