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### IRS Offers Carrot And Stick For Offshore Disclosures

Like the old McDonald's sign announcing how many billion hamburgers it has served, the IRS has announced a milestone: It has raked in more than \$5 **billion** in offshore disclosures. That's a lot of hamburgers. U.S. citizens and permanent residents must report their worldwide income, even if it's taxed somewhere else. See [10 IRS Rules for Stress-Free Foreign Accounts](#).



What's more, those with more than \$10,000 in overseas accounts must annually file an FBAR disclosing them. See [Foreign Accounts? Don't Forget June 30 FBAR Deadline](#). It's now painfully clear many people have failed to comply. The good news is that the IRS amnesty known as OVDP continues to welcome people into the program with no announced expiration date. See [IR-2012-64](#) and [New IRS Offshore Amnesty Announced: Third Time's A Charm](#). In fact, the IRS is in the process of releasing FAQs that update the [FAQs from the 2011 program](#).

The bad news is that it is also tightening eligibility for admission in several key respects. The tightening won't apply to many but it does reveal the tension these matters can produce. When a U.S. person faces

the pending disclosure of their name and details to the IRS, it is often possible for the person to hold it up in a foreign court. Many such challenges were mounted in Switzerland.

But U.S. law has a trump card for such challenges. Under U.S. law, if you challenge the disclosure of your name in a foreign court you are required to notify the Justice Department of the appeal. See [18 U.S.C. § 3506](#). For many, that notice defeats the purpose of mounting the foreign legal challenge in the first place, so some taxpayers skip the notice.

Now such inaction will have additional consequences. The IRS has announced that if you fail to notify the Justice Department of a foreign appeal as required, you will not be eligible for the Offshore Voluntary Disclosure Program (OVDP). In effect, even though there is no IRS pending investigation of you, you won't be allowed to join the OVDP and get the same deal as everyone else.

Second, your eligibility to participate in the OVDP could be terminated in a way that hardly seems to involve you and over which you have no control. If the foreign institution where you have your account faces IRS action, you're **also ineligible** for the OVDP. Once the U.S. government has taken action against a financial institution, any U.S. taxpayers with accounts at that institution can't participate in the OVDP.

Both of these actions reflect a fundamental precept of voluntary disclosure. The IRS wants you to come forward **before** you have to, not after.

One other piece of good news? The IRS will soon offer U.S. citizens residing overseas a way to catch up with tax filing obligations and assistance for people with foreign retirement plan issues. See [IR-2012-64 discussed here: IRS Announces Tax Relief For Dual Citizens And US Citizens Abroad](#).

For more, see:

[FBAR Penalties: When Will IRS Let You Off With A Warning?](#)

[Foreign Accounts? Don't Forget June 30 FBAR Deadline](#)

[Living Abroad Sounds Idyllic—Until You Consider Taxes](#)

[Beware Longer IRS Statute Of Limitations On Foreign Accounts](#)

[10 IRS Rules for Stress-Free Foreign Accounts](#)

[FBARs & FATCA Form 8938: Maddening Duplication?](#)

[More On IRS Form 8938 vs. FBAR](#)

[Is Closing Foreign Bank Accounts An Alternative To Disclosure?](#)

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