

# IRS Tightens OVDI (Tax Amnesty) Participation Rules

by Brian Mahany

The IRS primarily operates on a “first contact” basis. Taxpayers who come forward to correct a problem before they are caught generally are treated better, pay less penalties and avoid criminal prosecution. The IRS’ stated mission is to foster voluntary compliance. That means not punishing those who come forward once a mistake is corrected. This policy extends to the current offshore tax amnesty program called the 2012 Offshore Voluntary Disclosure Program or “OVDI.”

Presently, taxpayers with unreported offshore bank accounts or financial assets are eligible for amnesty as long as they have not received an audit notice or are not under criminal investigation. Those rules are getting tougher, however.

Earlier this week the IRS published new guidance on the OVDI program. Under the new rules, taxpayers will no longer be eligible once the IRS learns about their account from a foreign bank. This is a significant change and one that makes it more important to come forward immediately.

IRS OVDI FAQ 21 states: “The mere fact that the Service served a John Doe summons, made a treaty request or has taken similar action does not make every member of the Joe Doe class or group identified in the treaty request or other action ineligible to participate. However, once the Service or the Department of Justice obtains information under a John Doe summons, treaty request or other similar action that provides evidence of a specific taxpayer’s noncompliance with the tax laws or Title 31 reporting requirements, that particular taxpayer will become ineligible for OVDP [OVDI] and Criminal Investigation’s Voluntary Disclosure Practice. For this reason, a taxpayer concerned that a party subject to a John Doe summons, treaty request or similar action will provide information about him to the Service should apply to make a voluntary disclosure as soon as possible.”

The IRS currently has [several banks under investigation](#). These banks are believed to include banks in Liechtenstein, Israel and Switzerland; specifically, [Liechtensteinische Landesbank AG](#), Credit Suisse, Julius Baer, HSBC Switzerland, Basler Kantonalbank, Zürcher Kantonalbank, NZB Neue Zürcher Bank AG, Wegelin & Co., Bank Leumi, Bank Hapoalim and Mizrahi Tefahot Bank. Many experts believe that other banks are also under investigation. Under the new IRS rules, once the government obtains records from these banks and identifies U.S. taxpayers with unreported accounts, it will

be too late to apply for amnesty.

The reason for the change in policy is simple. The IRS believes that some taxpayers are gaming the system and waiting to see if their bank will be targeted. Only after they receive a notice from the bank will the taxpayer seek amnesty and cooperate with the IRS. By amending its policy, the IRS is hoping to bring in those people who are intentionally sitting on the fences.

For those taxpayers who knowingly failed to report their offshore holdings, amnesty remains a good deal. Taxpayers who can demonstrate that their actions were not willful or who truly didn't know of the reporting requirements may fair much better under a traditional voluntary disclosure.

Beginning in 2013, foreign banks will be required to collect information on account holders with ties to the United States and report that information to the IRS. Once that happens, the OVDI tax amnesty program will no longer be an option for most taxpayers.

Time is running out.

The tax lawyers at Mahany & Ertl help many people with unreported accounts and foreign reporting requirements - OVDI, FBAR filings, FATCA compliance and the reporting of foreign partnerships and corporations. If you or your clients need assistance, give us a call. All inquiries are kept in strict confidence and protected by the attorney client privilege. For more information, contact attorney Bethany Kroes at [bckroes@mahanyertl.com](mailto:bckroes@mahanyertl.com) or by telephone at (414) 223-0464.