Date: XXX

To: AGENT

From: anon5percent

Sub: Reasonable Cause Arguments for Removal of FBAR Penalties and for Removal of Section, 6651 and 6662 Penalties

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Proposals for Penalties and Adjustments

1. Anon5percent has reasonable cause for her failure to file FBAR forms for the tax periods of all open years. She requests the issuance of Letter 3800 – a Warning Letter on FBAR filings and full relief from FBAR penalties.
2. Anon5percent requests that Section 6662 Accuracy Penalties in years that were not filed be removed as no return was ever filed so an accuracy penalty is inappropriate. Any changes currently being made to the returns are due to new requirements from opting out of OVDI. Additionally, information which would have made those unfiled returns accurate was not available to her from her employer.
3. Reasonable cause arguments which support complete removal of the Section 6651 penalties will be presented for the open tax years
4. Anon5percent also requests a First Time Abate (FTA) for Section 6651 FTP and FTF penalties for tax returns for *Relevant Date*. IRM 20.1.1.3.6.1 (1) provides an option for the FTF, FTP and/or FTD penalties if no prior penalties have been assessed on the same MFT in the prior 3 years. This is known as a First Time Abate (FTA). She has had no penalties in the prior 3 years to *Relevant Open Year* and thereby qualifies for this abatement. .
    a. The FTA is an administrative waiver and does not carry any Oral Statement Authority (OSA) dollar threshold and therefore, should be grantable by an examiner as part of an exam. See IRM 20.1.1.3.6.1 (1).
    b. Should any FTP penalty be owed due to the fact that it has accrued, then as is specified in the Note to IRM 20.1.1.3.6.1 (9), Anon5percent requests reasonable cause abatement of the entire FTP penalty.
    c. It is assumed the FTA will not be necessary if her Reasonable Cause arguments are accepted.
5. In the light of recent statements by the IRS that a Taxpayer does not have to meet the requirements of the Streamlined Program exactly, the case for considering Anon5percent as a low risk taxpayer eligible for the terms of the Streamlined Program is also presented in Section 6. Under the terms of the Streamlined Program, no penalties will be asserted, nor will the IRS pursue follow-up actions.

Rationale for Removal of FBAR Penalties

Reasonable Cause for the complete removal of FBAR penalties will be shown in the attached documents (Section 3). The Reasonable Cause arguments which apply and which will be demonstrated are (listed in the order that they will be presented):

- IRM 4.26.16.4.4 (2) (a) and (b) ´
- IRM 4.26.16.4.7 (3) (b)
- FS-2011-13: Example 4 substantial similarity
- IRM 4.26.16.4.7 (3) (b)
- IRM 4.26.16.4.3.1
- IRM 20.1.1.3.2.2.6 (4) (a)
- IRM 20.1.1.3.2.2.6 (2) (e)
- IRM 20.1.1.3.2.2.6 (4) (b)
- IRM 20.1.1.3.2.2.1 (contributing factors)

Rationale for Removal of Tax Penalties (Section 6651 (a) and (b))
Reasonable Cause for the complete removal of all tax penalties will be shown in the attached document (Section 4).

The Sections of the IRM cited are redacted out here as these pertain to anon5percent's particular facts only.

1. General Facts - Short Summary

Anon5percent is a dual national Country A-US citizen who has not resided in the United States since 19XX. She currently resides in Country A. She has been tax compliant on her worldwide income (including income from the US) in Country A and all other countries where she has resided. With respect to her US declaration, which was self-prepared, she was not consciously aware of the requirement to file TDF 90-22.1 (FBAR forms), nor that her passive income was incorrectly reported. She was unaware that foreign mutual funds were called Passive Foreign Investment Companies and subject to complex reporting requirements. She was also unaware that her employer did not report all payments made on her behalf to her.

Her foreign bank accounts in Country A and Country B were opened because Anon5percent had immigrated to these countries for work and family reasons. She maintains family and professional ties in these countries. The accounts in Country C and Country D were opened under the direction of her employer for receiving local salary payments during temporary work in these countries. In Country C, her existing account was opened by her employer as required by Country C's Social Security Law. All the accounts were opened as part of normal, lawful residence and activities in these countries.

Since moving overseas Anon5percent has complied with her tax obligations on her worldwide income in the countries in which she has resided. She also believed that she was filing her US tax declarations correctly. She exhibited numerous examples of good faith in trying to comply with her U.S. tax filing obligations. She sought advice on filing and documents from the U.S. Embassy, foreign tax advisors with international operations RRR and SSS, the advisors where she was employed who controlled access to her financial information, and the IRS itself. She had correspondence audits from the IRS twice and responded immediately and to the satisfaction of the IRS. These interactions led her to understand that she was filing her U.S. taxes correctly.

Her facts show that Anon5percent's omissions are far from egregious and that, once she became aware of the income and FBAR requirements, she came into compliance quickly and completely and has remained in compliance since. Her previous behavior also shows that she had always responded to communications from the IRS and would have responded appropriately to a notice or Warning Letter from the IRS. Indeed, facts like hers are contemplated by the Internal Revenue Manual as a basis **for finding reasonable cause for a filing omission** (and thereby, where appropriate, relieving Anon5percent entirely of penalties).

2. General Facts – More details

2.1 Long term residence outside USA with little contact to the USA

Anon5percent, a dual national Country A-American citizen, has not resided in the United States since 19XX. Since then, she has spent a limited amount of time in the U.S., totaling less than one year to date. She has no family left in the US and since the early 2000s has had mostly sporadic email contacts with a few acquaintances in the US. Before entering the OVDI program, she had extremely limited contact with other Americans in her countries of residence.

Anon5percent was a permanent resident of Country B from 19XX through 200X. She has been a permanent resident of Country A from *Relevant Date* to the present.

During the period of *Relevant Date*, her work tasks for her employer, a Country A company, would require that her company obtain temporary work permits and visas in third countries which had associated tax liabilities in those countries.

Exhibit ?? contains certification from the Country A's Tax Authority for the years that Anon5percent was considered resident in Country A and liable for income tax on her worldwide income in Country A. Please note that Country A is not a tax haven and has one of the highest income tax rates in the world. Anon5percent met her tax liability for her worldwide income in Country A for all years considered in OVDI.

