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\$1.5 Billion UBS Fine? Much Less After Taxes

Swiss bank [UBS](#) is coughing up \$1.5 billion and pleading to a single count of wire fraud in connection with manipulation of Libor interest rates. The Financial Times [reported](#) that three dozen UBS employees would be implicated. Some face criminal charges. Is that the last word?



(Image credit: AFP/Getty Images via @daylife)

Unlikely. See [Record UBS fine unlikely to be the end](#). The settlement covers charges that UBS personnel tried to manipulate rate submissions. The record \$1.5 billion bid-rigging smackdown is staggering, but is \$1.5 billion the bottom line? See [UBS fined \\$1.5 billion in growing Libor scandal](#).

After tax, it could be a lot less. It is hard to tell what is penal in nature and what could be tax deductible, but it's likely someone is considering appropriate tax reporting positions. Is that inappropriate? Not necessarily.

Most payments in business are deductible, even punitive damages. See [Can Rolls-Royce Deduct Bribes? How About Fines?](#) However, the tax code prohibits deducting “any fine or similar penalty paid to a government for the violation of any law.” See [IRC Section 162\(f\)](#). That includes criminal and civil penalties, yet many companies are able to deduct fine-like settlements.

If a fine or penalty is intended to be **punitive**, it is probably nondeductible. But if it is **remedial** in nature, it may be deductible despite its “fine or penalty” name. Environmental payments and other payments to governmental entities may qualify.

Example: Suppose you pay a \$100 million fine. If it’s nondeductible, it costs the full \$100 million. But if you are in a 40% tax bracket and can deduct it, the fine actually costs you \$60 million after tax. Exxon’s \$1.1 billion Alaska oil spill settlement actually cost Exxon \$524 million after tax. See [BP, Oil, and Deducting Punitive Damages](#).

It is sometimes possible to settle with a government agency and to address this issue. The settlement agreement may specify that a fine is remedial rather than punitive in character. Yet sometimes tax deductions land companies in court a second time. See [Tax Deductions for Damage Payments: What, Me Worry?](#)

After McLaren somehow had secret Ferrari documents, McLaren was hit with a [€40m fine](#). McLaren argued it was not a penalty but was simply a [Formula One](#) rule. McLaren deducted the payment and beat British taxing authorities ([HMRC](#)) in court.

Fines are often linked to bribes, another prohibited deduction. But here, too, some are deductible. In [SEC v. Bilzerian](#), Mr. Bilzerian paid off a stockbroker. Bilzerian deducted it even though he was convicted of securities violations and conspiring to defraud the IRS. The IRS disallowed the deduction saying the payoff was illegal.

But in Tax Court Bilzerian got his deduction. Only payments illegal by **themselves** are nondeductible, the court ruled. See [IRS Cracking Down on Government Settlements](#). There is often considerable grey area that encourages taxpayers to claim deductions.

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