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More FATCA Letters, As Swiss And Other Foreign Banks Crack Down

If you are American and have a non-U.S. bank account, chances are that you've received a letter from your bank asking for your tax details. It may seem odd that banks everywhere want to know [if you are compliant with the IRS](#). But for the U.S. government, that's the beauty of FATCA. The entire world is helping the IRS.

Meanwhile, the IRS has updated its list of the foreign banks where offshore accounts trigger a 50% (rather than 27.5%) penalty in the IRS's long running Offshore Voluntary Disclosure Program ([OVDP](#)). In December 2014, the IRS added Sovereign Management & Legal, Ltd., plus certain branches of Bank Leumi. In March 2015, the IRS added [BSISA](#). Now, the IRS has added [Vadian](#), a tiny Swiss bank that has just finalized its [deal with the Justice Department](#).



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, 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
2. Credit Suisse AG, Credit Suisse Fides, and Clariden Leu Ltd.
3. Wegelin & Co.
4. Liechtensteinische Landesbank AG
5. Zurcher Kantonalbank
6. swisspartners Investment Network AG, swisspartners Wealth Management AG, swisspartners Insurance Company SPC Ltd., and swisspartners Versicherung AG
7. CIBC FirstCaribbean International Bank Limited, its predecessors, subsidiaries, and affiliates
8. Stanford International Bank, Ltd., Stanford Group Company, and Stanford Trust Company, Ltd.
9. The Hong Kong and Shanghai Banking Corporation Limited in India (HSBC India)
10. The Bank of N.T. Butterfield & Son Limited (also known as Butterfield Bank and Bank of Butterfield), its predecessors, subsidiaries, and affiliates
11. Sovereign Management & Legal, Ltd., its predecessors, subsidiaries, and affiliates (effective December 19, 2014)
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 December 22, 2014)
13. BSI SA (effective March 30, 2015)
14. Vadian Bank AG (effective May 8, 2015)

Outside of these banks, though, the norm remains 27.5%, which is a far better deal than prosecution or much bigger civil penalties. Of course, some taxpayers can opt for the cheaper and easier [Streamlined program](#). And within the OVDP, many people got in under the wire. For banks 1 through 10, the 50% penalty applies if a pre-clearance request was submitted on or after August 4, 2014. As in the past, this [list](#) does not impact the Streamlined programs because you must be non-willful to qualify.

Based on [OVDP FAQ 7.2](#), the 50% penalty may not apply for Sovereign Management and Leumi clients if the pre-clearance request was submitted before one of two dates. For Sovereign Management, the key date was December 19, 2014. For Leumi, it was December 22, 2014. All of this is part of the [June 2014 improvements to the OVDP](#), which sparked new interest in cleaning up offshore accounts.

The reformed amnesty program can be more generous, but good things will not come to those who wait. With 100 Swiss banks taking the DOJ deal, and with FATCA disclosures increasing, everyone is rooting out Americans with increasing vigilance. The initial list of 50% penalty banks by the IRS included the [first 10 banks under investigation](#). The IRS warned that the [higher penalty would take effect on August 4, 2014](#). 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.

If you aren't compliant with reporting [worldwide income](#) on your U.S. tax return, FBARs and IRS [Form 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 have the potential to be 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*. Remember, each year is a separate violation. A Florida man was hit with civil penalties equal to 150% of his account. The [court upheld the penalties even though they exceeded his entire offshore account balance](#). In that sense, even a 50% penalty can look attractive when you consider the possibility of prosecution or even just higher civil FBAR penalties.

For alerts to 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.