2.2 Tax Compliance on Worldwide Income

Anon5percent timely complied with the tax reporting and payment rules of the countries in which she resided during the OVDI period. She met tax liabilities in Country A on all worldwide income as described above. Although she was temporarily resident in Country C in *Relevant Date*, she filed tax returns in Country A in *Relevant Date* as it was her full intention to return to Country A and wanted to be sure that she met all obligations there.

It should be noted that pursuant to her employer's policy and practice, during the period above, her employer was responsible for the reporting and payment of taxes with respect to her salary in Country C and Country D. Taxes were filed on her behalf in these countries by her employer without being properly reported to her.

To ensure tax compliance on her Country B bank accounts, in addition to declaring them and paying ++% tax on them in Country A, she also let the Tax Authority of Country B keep withheld tax amounts.

With the exception of the open years for which she argues reasonable cause, she always made timely and what she believed were complete declarations to the IRS of her income for U.S. tax purposes.

2.3 How Anon5percent came into OVDI - Immediate Compliance when possible errors were suspected

In 2010, Anon5percent, due to the fact that she did not have all her tax information from Country A and Country D, needed to file her 2009 declaration after June 15. On or about *Relevant Date in 2010*, when searching on the Internet for how to calculate any possible "interest penalty", she first became aware of the FBAR form. With great difficulty, as she knew no one in Country A or America who could help her, she contacted a US accountant who referred her to a lawyer.

She learned that as she had foreign mutual funds and had not filed Form 8621, she might owe some taxes. She was horrified as she had always thought she was tax compliant and asked how to correct and explain this. She was told that the only way to correct and explain this as well as the non-filing of the FBAR form was to enter a Voluntary Disclosure program. Without hesitation and without knowing if she owed taxes, she told the attorney that she wanted to follow the proper process to correct and explain the error because she believed if she owed taxes, she should pay them.

Within the remarkably short period of two weeks, on *Relevant Date*, Anon5percent entered the longstanding Voluntary Disclosure Program of the IRS. She was automatically rolled over into the OVDI program in 2011 and made timely and complete application within this program. Since then, she has provided timely and complete reporting of her foreign bank accounts and income.

Anon5percent was rolled over into OVDI and denied the possibility to argue reasonable cause within the program. Her attorney had told her that she could argue reasonable cause in the original Voluntary Disclosure program she entered ("explain and correct" previous omissions). He also told her that her 2009 taxes would be filed as part of the Voluntary Disclosure.

Anon5percent's many years of compliance in foreign jurisdictions, her good faith attempts to comply with US taxes, her limited contacts with the US during the years at issue and her rapid effort to reestablish full compliance following her reading of the information related to the FBAR on the Internet on or around *Relevant Date* 2010 all point to an understandable lack of awareness, a date at which awareness occurred, and immediate compliance efforts following that date. These facts surely refute any suggestion of egregious conduct, and they support mitigation well beyond the penalty mitigation guidelines and even full relief from penalties.

3. Reasonable Cause Arguments for removal of all FBAR penalties

Anon5percent's personal circumstances represent a sympathetic case and the OVDI program structure imposes penalties that are disproportionate for a person with her facts. The outcome of such harsh penalties being applied to someone in her circumstances is likely unintended and unwanted by the IRS. Her non-filing of FBAR forms was not willful and the considerations outlined in this document support this. It is in the best interests of both Anon5percent and the IRS that a nuanced approach to the application of penalties is taken in her case and reasonable cause arguments be considered. Complete non-assertion of penalties due to reasonable cause appears to be in order.

3.1 FBAR Warning Letter is appropriate

The guidelines for penalties on international information returns including FBAR returns provide that those penalties are subject to relief for reasonable cause. In particular, IRM 4.26.16.4 (4) states "*Penalties should be asserted only to promote compliance with the FBAR reporting and recordkeeping requirements. In exercising their discretion, examiners should consider whether the issuance of a warning letter and the securing of delinquent FBARs, rather than the assertion of a penalty, will achieve the desired result of improving compliance in the future*."

The facts, circumstances and behavior of Anon5percent during the OVDI period, even during her the entire period she has lived abroad, will show that a warning letter, rather than the application of a penalty is appropriate and would have always been appropriate for Anon5percent.

It will be also shown that in accordance with IRM 4.26.16.4.4 (2) (a), the FBAR violation was due to reasonable cause. Similarity with facts and circumstances that show reasonable cause as contemplated by the IRS will be shown. It will also be shown that the Taxpayer acted reasonably and prudently and given the information she had, she had no knowledge or acquaintance with the FBAR requirement and, therefore, a penalty should NOT be imposed.

3.1.1 All delinquent FBARs have been received by examiner

One of the conditions for the issuance of a warning letter is that a taxpayer has satisfied condition of IRM 4.26.16.4.4 (2) (b), which states that the delinquent FBARs should be secured by the examiner. The delinquent FBARs have already been submitted by Anon5percent.

Anon5percent has also been FBAR compliant for three years, 2010, 2011 and 2012. See Exhibit ?? for proof that she has already filed the 2012 FBAR. **She has established timely and complete ongoing compliance for the FBAR.**

In accordance with conditions for avoiding a non-willfulness penalty, her deliverance of the FBARs meets condition IRM 4.26.16.4.4 (2)(b). This states that if the examiner has received the delinquent FBARs from the taxpayer, the application of the non-willfulness penalty can be avoided.

3.1.2 No previous FBAR Warning Letter or Penalty

In accordance with IRM 4.26.16.4.7(3)(b), a factor to consider when applying examiner discretion is whether the person who committed the violation had been previously issued a warning letter or has been assessed the FBAR penalty.

Anon5percent has never been issued a warning letter or been assessed the FBAR penalty. Thus she fulfills another condition for the issuance of a warning letter.

