

IRS Finally Does The Right Thing! Huge Changes to the IRS Offshore Voluntary Disclosure Program

The IRS recently announced major changes to its offshore voluntary disclosure program. Following is a summary of key changes to the program.

5% Penalty for non-willful taxpayers

For taxpayers whose conduct was non-willful, such taxpayers will pay a one-time five percent offshore penalty. This penalty will be assessed on the highest aggregate value of the taxpayer's foreign accounts/assets, over the previous six years. In order to be eligible, taxpayers must certify under penalty of perjury that the failure to report all income and submit FBARs was due to non-willful conduct.

Non-willful conduct is defined by the IRS as conduct that is due to negligence, inadvertence, or mistake or conduct that is the result of a good faith misunderstanding of the requirements of the law. Individuals who are currently in the offshore voluntary disclosure program, but who have not received fully executed closing agreements may qualify for the reduced 5% penalty.

50% Penalty for taxpayers who holds accounts at a bank under Investigation

For taxpayers who enter the program after it becomes public that a bank where the taxpayer holds an account is under investigation by the IRS or Department of Justice, the offshore penalty is increased from 27.5% to 50% of the highest balance of the taxpayer's foreign accounts/assets during the preceding 8 years. The current list of those banks include:

- UBS AG
- Credit Suisse AG, Credit Suisse Fides, and Clariden Leu Ltd.
- Wegelin & Co.
- Liechtensteinische Landesbank AG
- Zurcher Kantonalbank
- swisspartners
- CIBC FirstCaribbean International Bank Limited, its predecessors, subsidiaries, and affiliates
- Stanford International Bank, Ltd., Stanford Group Company, and Stanford Trust Company, Ltd.
- HSBC India
- The Bank of N.T. Butterfield & Son Limited (also known as Butterfield Bank and Bank of Butterfield)

The IRS finally decided to do the right thing and realized that its program was too rigid and focused on taxpayers who *willfully* failed to report income from foreign accounts (*i.e.*, criminals). However, one problem with these new changes, is that it rewards latecomers and penalizes taxpayers who previously entered the program and paid an offshore penalty of 20%, 25%, or 27.5%, based on when they entered the program. That is unfair and detrimental to our tax system which is based on voluntary compliance. The IRS should provide non-willful taxpayers who previously entered the program and paid a higher offshore penalty, an avenue for explaining why their noncompliance was non-willful and provide them refunds.

Please do not hesitate to contact me if you have any questions.



Pedram Ben-Cohen, Esq., CPA
BOARD CERTIFIED TAX LAW SPECIALIST
BEN-COHEN LAW FIRM, PLC
1901 Avenue of the Stars, Suite 1100
Los Angeles, CA 90067-6002
Office: +1.310.272.7600
Fax: +1.310.272.7601
Email: pedram@lataxattorney.com
<http://www.LATaxAttorney.com>