

Latham & Watkins Tax Controversy

February 3, 2014 | Number 1640

6 Reasons US Taxpayers Should Report Assets Held in Swiss Banks Soon

Initial success of DOJ Swiss bank amnesty program creates greater urgency for US taxpayers.

On December 31, 2013, the window to apply for the US Department of Justice's (DOJ) amnesty program closed for certain Swiss banks seeking non-prosecution agreements with respect to potential violations of US law in connection with undeclared US-related accounts. The DOJ recently announced that, before the window closed, it received letters of intent to participate from no fewer than 106 banks. By April 30, 2014 (unless a 60-day extension is granted), each participant bank will be required to provide the DOJ substantial amounts of information with respect to its cross-border business, US account holders and advisors affiliated with US-related accounts and to pay penalties tied to the balance of US-related accounts as we described in a previous [Client Alert](#).

The apparent success of the first phase of the DOJ's amnesty program serves as an *urgent reminder* for US taxpayers with unreported accounts or interests in certain foreign entities to participate in the Internal Revenue Service's (IRS) offshore voluntary disclosure program (OVDP) or otherwise take steps to correct tax noncompliance. The OVDP allows taxpayers to become compliant, reduce substantial civil penalty exposure and eliminate the risk of criminal prosecution, as described in our earlier [Client Alert](#).

In light of the Swiss banks' high participation rate in the DOJ amnesty program, resident and non-resident US taxpayers with unreported foreign accounts or holdings should consider the following reasons to comply and comply early in order to avoid potential criminal liability:

1. **Compliance window still open:** US taxpayers who have failed to disclose foreign bank accounts, or have failed to report certain interests in foreign corporations, partnerships or trusts, *still have time* to enter the OVDP or the streamlined program for non-residents. Kathryn Keneally, Assistant Attorney General of the DOJ Tax Division stated recently, "I would think that anybody that has an undisclosed account anywhere in the world should come forward. . . .We'll be looking for you."
2. **Possibly reduced penalties:** The DOJ-imposed penalties on participant banks may be reduced if the bank provided its US account holders with notice of the OVDP and the US account holder discloses the account. As a result, banks have an incentive to push US account holders into compliance and some banks have begun freezing accounts of US persons unless such persons can confirm that they have or will enter the OVDP.
3. **'Grace period' may end:** Once the participating Swiss banks turn over the required information to the DOJ, scheduled over the next two to four months, *it will be too late* for US depositors in those banks to take advantage of the benefits of the OVDP. Taxpayers cannot participate in the OVDP once the government obtains specific evidence of non-compliance from their bank.

4. **Possible blacklisting:** In addition, the IRS has warned that it may, at any time, designate specific banks whose accountholders will no longer be eligible to participate in the OVDP.
5. **Possible penalties and prosecution:** A US taxpayer with a foreign account who is identified by the government and thus ineligible for the OVDP faces near certain IRS scrutiny, significant liabilities, including a severe and confiscatory array of civil penalties, and, most seriously, the threat of criminal prosecution. The DOJ and IRS continue to gather and use information obtained from banks and other sources to identify, audit and prosecute noncompliant individuals.
6. **Quicker IRS timelines:** The disclosure process takes time to complete, but the IRS is working to process applications more quickly and to improve the “opt out” process for taxpayers who believe they should pay penalties lower than those required by the OVDP.

The OVDP is complex. Experienced counsel can ensure that the IRS does not impose excessive taxes and penalties. According to the 2013 National Taxpayer Advocate’s Report, the most disproportionately high penalties as a percentage of unpaid tax were imposed on *unrepresented* accountholders. Counsel can navigate the various pathways for disclosure under the OVDP and the streamlined process.

For more information on the IRS’s offshore voluntary disclosure program and the non-resident streamlined program, contact a professional in Latham & Watkins’ [Tax Controversy and Litigation Practice Group](#).

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