3.2 Reasonable Cause in Accordance with IRS Fact Sheet FS-2011-13

In IRS Fact Sheet FS-2011-13, dated August 4, 2012, it is stated that factors that might weigh in favor of a determination that an FBAR violation was due to reasonable cause include "*that the unreported account was established for a legitimate purpose and there were no indications of efforts taken to intentionally conceal the reporting of income or assets, and that there was no tax deficiency (or there was a tax deficiency but the amount was de minimis) related to the unreported foreign account. There may be factors in addition to those listed that weigh in favor of a determination that a violation was due to reasonable cause. No single factor is determinative.*"

3.2.1 Substantial Similarity with Example 4 of IRS FS-2011-13

The Taxpayer's facts and circumstances appear **substantially similar** to the fact pattern described in Example 4 of FS-2011-13. Example 4 is reproduced below.

Example 4: Taxpayer is a United States citizen who lives and works in Country B as a computer programmer. Taxpayer has checking and savings accounts with a bank that is located in the city where he lives. The aggregate balance of the checking and savings accounts is $50,000 during the tax year. Taxpayer complied with Country B's tax laws and properly reported all his income on Country B tax returns. Taxpayer failed to file federal income tax returns and failed to file FBARs to report his financial interest in the checking and savings accounts. After reading recent press and thus learning of his federal income tax return and FBAR reporting obligations, Taxpayer filed delinquent FBARs, reporting both foreign accounts, and attached statements to the FBARs explaining that he was previously unaware of his obligation to report the accounts on an FBAR. Taxpayer also filed federal income tax returns properly reporting all income and no tax was due. The IRS will determine whether the FBAR violation was due to reasonable cause based on all the facts and circumstances. Taxpayer had a legitimate purpose for maintaining the foreign accounts, there were no indications of efforts taken to intentionally conceal the reporting of income or assets, and no tax was due. Taxpayer's explanation for why he failed to timely file an FBAR appears reasonable in view of the facts and circumstances of the case. Since the IRS determined that the FBAR violation was due to reasonable cause, no FBAR penalty will be asserted.

Anon5percent meets almost all of the conditions in Example 4. Her difference is that she may owe tax in some years. While the final amount is not yet determined at the time of writing of this letter, it appears to be **de minimis**. As a point of reference, what Anon5percent owes can be compared to the threshold of $1500 which is allowed under the IRS New Streamlined Procedure for Non-filer Non-Residents issued on August 31, 2012. It should also be noted that taxes owed

are due to reasonable cause under IRM 20.1.1.3.2.2.6 (2) (e) and IRM 20.1.1.3.2.2.6 (4) (b) as is explained in Section 3.5 of this document.

Due to the substantial similarity to FS-2011-13 and reasonable cause as is specified in the last two sentences of Example 4, no FBAR penalty should be asserted.

If we look at the specific requirements for the establishment of reasonable cause as listed in FS-2011-13, Example 4, the following illustrates how Anon5percent meets the requirements for the establishment of reasonable cause:

a) **Compliance with Country B's Tax Laws:** *Taxpayer complied with Country B's tax laws and properly reported all his income on Country B tax returns.*

   Taxpayer Facts: Anon5percent has been diligent about meeting all tax liabilities on her earned income and bank accounts worldwide. During most years of the OVDI program, due to the nature of her work, in addition to the United States, she was simultaneously filing and/or paying taxes in up to 3 other countries where she had bank accounts due to work (Country A, Country B and Country C or Country D). In Country A and Country B she kept bank accounts because she had immigrated to these countries and maintains family or employment ties in these countries. Her tax returns in these countries were timely and in accordance with the laws of these countries.

   For the OVDI period, Anon5percent was a permanent resident of Country A. She timely declared and paid taxes on her worldwide income in Country A in accordance with the rules of the Country A's Tax Agency.

   For reasons related to work, family and personal history, Anon5percent had bank accounts in Country B, Country C and Country D.

   In order to ensure compliance with any Country B tax obligation, for the OVDI years, she let the Tax Authority keep the withholding taxes on her bank accounts in Country B.

   Furthermore, for *Relevant Date,* Anon5percent had a work permit and temporary residence in Country C. Her employer, Company X filed Country C's tax declaration and paid taxes on her behalf on income earned in Country C.

   In *Relevant Date*, Anon5percent had temporary residence in Country D. Her employer declared and paid taxes on her behalf in Country D on her income.

b) **Delinquent FBARs filed: "***Taxpayer filed delinquent FBARs, reporting both foreign accounts, and attached statements to the FBARs explaining that he was previously unaware of his obligation to report the accounts on an FBAR.*"

   Taxpayer Facts: Anon5percent has provided the delinquent FBARs. In the present document, she explains that she had no prior knowledge of or acquaintance with the FBAR form or the need to file it.

c) **US Tax Returns Filed – no tax or de minimis tax was due: "***Taxpayer also filed federal income tax returns properly reporting all income and no tax was due."*

Taxpayer Facts: Anon5percent has filed her federal income returns tax properly as part of OVDI For *Relevant Date*, there may be taxes due. However, it appears that any taxes that may be due are due on PFICs. Ms anon5percent had no knowledge of PFICs and had losses in her currency of operation and therefore was unaware that these amounts were due.

d) **Legitimate Purpose for opening bank accounts: "**Taxpayer had a legitimate purpose for maintaining the foreign accounts, there were no indications of efforts taken to intentionally conceal the reporting of income or assets and no tax was due."

Taxpayer Facts:

- In each country where she had an account, Country A, Country B, Country C, and Country D, the initial bank account was opened for the receipt of salary and was opened with the assistance of her employer.
- In Country A and Country B, additional bank accounts were opened because Anon5percent had immigrated to these countries. These accounts were opened as part of normal, lawful residence and activities in these countries. Family and professional ties are still maintained in each of these countries.
- In Country B and Country C, her largest bank accounts were opened in connection with the Taxpayer's employment in these countries to meet legal requirements of lawful working residents of those countries.
- Income from her foreign bank accounts and US bank accounts was appropriately declared and taxed in Country A, where she resides. Despite being under no obligation to file Country B taxes she permitted Country B to keep withheld tax amounts on interest and dividends in order to be sure she was satisfying any possible obligation to the Country B Tax Agency.
- No entities were used.
- No nominees.
- The funds in these accounts were accumulated legally.
- No misleading statements to accountants or the IRS.
- No double books.

3.3 Lack of willfulness or willful blindness

Anon5percent shows no evidence of willfulness or willful blindness as she did not intentionally or consciously avoid learning about the FBAR.

