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### More Swiss Banks Settle With U.S., FATCA Marches On

Two more Swiss banks, [Société Générale Private Banking \(Suisse\) SA](#) and [Bernier Kantonbank AG](#), have entered deferred prosecution agreements with the U.S. government over tax evasion issues involving American account holders. Today, banks everywhere want to know [if you are compliant with the IRS](#). For the U.S. government, under FATCA, the entire world is lending the IRS a hand. Meanwhile, the IRS has updated its [list of the foreign banks](#) where offshore accounts trigger a 50% (rather than 27.5%) penalty based on your account balances in the IRS's long-running Offshore Voluntary Disclosure Program ([OVDP](#)).

The IRS recently [added](#) Finter Bank Zurich AG (effective 5/15/15); Societe Generale Private Banking (Lugano-Svizzera) SA (effective 5/28/15); MediBank AG (effective 5/28/15); LBBW (Schweiz) AG (effective 5/28/15); Scobag Privatbank AG (effective 5/28/15); [Rothschild Bank AG](#) (effective 6/3/15); and [Banca Credinvest SA](#) (effective 6/3/15). This higher penalty was created as part of the June 2014 OVDP reforms that created both a more lenient regime for the non-willful, and a more stringent OVDP aimed at covering any remaining offshore account holdouts.



There will be more additions as more and more Swiss banks conclude their discussions as part of the U.S. settlement. They come on the heels of numerous [John Doe summonses issued to FedEx, DHL, UPS, and 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 (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. Générale Private Banking SA (effective date to be announced)

23. Berner Kantonalbank 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 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 more and more 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.

*For alerts to me at [Wood@WoodLLP.com](mailto: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.*