

Forbes



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THE TAX LAWYER

TAXES 1/05/2016

As Offshore Banks Agree To U.S. Tax Evasion Deal, Account Holders Must Deal With IRS

Lately, the IRS is warning offshore account holders to [disclose before it's too late](#). Under FATCA, banks everywhere want to know [if you are compliant with the IRS](#). And the cost of compliance for many people is growing. The IRS updated its [list of foreign banks](#) where 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 OVDP remains the safest and most foolproof program, with amnesty even for willful acts.

But for those with the right facts, the IRS [Streamlined program](#) continues to grow in popularity. It is only for non-willful violations, but it is far simpler and much less costly. The safer OVDP is more expensive, and getting more so. The IRS recently added [EFG Bank AG](#) (effective 12/3/15); [EFG Bank European Financial Group SA, Geneva](#) (effective 12/3/15); [Aargauische Kantonalbank \(AKB\)](#) (effective 12/8/15); [Cornèr Banca SA](#) (effective 12/10/15); [Bank Coop AG](#) (effective 12/10/15); [Crédit Agricole \(Suisse\) SA](#) (effective 12/15/15); [Dreyfus Sons & Co Ltd, Banquiers](#) (effective 12/15/15); [Baumann & Cie, Banquiers](#) (effective 12/15/15); [Bordier & Cie Switzerland \(Bordier\)](#) (effective 12/17/15); [PBZ Verwaltungs AG \(PBZ\)](#) (effective 12/17/15); [PostFinance AG](#) (effective 12/17/15); [Edmond de Rothschild \(Suisse\) SA](#) (effective 12/18/15); [Edmond de Rothschild \(Lugano\) SA](#) (effective 12/18/15); [Bank J. Safra Sarasin SA](#) (effective 12/23/15); [Coutts & Co Ltd](#) (effective 12/23/15); [Gonet & Cie](#) (effective 12/23/15); [Banque Cantonale Valais](#) (effective 12/23/15); and [Banque Cantonale Vaudoise](#) (effective 12/23/15).



This higher 50% penalty was created as part of the June 2014 OVDP reforms. The IRS created a more lenient deal for non-willful taxpayers, and a more stringent OVDP for others. 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. The Streamlined program remains very favorable for those who 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.

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 good—and certain—deal.

For alerts to future tax articles, email me at Wood@WoodLLP.com. This discussion is not intended as legal advice.