- No false answer to the foreign bank account question on Schedule B.
- Anon5percent had no acquaintance with the foreign account question on Schedule B because she had never filed, nor looked at the contents of Schedule B. Without knowledge of the foreign account question, she was not aware of the requirement for the FBAR.
- Upon reading the instructions for the 1040, Anon5percent understood that Schedule B did not have to be filed if she had less than USD 1500 in interest and USD 1500 in dividends, which appears to have been true for most of the years she has lived abroad. See Table 1 for proof of this for the currently open years. Anon5percent understood that she had less than USD 1500 in dividends and less than USD 1500 in interest. As a result, she never

even looked at Schedule B. She could not consciously avoid the foreign bank account question if she had no knowledge that it existed on Schedule B. This was true for the years for *Relevant Date*, which are the currently open years.

TABLE 1(Redacted)

Year	Interest Declared on 1040	Dividends Declared on 1040
*	XXX	XXX

*First filed as part of OVDI so there was no chance to spot Schedule B and the Foreign Bank Account Question

- Anon5percent attempted in 200X to check information with the IRS that could have made her aware of the contents of Schedule B, but she was told that everything was fine. This is described in detail under the Section 3.4.2 "Good Faith". This is what led Anon5percent to believe that Schedule B was not necessary in *Relevant Date* and why she continued to have no acquaintance with the foreign account question and no knowledge of the FBAR.

3.4 Good faith

IRM 4.26.16.4.3.1 (3) states that: *"Treas. Reg. 1.6664-4, Reasonable Cause and Good Faith Exception to § 6662 penalties, may serve as useful guidance in determining the factors to consider. Although this tax regulation does not apply to FBARs, the information it contains may still be helpful in determining whether the FBAR violation was due to reasonable cause and not due to negligence.*"

3.4.1 Good faith: Immediate compliance once becoming aware of FBAR

It must be stressed here that as soon as Anon5percent became aware of her failure to file FBARs on or about *Relevant Date* and the fact that she might owe taxes, without even being sure that she owed taxes, she took immediate action to remedy the situation. Although she had limited contacts in the US, she sought help with her taxes and followed the recommended procedures for explaining and correcting the error. This act of good faith has already been described in detail in Section 2.3.

3.4.2 Good faith: Multiple examples of seeking information, responding immediately to IRS requests

Anon5percent has always shown good faith supporting reasonable cause. There are numerous examples of this.

- **Anon5percent requests required forms from US Embassy and FBAR form was never provided. Other relevant forms, e.g. 8621 and AMT are also never mentioned, nor provided.** Anon5percent acted in good faith to report the proper tax liability. Since moving overseas in *Relevant Date* she has tried to report the proper tax liability. When she moved to Country B in *Relevant Date*, on the basis of a list of accountants she received from the U.S. Embassy, she contacted RRR, an accounting firm (at that time) in the city she was living in. They made sure her Country B taxes were properly filed, but told her they could not calculate her US taxes for her. They also could not recommend anyone to do them. As she had always done her own taxes in the States and had what she thought was an uncomplicated situation, she filed her own taxes. She contacted the US Embassy and asked for advice on how and what to file internationally. They provided

her with only Publication 54, Form 2555, Form 1116 and the 1040. The FBAR was never shown or mentioned. She checked Instructions for the 1040 and followed the examples in Publication 54 in order to fill out the forms that had been given to her. To assure quality, she would recheck these publications and their examples every year and compare the current year's tax form to her previous year's tax form, which had, to the best of her understanding, already been approved by the IRS. She took it in good faith that the embassy had provided her with the forms she needed as an overseas filer and that Publication 54 was a complete "Tax Guide for U.S. Citizens and Resident Aliens Abroad" and would not leave out any important filing requirements for overseas citizens. Publication 54 mentioned nothing about PFICs (Form 8621) nor AMT, etc.

- **Taxpayer "audited" twice and audit result leads her to believe all has been filed correctly.** Anon5percent understood that she was "audited" twice by the IRS and the satisfactory outcomes indicated to her that she was appropriately filing her US taxes. The first "audit" was a correspondence audit in *Relevant Date* and the second time was in *Relevant Date*. Records will show that she responded immediately to the IRS, followed all instructions of the IRS and provided all information to the satisfaction of the IRS. Anon5percent now knows that these were only line item audits, however, the satisfactory results of the audits led her to believe that she had met all filing and reporting requirements of the IRS after these audits and was filing her US taxes correctly.
- **Taxpayer responds immediately to IRS requests.** Anon5percent responded to both of these IRS requests on the day she received them. With respect to the *Relevant Date return*, she recounts how she came home and went immediately to the phone to make sure there was no delay due to the fact that the letter came from overseas. On *Relevant Date*, upon receiving a communication from the IRS, Exhibit ??, dated *Relevant Date*, with reference number 123456789, Anon5percent immediately called the IRS and spoke with representative 987654. She was then transferred to the international section. She spoke with Mrs. X. Anon5percent requested and received the following ID number from Mrs. X: 4567890.
- **Taxpayer requests additional information from IRS and is told that all is "just fine."** Details of conversation are provided here
- **Taxpayer follows instructions to satisfaction of the IRS.** Anon5percent followed the instructions of the IRS representative and sent an immediate response to the IRS on *Relevant Date* and as there was no further communication from the IRS, Anon5percent truly believed that everything was just fine.
- **Taxpayer acts immediately to correct FBAR omission by following what she understood was the only process (VD) to do so and pays any possible outstanding tax.** Anon5percent first became aware of the FBAR requirement on or around *Relevant Date*. Although she has almost no contact to the States, she immediately, with great difficulty, sought out tax professionals in the States so that she could rectify the error. On *Relevant Date*, she entered the Voluntary Disclosure Program before the OVDI started as she understood this was the proper thing to do to explain and correct any errors made in taxes or filing the FBAR. At the time, she was unaware that of what errors she had made, but entered Voluntary Disclosure in order to be sure she was following the proper process that the IRS recommended for correcting any possible omissions.
- **Voluntary Disclosure shows a good faith effort to meet tax and reporting obligations.** Anon5percent has supplied all information and tax returns and paid the outstanding tax obligations.

