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THE TAX LAWYER

TAXES 10/06/2015

As IRS And DOJ Hunt Offshore Accounts, Banks Pony Up

The number of banks with deferred prosecution agreements with the U.S. government keeps growing. The subject is tax evasion involving American account holders. Today, under FATCA, banks everywhere want to know [if you are compliant with the IRS](#). And the IRS keeps updating its [list of foreign banks](#) where offshore accounts trigger a 50% (rather than 27.5%) penalty in the IRS's long-running Offshore Voluntary Disclosure Program ([OVDP](#)). This penalty is based on the highest account balance measured over up to eight years.

The IRS [Streamlined program](#) is now more than a year old, and it continues to grow in popularity. But it is only for non-willful violations and there are risks. The safer OVDP is more expensive, and getting more so. The IRS recently added [Schroder & Co. Bank AG](#) (effective 9/3/15); [Valiant Bank AG](#) (effective 9/10/15); [Bank La Roche & Co AG](#) (effective 9/15/15); [Belize Bank International Limited, Belize Bank Limited, Belize Corporate Services Limited](#), their predecessors, subsidiaries, and affiliates (effective 9/16/15); [St. Galler Kantonalbank AG](#) (effective 9/17/15); [E. Gutzwiller & Cie. Banquiers](#) (effective 9/17/15); [Migros Bank AG](#) (effective 9/25/15); [Graubündner Kantonalbank](#) (effective 9/25/15); and [BHF-Bank \(Schweiz\) AG](#) (effective date to be announced).

This higher penalty was created as part of the June 2014 OVDP reforms that created a more lenient deal for the non-willful, and a more stringent OVDP for others.



(Photo credit: AP Photo/Emrah Gurel)

More Swiss banks are concluding their discussions as part of the huge U.S. settlement. Other enforcement efforts have included the [John Doe summonses issued to FedEx, DHL, UPS, and HSBC relating to Sovereign](#). Disclosure is clearly the best path, and the OVDP still has the highest degree of safety. Presently, taxpayers in the 2014 OVDP face a 50% penalty if they had accounts at any of the banks listed [here](#).

Outside of these banks, the norm within the OVDP remains 27.5%. That is far better than prosecution or much bigger civil penalties. Some taxpayers can opt for the easier and less costly [Streamlined program](#). This list does not impact the Streamlined programs because you must be non-willful to qualify. All of this is part of the [June 2014 improvements to the OVDP](#), which sparked new interest in cleaning up offshore accounts.

With over 100 Swiss banks taking the DOJ deal and FATCA disclosures increasing, everyone is rooting out Americans with increasing vigilance. Within the OVDP, people who pre-cleared before the various effective dates are [generally safe](#) from the higher 50% penalty. As additional banks are added to the list, though, only those who get in under the wire will stay safe. The 50% penalty now applies to all taxpayers with accounts at financial institutions or with facilitators which are named, are cooperating or are identified in a court filing such as a John Doe summons.

For those who are not compliant with reporting [worldwide income](#) on U.S. tax returns, FBARs and IRS [Forms 8938](#), it is safest to join the OVDP or (in appropriate cases) at least the Streamlined program. The IRS has been clear that [“quiet” foreign account disclosures are not enough](#). Setting aside the potential criminal liabilities, the civil penalties alone are potentially catastrophic outside one of the disclosure programs.

Indeed, although the 50% penalty is high, willful civil violations can draw penalties equal to the greater of \$100,000 or 50% of the balance in the account *for each violation*. A Florida man was hit with civil penalties equal to 150% of his account [even though this exceeded his entire offshore account balance](#). In that sense, even a 50% penalty applied once can look attractive when you consider the possibility of prosecution or even just higher civil FBAR penalties. Recent [guidance](#) suggests that the IRS could be more lenient in the future, but the IRS's definition of leniency can still make the OVDP a very good—and very certain—deal.

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