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THE TAX LAWYER

TAXES 6/22/2014

IRS Names Offshore Accounts With Higher Penalties---Unless You Beat August 4, 2014 Deadline

The IRS's [Better Offshore Amnesty Program](#) has sparked new interest in cleaning up offshore accounts. The timing is good, since over 100 Swiss banks are about to provide data to the IRS. More globally, FATCA disclosures are right around the corner. Many foreign banks are rooting out Americans with increasing vigilance.

Although many of the changes in the IRS deal are liberalizing, some changes to the [Offshore Voluntary Disclosure Program](#) are not. For some, the [penalty goes from 27.5% To 50%](#). But for who? The IRS has released a list of the [10 firms currently under investigation](#) whose clients could be subject to this new 50% penalty.

The IRS also revealed a hard deadline. This [higher penalty will take effect on Aug. 4](#). According to the IRS, the 50% penalty 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. Here's the current list:

- UBS AG
- Credit Suisse AG, Credit Suisse Fides, and Clariden Leu Ltd.
- Wegelin & Co.
- Liechtensteinische Landesbank AG
- Zurcher Kantonalbank
- swisspartners Investment Network AG, swisspartners Wealth Management AG, swisspartners Insurance Company SPC Ltd., and swisspartners Versicherung AG
- CIBC FirstCaribbean International Bank Limited, its predecessors, subsidiaries, and affiliates
- Stanford International Bank, Ltd., Stanford Group Company, and Stanford Trust Company, Ltd.
- The Hong Kong and Shanghai Banking Corporation Limited in India (HSBC India)
- The Bank of N.T. Butterfield & Son Limited (also known as Butterfield Bank and Bank of Butterfield), its predecessors, subsidiaries, and affiliates



Some people may find this 50% penalty high, since many people already find the 27.5% figure hard to pay. If you apply to the OVDP thinking you will pay 27.5%, what if the IRS says 50%? Fortunately, the IRS is trying to be clear with this list. Plus, there's a very generous August 4, 2014 deadline.

The August 4 deadline means pre-clearance letters submitted after this date come under this enhanced penalty. Other [important modifications](#) to the OVDP include:

- Requiring additional information from taxpayers applying to the program;
- Eliminating the existing reduced penalty percentage for certain non-willful taxpayers in light of the expansion of the streamlined procedures;
- Requiring taxpayers to submit all account statements and pay the offshore penalty at the time of the OVDP application; and
- Enabling taxpayers to submit voluminous records electronically rather than on paper.

Remember, you must report [worldwide income](#) on your tax return. If you have an interest in a foreign bank account you must check "yes" (on Schedule B). You may also need to file an IRS [Form 8938](#) to report foreign accounts and assets. If you have foreign accounts exceeding \$10,000 in the aggregate at any time during the year, you must file an FBAR by each June 30.

If you aren't compliant with these rules, it is safest to join one of the two IRS programs, the [Streamlined](#) program or the [OVDP](#). The IRS says "[quiet](#)" [foreign account disclosures are not enough](#). Apart from potential criminal liability, even civil penalty exposure can be catastrophic. To begin with, the non-willful FBAR [penalty](#) is \$10,000 each.

And as you consider the new post-August 4, 2014, 50% penalty, consider that willful civil violations can draw penalties equal to the greater of \$100,000 or 50% of the amount in the account for **each** violation. Each year is a separate violation. A Florida man was recently hit with civil penalties amount to 150% of his account. See [Court Upholds Record FBAR Penalties, Exceeding Offshore Account Balance](#).

In that sense, even the new 50% penalty isn't a bad deal. In fact, it can look pretty good, particularly 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.