- **Taxpayer discloses all accounts (including US) to XYZ (Country A's Tax Agency) as well as TUV.** When Anon5percent first arrived in Country A, before Country A's taxes were due, her employer organized group information sessions with TUV for all new foreign employees. The employees were given booklets in English showing how to file Country A's tax returns and they were allowed to ask specific questions to TUV. Anon5percent disclosed all her accounts to TUV and was told how to declare the income from them. She also told TUV that she filed tax declarations in the U.S. as well and asked what effect that had. TUV responded that their session only covered Country A's taxes. They informed her that she would have to pay and declare taxes in Country A on all her income, but it was good she was filing in the U.S. and that as Country A's tax rates were much higher than U.S. tax rates it was unlikely she would owe anything to the IRS. This also contributed to the taxpayer's belief that she was filing correctly.
- **Taxpayer has cooperated.** Anon5percent has cooperated fully in OVDI.

3.4.3 Behavioral responses indicate Taxpayer would have responded to FBAR Warning Letter 3800

The behavioral responses described above show clearly that Anon5percent would have responded to a Warning Letter from the IRS about the FBAR as she had responded to every other communication from the IRS immediately.

3.5 Complicated PFICs, Reasonable Cause and relation to tax due in Open Years

Anon5percent will owe some tax due to complicated PFIC calculations. As has been shown previously, if no tax is due, or there are de minimis taxes, no FBAR penalty will be given. Anon5percent's tax is not finally determined, but it appears to be de minimis. She has reasonable cause for being unaware of PFIC taxes due and this gives further strength to the position that no FBAR penalty should be asserted, even though she may owe some tax.

While ignorance of the law is not an excuse, IRM 20.1.1.3.2.2.6 (2) (e) allows *Reasonable cause may be established if the taxpayer shows ignorance of the law in conjunction with other facts and circumstances. For example, consider: E. The level of complexity of a tax or compliance issue.*

PFICs constitute a highly specialized and complicated area of US tax policy. Even revenue agents assigned to OVDP/OVDI programs have been documented by reputable practitioners to be unfamiliar with PFIC rules although they are specialists in US tax law.[1] It should be noted that one of the parties who has documented this, Mr. Matthews, was the IRS Deputy Commissioner from 2003 to 2006 and therefore commands a certain amount of credibility. His 2010 article on the 2009 Voluntary Disclosure Program makes it very clear: *"Practitioners who had labored in the vineyards of international tax knew about PFICs, but few other people did. Acting on directions from the technical advisers, agents (who had also never heard of the*

[1] Matthew, Mark E. and Michel, Scott D., Daily Tax Report, "IRS Voluntary Disclosure Program for Offshore Assets: A Critical Assessment after One Year", 181 DTR J-1, 09/21/2010. Copyright 2010 by The Bureau of National Affairs, Inc. ISSN 0092-6884, page 7.

concept) suddenly bombarded practitioners with inquiries about whether there were any PFICs contained in a given foreign account."

IRM 20.1.1.3.2.2.6 (2) (e) and IRM 20.1.1.3.2.2.6 (4) (b) are directly applicable here as the IRS itself, as noted above, has been documented to be unaware of PFIC rules. Therefore, it is unreasonable to expect a taxpayer to know of the requirement. A former IRS Deputy Commissioner is on record as stating that these are esoteric, complicated requirements, thus confirming that "the level of complexity of a tax or compliance issue" is high.

3.6 Environmental Considerations

A main hallmark of reasonable cause is a showing that a taxpayer exercised ordinary care and prudence. See IRM 20.1.1.3.2.2. Lack of awareness of a filing obligation may be consistent with ordinary business care. IRM 20.1.1.3.2.2.6 (2) (e) provides that reasonable cause may be established if the taxpayer shows ignorance of the law where "there were recent changes in the tax forms or law which a taxpayer could not reasonably be expected to know." Reasonable cause is also consistent with IRM 20.1.1.3.2.2.6 (4) (b) when a taxpayer establishes that "the taxpayer was unaware of a requirement and could not reasonably be expected to know of the requirement."

The following section will establish that FBAR requirements are not discoverable by a reasonable and prudent person, especially one living overseas. Documentation is lacking, resources are not available and as with PFICs, the FBAR question is not addressed openly and prominently in the documentation. Anon5percent is not alone in missing this requirement. Many overseas residents and new immigrants to the United States of America have suffered from the same lack of information which has caused them to miss this requirement.

3.6.1 IRS acknowledges the lack of Information available on FBAR and other compliance requirements and complexity of international requirements

The IRS itself recognizes the difficulty for international taxpayers of finding information on complex tax requirements and forms that are always changing. In the 2011 Annual Report to Congress[2] by the Taxpayer Advocate, Nina Olson states on page 129,

> "The complexity of international tax law, combined with the administrative burden placed on these taxpayers, creates an environment where taxpayers who are trying their best to comply simply cannot."

This statement captures the situation of Anon5percent in a nutshell.

On the same page, the Taxpayer Advocate states:

> "A recent IRS study of taxpayer needs and preferences showed that international taxpayers may have a greater current need for IRS services than the general taxpayer population. Yet while the IRS has substantially stepped up and invested hundreds of

[2] http://www.taxpayeradvocate.irs.gov/userfiles/file/2011_ARC_MSP%207-12.pdf

millions of dollars in international enforcement programs, it has not adequately improved taxpayer services that would foster compliance."

On page 131, an entire section is devoted to the discussion about "International Provisions Are Among the Most Complicated in the Internal Revenue Code." The Taxpayer Advocate 2011 Report also has another section which starts on page 132 which is entitled, "The Complexity and Administrative Detail of International Reporting Requirements are Overwhelming".

The IRS has made informed and credible statements that filing requirements are complex and US citizens residing overseas do not know about the FBAR form and other forms like Form 8621 for PFICs (Passive Foreign Investment Companies) and that this prevents compliance. Additionally, the IRS admits that services which provide assistance to foster compliance are lacking.

IRM 20.1.1.3.2.2.6 (2) (e) and IRM 20.1.1.3.2.2.6 (4) (b) are directly applicable here as the IRS itself is has found that for international taxpayers "the level of complexity of a tax or compliance issue" is unmanageable and a taxpayer "could not be reasonably expected to know of the requirement."

