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IRS Hikes Offshore Account Penalty To 50% For Bank Leumi, Sovereign, 10 Others

The IRS has updated its list of so-called bad foreign banks where offshore accounts trigger a 50% (rather than 27.5%) penalty in the Offshore Voluntary Disclosure Program (OVDP). The IRS added Sovereign Management and Legal, Ltd., plus certain branches of Bank Leumi. Neither addition should come as a surprise. Both banks have been targets of the Department of Justice.

Israel's Bank Leumi is fresh off its [\\$400 million settlement](#) with the [U.S.](#) and [New York](#), so its addition to the 50% list is the other shoe dropping. Sovereign's addition should also raise no eyebrows, coming on the heels of numerous that [John Doe Summonses issued to FedEx, DHL, UPS, HSBC relating to Sovereign](#). Presently, taxpayers in the 2014 OVDP face a 50% penalty if they had accounts at any of the following:

1. UBS AG
2. Credit Suisse AG, Credit Suisse Fides, and Clariden Leu Ltd.
3. Wegelin & Co.
4. Liechtensteinische Landesbank AG
5. Zurcher Kantonalbank
6. swisspartners Investment Network AG, swisspartners Wealth Management AG, swisspartners Insurance Company SPC Ltd., and swisspartners Versicherung AG
7. CIBC FirstCaribbean International Bank Limited, its predecessors, subsidiaries, and affiliates
8. Stanford International Bank, Ltd., Stanford Group Company, and Stanford Trust Company, Ltd.
9. The Hong Kong and Shanghai Banking Corporation Limited in India (HSBC India)
10. The Bank of N.T. Butterfield & Son Limited (also known as Butterfield Bank and Bank of Butterfield), its predecessors, subsidiaries, and affiliates
11. Sovereign Management & Legal, Ltd., its predecessors, subsidiaries, and affiliates
12. Bank Leumi le-Israel B.M., the Bank Leumi le-Israel Trust Company Ltd., Bank Leumi (Luxembourg) S.A., Leumi Private Bank S.A., and Bank Leumi USA



Timing matters. For banks 1 through 10, the 50% penalty applies if a pre-clearance request was submitted on or after August 4, 2014. As in the past, this list does not impact the Streamlined programs. Based on [OVDP FAQ 7.2](#), the 50% penalty may not apply for Sovereign Management and Leumi clients if the pre-clearance request was submitted before one of two dates. For Sovereign, the key date was December 19, 2014. For Bank Leumi, it was December 22, 2014.

This is the second time the IRS has enunciated the list of banks that carry the higher penalty. In June 2014, the IRS announced a [better Offshore Amnesty Program](#), sparking new interest in cleaning up offshore accounts. Cleaning up is appropriate before it is too late. With 100 Swiss banks taking the DOJ deal, and with FATCA disclosures increasing, everyone is rooting out Americans with increasing vigilance.

The initial list of 50% penalty banks by the IRS included the [first 10 banks under investigation](#). The IRS warned that the [higher penalty would take effect on Aug. 4, 2014](#). 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.

If you aren't compliant with reporting [worldwide income](#) on your U.S. tax return, FBARs and IRS [Form 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](#). Apart from potential criminal liability, even civil penalties can be 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*. Remember, each year is a separate violation. A Florida man was hit with civil penalties equal to 150% of his account. The [court upheld the penalties even though they exceeded his entire offshore account balance](#). In that sense, even a 50% penalty can look attractive when you consider the possibility of prosecution or even just higher civil FBAR penalties.

You can reach me at Wood@WoodLLP.com. This discussion is not intended as legal advice, and cannot be relied upon for any purpose without the services of a qualified professional.