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Cayman Companies Plead Guilty To U.S. Tax Evasion, Handing Over American Accounts

The Justice Department has [announced guilty pleas](#) of Cayman National Securities Ltd. and Cayman National Trust Co. Ltd., which provided investment brokerage and trust management services to American individuals and entities. The institutions pleaded guilty to a criminal Information charging them with conspiring with U.S. taxpayer-clients to [hide more than \\$130 million](#) in offshore accounts from the IRS.

Part of the deal is that they will fork over files of Americans with accounts, and pay \$6 million in penalties. Some Americans may be scrambling. For a decade or more, these two Cayman entities helped Americans hide accounts from the IRS. The Cayman entities opened or encouraged U.S. clients to open accounts held in the name of sham Cayman companies and trusts to help them conceal their ownership of the accounts. The Cayman entities treated these sham Cayman structures as the account holders, and allowed U.S. owners of the accounts to trade in U.S. securities.



The Cayman securities firm failed to disclose to the IRS the identities of the U.S. beneficial owners who were trading in U.S. securities, breaching the institution's Qualified Intermediary Agreement with the IRS. Even when the Justice Department was [going after UBS in 2008](#) and everyone became aware of it, the business in Cayman flourished. In fact, they did not begin to engage in any significant remedial efforts with respect to those accounts until 2011 and 2012.

The sham Cayman structures included trusts controlled by U.S. clients; managed shell companies holding assets of the U.S. clients; and registered office companies, which were shell companies with a Cayman mailing address. That way American clients could trade in U.S. securities, without submitting IRS Forms W-9. That is the IRS form that identifies individuals as U.S. taxpayers.

As part of their plea agreements, the Cayman institutions must cooperate fully with the investigation of the companies' criminal conduct. The companies are already facilitating interviews with their employees, including top level executives. They are voluntarily producing documents in response to government requests. Moreover, they are providing, in response to treaty requests, unredacted client files for approximately 20% of the U.S. clients who maintained accounts.

The two Cayman companies have committed to assist in responding to a treaty request that is expected to result in the production of unredacted client files for approximately 90% to 95% of the U.S. clients who maintained Cayman accounts. In connection with their guilty pleas, the two Cayman companies have agreed to pay the U.S. \$6 million. That is made up of the forfeited gross proceeds of illegal conduct, restitution of the outstanding unpaid taxes from U.S. taxpayers who held undeclared accounts there, and a fine.

With the web of FATCA information exchanges, whistleblowers, cooperating witnesses, and other sources, the IRS and Justice Department have a wealth of information at their disposal. And they are [still hunting offshore accounts as more foreign banks sign deals with the U.S.](#) They have warned offshore account holders to [disclose before it's too late](#).

Under FATCA, banks everywhere want to know [if you are compliant with the IRS](#). The risk of being discovered has grown materially. At the same time, the

list of accounts facing the highest IRS penalties has expanded again. 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.

For alerts to future tax articles, email me at Wood@WoodLLP.com. This discussion is not legal advice.