3.6.2 General Public Knowledge of FBAR filing requirements

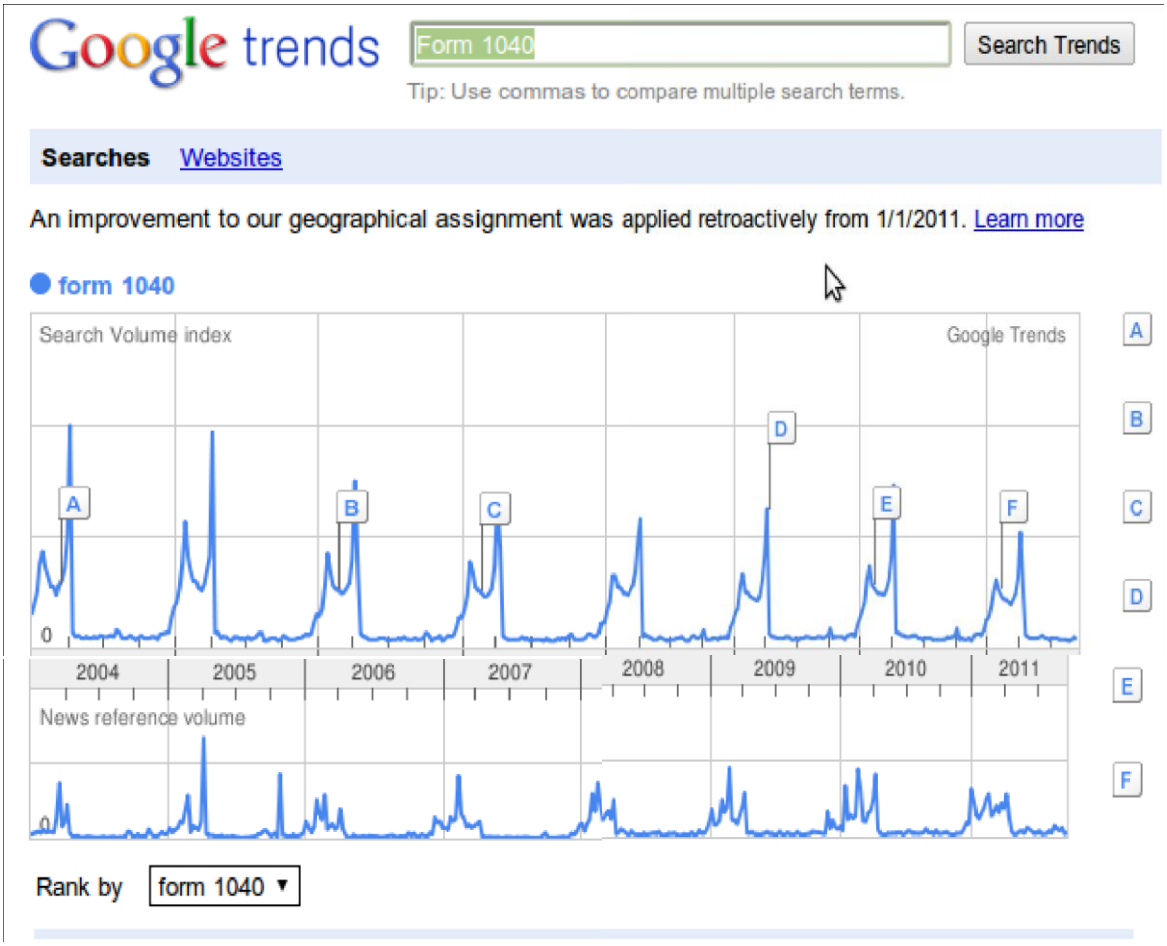
Until very recently, the general population has not been aware of the existence of the FBAR form, or the filing requirements that are related to it.

A suitable tool to understand the degree to which people are seeking information on a given subject is the Google Trends[3] service. It allows the graphical analysis of volumes for a given search term over time via the Google Search service. Given that Google Search accounts for more than 80%[4] of internet searches it logically follows that volumes of search terms are a suitable proxy for the general population's knowledge-seeking behavior.

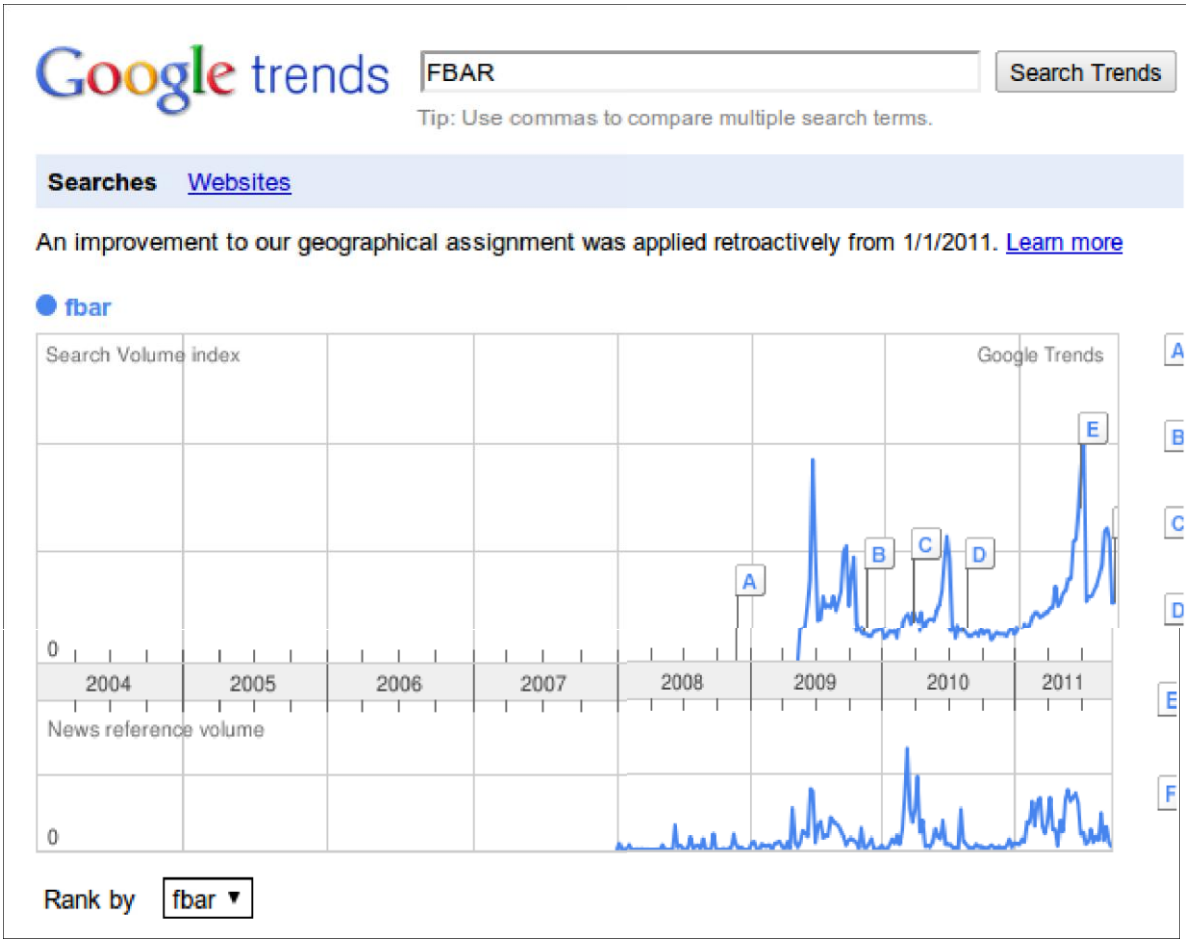
I suggest that the example search volumes for "Form 1040" (the US Federal tax return form) illustrates a subject that people:
. know exists; and
. need related information about it (detailed requirements, how and when to file etc)

