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THE TAX LAWYER

TAXES 9/15/2015

IRS Offshore Account Penalties Expand, More Banks Sign

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 [Privatbank Reichmuth & Co.](#) (effective 8/6/15); [Banque Cantonale du Jura SA](#) (effective 8/6/15); [Banca Intermobiliare di Investimenti e Gestioni \(Suisse\) SA](#) (effective 8/6/15); [bank zweiplus ag](#) (effective 8/20/15); [Banca dello Stato del Cantone Ticino](#) (effective 8/20/15); [Hypothekarbank Lenzburg AG](#) (effective 8/27/15); [Schroder & Co. Bank AG](#) (effective 9/3/15); and [Valiant Bank 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.



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 following:

1. UBS AG (effective 8/4/14)
2. Credit Suisse AG, Credit Suisse Fides, and Clariden Leu Ltd. (effective 8/4/14)
3. Wegelin & Co. (effective 8/4/14)
4. Liechtensteinische Landesbank AG (effective 8/4/14)
5. Zurcher Kantonalbank (effective 8/4/14)
6. swisspartners Investment Network AG, swisspartners Wealth Management AG, swisspartners Insurance Company SPC Ltd., and swisspartners Versicherung AG (effective 8/4/14)
7. CIBC FirstCaribbean International Bank Limited, its predecessors, subsidiaries, and affiliates (effective 8/4/14)
8. Stanford International Bank, Ltd., Stanford Group Company, and Stanford Trust Company, Ltd. (effective 8/4/14)
9. The Hong Kong and Shanghai Banking Corporation Limited in India (HSBC India) (effective 8/4/14)
10. The Bank of N.T. Butterfield & Son Limited (also known as Butterfield Bank and Bank of Butterfield), its predecessors, subsidiaries, and affiliates (effective 8/4/14)
11. Sovereign Management & Legal, Ltd., its predecessors, subsidiaries, and affiliates (effective 12/19/14)
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 (effective 12/22/14)
13. BSI SA (effective 3/30/15)
14. Vadian Bank AG (effective 5/8/15)
15. Finter Bank Zurich AG (effective 5/15/15)
16. Societe Generale Private Banking (Lugano-Svizzera) SA (effective 5/28/15)
17. MediBank AG (effective 5/28/15)

18. LBBW (Schweiz) AG (effective 5/28/15)
19. Scobag Privatbank AG (effective 5/28/15)
20. Rothschild Bank AG (effective 6/3/15)
21. Banca Credinvest SA (effective 6/3/15)
22. Societe Generale Private Banking (Suisse) SA (effective 6/9/15)
23. Berner Kantonalbank AG (effective 6/9/15)
24. Bank Linth LLB AG (effective 6/19/15)
25. Bank Sparhafen Zurich AG (effective 6/19/15)
26. Ersparniskasse Schaffhausen AG (effective 6/26/15)
27. Privatbank Von Graffenried AG (effective 7/2/15)
28. Banque Pasche SA (effective 7/9/15)
29. ARVEST Privatbank AG (effective 7/9/15)
30. Mercantil Bank (Schweiz) AG (effective 7/16/15)
31. Banque Cantonale Neuchateloise (effective 7/16/15)
32. Nidwaldner Kantonalbank (effective 7/16/15)
33. SB Saanen Bank AG (effective 7/23/15)
34. Privatbank Bellerive AG (effective 7/23/15)
35. PKB Privatbank AG (effective 7/30/15)
36. Falcon Private Bank AG (effective 7/30/15)
37. Credito Privato Commerciale in liquidazione SA (effective 7/30/15)
38. Bank EKI Genossenschaft (effective 8/3/15)
39. Privatbank Reichmuth & Co. (effective 8/6/15)
40. Banque Cantonale du Jura SA (effective 8/6/15)
41. Banca Intermobiliare di Investimenti e Gestioni (Suisse) SA (effective 8/6/15)
42. bank zweiplus ag (effective 8/20/15)
43. Banca dello Stato del Cantone Ticino (effective 8/20/15)
44. Hypothekarbank Lenzburg AG (effective 8/27/15)
45. Schroder & Co. Bank AG (effective 9/3/15)

46. Valiant Bank AG (effective date to be announced)

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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