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IRS Increases Offshore 'Amnesty' Penalty From 27.5% To 50%, Makes Other Changes

The IRS has announced important changes to its offshore account programs. They come as FATCA is taking hold worldwide. Many foreign banks are rooting out Americans with increasing vigilance. One key target of the changes?

Americans living abroad and certain others who can now come within the IRS Streamlined Program. See [IRS Announces Better Offshore Amnesty Program](#). These are liberalizing changes. But the more global—and decidedly non-liberal—changes are to the main program known as the [Offshore Voluntary Disclosure Program](#), OVDP.

More than 45,000 taxpayers have participated in the IRS programs so far, paying about [\\$6.5 billion in taxes, interest and penalties](#). As FATCA and more global bank transparency kicks in July 1, 2014, the IRS can expect even more. Generally, Americans with undisclosed accounts have no choice, for disclosure and penalties are vastly better than the alternative.



IRS and Department of Justice (DOJ) warn that they have even more resources at their disposal. A parade of over 100 Swiss banks took a DOJ deal that means full disclosure of American accounts and tiers of fines depending on how the banks behaved. The deal was not offered to the 14 Swiss banks under U.S. investigation.

The changes make [important modifications](#) to the OVDP. The changes 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;
- Enabling taxpayers to submit voluminous records electronically rather than on paper;
- Increasing the offshore penalty percentage (from 27.5% to 50%) if, before the taxpayer's OVDP pre-clearance request is submitted, it becomes public that a financial institution where the taxpayer holds an account or another party facilitating the taxpayer's offshore arrangement is under investigation by the IRS or Department of Justice.

One of the most worrisome issues will be this last one, since you might apply to the OVDP thinking you would pay 27.5%, and the IRS might say 50%. It remains to be seen how that will be enforced.

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

But if you haven’t been doing this, you should start. The safest way is to joint one of the two IRS programs. In contrast, a “quiet” disclosure—which the IRS warns against—is a correction of past tax returns and FBARs without drawing attention to what you are doing. See [“Quiet” Foreign Account Disclosure Not Enough](#).

Can you start filing complete tax returns and FBARs prospectively, but not try to fix the past? The risk is that past non-compliance will be noticed and it may then be too late to make a voluntary disclosure. Indeed, although criminal cases are rare, FBAR violations and tax violations can both be criminal.

Even civil penalty cases can be catastrophic. The non-willful FBAR [penalty](#) is \$10,000 each. Willful violations are hit with \$100,000 or 50% of the amount in the account for each violation. A Florida man was recently hit with 150% of his account. See [Court Upholds Record FBAR Penalties, Exceeding Offshore Account Balance](#).

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.