The following Google Trends image illustrates this by showing a constant level of search activity with peaks around tax preparation times and filing times.

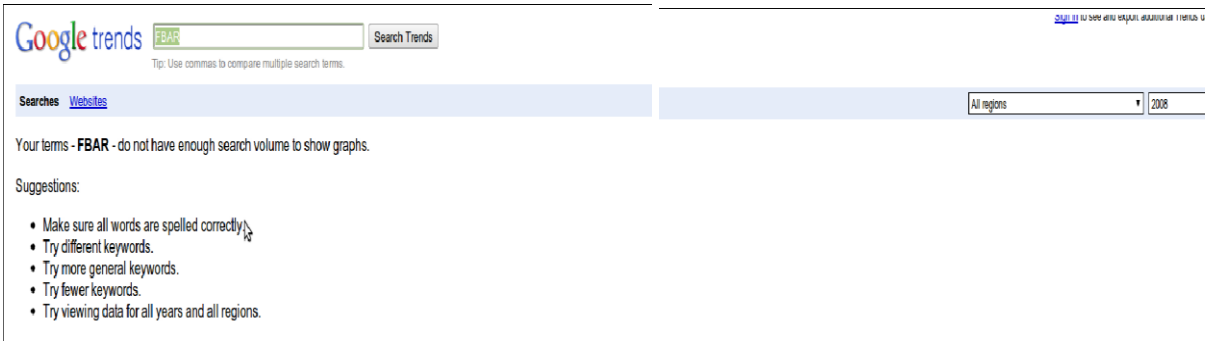
[3] www.google.com/trends
[4] http://marketshare.hitslink.com/search-engine-market-share.aspx



I suggest that the example search volumes for "FBAR" illustrate a subject that the population;
. prior to mid 2009, did not know that it and the associated filing requirement existed; and
. therefore did not search for related information on the internet; and
. after mid-2009 (after the first OVDP was announced) became aware that it and the associated filing requirement existed; and
. therefore, started to search for related information on the internet



This is further illustrated by choosing to view search volume information for only the year of 2008. As shown, the image below the search volume is insignificant, the specific response being *"Your terms - FBAR - do not have enough search volume to show graphs..."*



In addition, the filing requirements related to the FBAR form are now well known to be unclear and confusing (as evidenced by letter 118613[5] from the New York State Bar Association on the topic). A form with this level of uncertainty surrounding it would, if people were aware of its existence, have triggered significant search activity by people seeking to clarify their understanding. As there is no such search activity prior to mid-2009, at which time the first

[5] http://www.nysba.org/AM/TemplateRedirect.cfm?Template=/CM/ContentDisplay.cfm&ContentID=29755

OVDP program was publicized, it can be inferred that people in general were simply unaware that the FBAR existed.

This comparison between historical search volumes on similar subjects provides evidence that the knowledge in the general population of the FBAR and filing requirements associated with the FBAR were very low prior to mid-2009. Although the population size with Form 1040 filing requirements is significantly larger than the population with FBAR filing requirements, the population with FBAR filing requirements is still large (driven by the number of immigrants to and emigrants from the US) and should not invalidate the relative search volumes over time.

With an environment where the general population is totally unaware of the existence of the FBAR form, it is clear that anyone that triggers an FBAR filing requirement will most likely not know of the requirement and their lack of knowledge will be continue to be facilitated by the lack of knowledge in the general population.

NOTE: I encourage the reader of this document to verify the results highlighted here using the Google Trends service and establish their own reference points.

3.6.3 US Government publicly acknowledges the lack of public knowledge regarding FBAR filing requirements

The Department of State has made informed and credible statements that US citizens do not know of the existence of the FBAR form and related filing requirements.

The US Department of State is responsible for the embassy and consular services provided to Americans living abroad. One of the services they provide to Americans is information regarding US taxation. On several embassy websites the following statement is consistently presented:

> ***The public may be unaware of their obligation to report their foreign bank accounts to the Department of the Treasury.***

A sampling of US embassies and corresponding websites that state this assertion as of April 10, 2012 are as follows:

- Sweden: http://sweden.usembassy.gov/consulate/acs6.html
- Germany: http://germany.usembassy.gov/acs/irs/
- Norway: http://norway.usembassy.gov/service/u.s.-tax-information
- United Kingdom: http://www.usembassy.org.uk/americanservices/?p=713
- Uzbekistan: http://uzbekistan.usembassy.gov/taxes.html

The Department of State (DoS) supports Americans living abroad as part of its core function and it can be expected to best understand, relative to other US government agencies, the level of knowledge of its customer base on particular subjects. When the DoS makes a public assertion as described above, that message is an informed and credible statement on behalf of the US government that US citizens are generally not aware of the existence of the FBAR form and related filing requirements, even though those same citizens are likely to have FBAR filing requirements.

