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IRS Offshore Account Collections Top $10 Billion, FATCA Hunt Continues

The IRS confirms that its offshore compliance efforts have now topped $10 billion. In all 55,800 taxpayers have entered the IRS's Offshore Voluntary Disclosure Program (OVDP), paying more than $9.9 billion in taxes, interest and penalties. Another 48,000 taxpayers have entered the Streamlined program, paying approximately $450 million in taxes, interest and penalties. The Streamlined program has netted more than 96,000 delinquent and amended income tax returns. Does this mean the IRS is done with offshore compliance? Not hardly. As IRS Commissioner John Koskinen put it:

> The IRS has passed several major milestones in our offshore efforts, collecting a combined $10 billion with 100,000 taxpayers coming back into compliance. As we continue to receive more information on foreign accounts, people's ability to avoid detection becomes harder and harder. The IRS continues to urge those people with international tax issues to come forward to meet their tax obligations."

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American citizens and residents with non-U.S. bank or financial accounts have faced myriad changes over the last decade. Potential civil and criminal penalties are still frighteningly high, and the risk of being caught is gone way up. Moreover, starting to file correctly on a prospective basis can obviously trigger queries about the past. Americans can have offshore assets, but they must be reported.

Much of the myopia about offshore assets started with the IRS's relentless pursuit of Swiss banking. UBS was the first Swiss bank to face major trouble from the IRS and Justice Department. After getting bruised in court battles with the IRS, in 2009, UBS paid $780 million to settle charges that it helped wealthy Americans evade taxes. Other Swiss banks followed suit. These steps launched thousands of voluntary disclosures to the IRS, and changed bank secrecy forever. The Swiss Parliament even passed a measure enabling banks to hand over client identities to American authorities without violating Swiss bank-secrecy laws.

For decades, Americans have been required to file FBARs—now called FinCEN Form 114, *Report of Foreign Bank and Financial Accounts.* They are not filed with the IRS, but with FinCEN, the Financial Crimes Enforcement Network, part of the Treasury Department. FinCEN's existing regulations say you must file if you have a financial interest in, or signature authority over, foreign financial accounts with a total value exceeding $10,000 during the previous calendar year. The due date is June 30 of each year, but next year it changes to April 15, like tax returns.

Starting next year, like tax returns, you will be able to extend that due date. In some ways, though, the biggest development was in 2010, when the U.S. passed FATCA, the Foreign Account Tax Compliance Act. FATCA now spans the globe with a network of reporting that is unparalleled in the world. America is requiring foreign banks and governments to hand over secret bank data about depositors. Non-U.S. banks and financial institutions around the world must reveal American account details or risk big penalties. Offshore banks that do not hand over Americans are withholding at 30% on most transactions.

Non-compliant institutions are frozen out of U.S. markets, so there is little choice but to comply. FATCA cuts off companies from access to critical U.S. financial markets if they fail to pass along American data. More than 100 nations have agreed to the law. Countries must agree to the law or face dire repercussions. FATCA also helped fuel efforts by the OECD to adopt Common Reporting Standards for nations around the world.

Under FATCA, banks everywhere want to know if you are compliant with the IRS. The IRS announcement that its collections from offshore account issues have topped $10 billion is probably due in part to FATCA. And yet the disclosure risks are varied. The OVDP may seem expensive, but not compared to the cost of the full gamut of potential civil penalties or the looming possibility of criminal prosecution. Such worries can make any cost seem reasonable.

The IRS has a list of foreign banks where accounts trigger a 50% (rather than 27.5%) penalty in the IRS's long-running Offshore Voluntary Disclosure Program (OVDP). The program encourages taxpayers to voluntarily disclose foreign financial accounts and assets now rather than risk detection by the IRS at a later date and face more severe penalties and possible criminal prosecution.It remains the safest program, with amnesty even for willful acts. But for those with the right facts, the IRS Streamlined program is simpler and less costly.

The IRS recently revised the certification forms used for Streamlined filings. The most current versions of Forms 14653 and 14654 are available on IRS.gov. Commonly used telephone numbers relating to the Offshore Voluntary Disclosure Program (OVDP) and the Streamlined Filing Compliance Procedures have also changed. But whichever path you take, this isn't the first time that the IRS has warned offshore account holders to disclose before it's too late.

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