It should be noted that Anon5percent sought information at the US Embassy in Country B on taxation when she lived there. She stated during her visits that she was working in Country B. Considering the fact that electronic deposits requiring a bank account are used in Country B for salary payment, this should have indicated to the embassy staff assisting her that an FBAR form would be required. This form was not amongst the forms that they gave her when she requested the forms that are relevant for overseas filers. It appears that even the embassy staff that helped her with tax forms for international filers was not knowledgeable about the FBAR.

The US government is on one hand publicly recognizing that its citizens and immigrants do not have the knowledge to comply with its own policies, and on the other hand is seeking to impose confiscatory penalties on those same people for not complying. This undermines the legitimacy of applying FBAR penalties to such people, Anon5percent included.

3.7 Contributing Factors

While the following factors are not being asserted as primary Reasonable Cause Factors, they likely did affect the ability of Anon5percent to exercise anything other the reasonable and prudent business care she believed she was exercising with respect to her taxes. They likely interfered with her capacity to detect any possible omissions from her forms. FS-2011-13 states that "*no single factor is determinative*" and "*there may be other factors in addition to those listed that weigh in favor of a determination that a violation was due to reasonable cause."*

IRM 20.1.1.3.2.2.1 allows reasonable cause in the event of death or serious illness. Both these events occurred in Anon5percent's life. Her circumstances will be described below.

Redacted

3.8 Conclusion

This section has shown clear evidence of non-willful behavior. Anon5percent established her bank accounts for legitimate purposes, owed de minimis taxes on her unreported accounts, had already paid taxes on said accounts in multiple foreign countries, had no acquaintance with either the FBAR form, or the Schedule B contents which would have made her familiar with the FBAR filing requirement. She was also subject to complex reporting requirements which are documented as being so by IRS experts.

As is allowed in IRM 20.1.1.3.2.2.6 (4) (a) and 4.26.16.4.3.1 (3) she exercised multiple instances of good faith when trying to meet her reporting obligations. She sought help from the US Embassy and other accountants with respect to international filing requirements and was never informed about the FBAR. She responded timely to all contacts from the IRS. She has also provided delinquent FBARs and established timely and complete ongoing tax and FBAR compliance. She made a rapid effort to establish full compliance following becoming aware of her deficiencies on or about *Relevant Date*. It has also been shown that there was a noted lack of information available to her.

Anon5percent's facts point to a strong history of compliance, an understandable lack of awareness, a date at which awareness occurred, and immediate compliance efforts following that date.

Her behavior shows that she was not evading taxes nor evading filing the FBAR and that she would have responded to a warning letter from the IRS. **In accordance with IRM 4.26.16.4.4 (2) (a) and (b) a non-willful penalty can be avoided and a warning letter can be issued.**
.

4. Request for removal of Section 6651 (a) and (b) penalties for Open Years

These sections are redacted out are they are specific to anon5percent's situation.

4.2 Reasonable Cause Arguments for removal of Section 6651 FTF/FTP Penalties for 2009

The principle reason for Anon5percent's 2009 tax return not being filed is due to IRM 20.1.1.3.2.2.5, which was advice from the tax attorney she used for Voluntary Disclosure. He told her not to file the 2009 return and only file it as part of the Voluntary Disclosure. In a discussion with Revenue Agent X, Rev Agent X verbally confirmed to Anon5percent that this is what the IRS was advising at that time.

5. Request for removal of Section 6662 accuracy penalties for any Open Year

Anon5percent requests that Section 6662 Accuracy Penalties in *Relevant Date* be removed as no return was ever filed so an accuracy penalty is inappropriate. Any changes currently being made to the returns are due to new requirements from opting out of OVDI.

6. Eligiblity for Opt Out under the Streamlined Program

Anon5percent requests an Opt Out under the Streamlined Program and application of the terms and conditions of that program. In the Streamlined Program, no penalties will be asserted and follow-up actions will not be pursued.

Based on recent statements by Mr. David Horton from the IRS Large Business and International Division international individual compliance function, just because a taxpayer fails to qualify under the criteria as a low risk is not reason to avoid applying to the program.[6] Additionally, Mr.

[6] Shamik Trivedi, IRS Urges Low Risk Account Holders to Apply Under Streamlined Procedures, 2012 TNT 236-3 (12/7/12)

Christopher Sterner, IRS deputy chief counsel (operations) said the IRS "will not necessarily beat up on a taxpayer just because he's a little bit over or doesn't meet one of the criteria."[7] These statements were made at the 2012 American Bar Association Section of Taxation's annual National Institute on Criminal Tax Fraud in Las Vegas.

The program is for "non-resident, non-filer" US taxpayers. Upon opt out from OVDI, Anon5percent will only have *Relevant Date* return not filed, thus she meets the basic criteria of being a non-filer and non-resident.

Additionally, the OVDI hotline has said that people in OVDI can opt out into the Streamlined Program. While the Streamlined Program requires that no returns have been filed since 2009, under the terms of OVDI, Anon5percent filed a return for 2010 timely and accurately. She then stayed in compliance and filed her 2011 return timely and accurately as she was required to do. It would be logically inconsistent to say that opt out into the Streamlined Program is not permitted because someone in OVDI has been compliant since entering OVDI.

Specifically, according to the instructions for the Streamlined Program found at http://www.irs.gov/uac/Instructions-for-New-Streamlined-Filing-Compliance-Procedures-for-Non-Resident-Non-Filer-US-Taxpayers , some criteria may raise the risk of an applicant to the program. The low risk situation of Anon5percent with respect to these facts is detailed below.

- Redacted – Each of the criteria of the Streamlined Program is listed with how it applies to anon5percent

To comply with the terms of the Streamlined Program, Anon5percent has attached a completed Streamlined Program questionnaire. See Exhibit ??.

Anon5percent is a low risk taxpayer. The terms and conditions of the Streamlined Program should be applied to her. She should be permitted to pay the tax that is owed without either FBAR or tax penalties.

[7] Ibid.