

# Offshore Bank Account Disclosure

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Title 26 of the US Code governs the Internal Revenue Service

Title 31 of the US Code governs the Money & Finance

Till 2007 the IRS motto was "Service & Compliance".

Tax Gap Update (\$ in billions)

	Tax Year 2001	Tax Year 2006
Total Tax Liabilities	2112\$	2660\$
Gross Tax Gap	345\$	450\$
Net Tax Gap	290\$	385\$

Tax Gap represents: Non Filing, Under reporting and Under payment

## **Why should I make a voluntary disclosure?**

Taxpayers with undisclosed foreign accounts or entities should make a voluntary disclosure because it enables them to become compliant, avoid substantial civil penalties and generally eliminate the risk of criminal prosecution. Making a voluntary disclosure also provides the opportunity to calculate, with a reasonable degree of certainty, the total cost of resolving all offshore tax issues. Taxpayers who do not submit a voluntary disclosure run the risk of detection by the IRS and the imposition of substantial penalties, including the fraud penalty and foreign information return penalties, and an increased risk of criminal prosecution. The IRS remains actively engaged in ferreting out the identities of those with undisclosed foreign accounts. Moreover, increasingly this information is available to the IRS under tax treaties, through submissions by whistle blowers, and will become more available under the Foreign Account Tax Compliance Act (FATCA) and Foreign Financial Asset Reporting (new IRC § 6038D). --- w.e.f 1/1/2012

**What if the taxpayer has already filed amended returns reporting the additional unreported offshore income, without making a voluntary disclosure (i.e. quiet disclosure)?**

The IRS is aware that some taxpayers have attempted so-called “quiet” disclosures by filing amended returns and paying any related tax and interest for previously unreported offshore income without otherwise notifying the IRS. Taxpayers who have already made “quiet” disclosures are eligible to take advantage of the penalty framework applicable to this program by submitting an application, along with copies of their previously filed returns (original and amended) to the IRS’s Voluntary Disclosure Coordinator.

Taxpayers are strongly encouraged to come forward under the OVDP to make timely, accurate, and complete disclosures. Those taxpayers making “quiet” disclosures should be aware of the risk of being examined and potentially criminally prosecuted for all applicable years.

**I have properly reported all my taxable income but I only recently learned that I should have been filing FBARs in prior years to report my personal foreign bank account or to report the fact that I have signature authority over bank accounts owned by my employer. May I come forward under this new program to correct this?**

The purpose for the voluntary disclosure practice is to provide a way for taxpayers who did not report taxable income in the past to come forward voluntarily and resolve their tax matters. Thus, if you reported, and paid tax on, all taxable income but did not file FBARs, do not use the voluntary disclosure process.

For taxpayers who reported, and paid tax on, all their taxable income for prior years but did not file FBARs, you should file the delinquent FBAR reports according to the instructions (send to Department of Treasury, Post Office Box 32621, Detroit, MI 48232-0621) and attach a statement explaining why the reports are filed late.

The IRS will not impose a penalty for the failure to file the delinquent FBARs if there are no under reported tax liabilities and you have not previously been contacted regarding an income tax examination or a request for delinquent returns.

**Some taxpayers have made quiet disclosures by filing amended returns. Will the IRS audit these taxpayers? If so, will they be eligible for the 27.5 percent offshore penalty? Is the IRS really going to prosecute someone who filed an amended return and correctly reported all their income?**

The IRS is reviewing amended returns and could select any amended return for examination. The IRS has identified, and will continue to identify, amended tax returns reporting increases in income. The IRS will closely review these returns to determine whether enforcement action is appropriate. If a return is selected for examination, the 27.5 percent offshore penalty would not be available. When criminal behavior is evident and the disclosure does not meet the requirements of a voluntary disclosure under IRM 9.5.11.9, the IRS may recommend criminal prosecution to the Department of Justice.

## **How Does the Taxpayer Access the Funds in Offshore Accounts? - Abusive Tax Schemes**

Although the unreported funds sitting in the offshore bank account are earning interest or being used for investment purposes, most of the time the taxpayer wants to have access to the money. There are several methods used to get the funds back to the taxpayer, but the following are the most common.

**Credit/Debit Card:** One of the most popular methods in recent years has been use of the bankcard to access offshore funds. Once the foreign bank account is established, the taxpayer is issued a bank card. The taxpayer can use the bankcard in the to withdraw cash and to pay for everyday expenses.

**Fraudulent Loans:** The taxpayer's International Business Corporation (IBC) will make a loan to the taxpayer. The funds are wire transferred back to the taxpayer's U.S. bank account. Since these wired funds are allegedly loans they are not taxable. Many times ownership of the IBC is through bearer shares so it is very difficult to prove that the loan is a complete sham. Further adding to the difficulty is the fact that the promoters provide their clients with loan documents to make the transaction appear legitimate.

## How to Interpret Criminal Investigation Data

Since actions on a specific investigation may cross fiscal years, the data shown in cases initiated may not always represent the same universe of cases shown in other actions within the same fiscal year.

	FY 2012	FY 2011	FY 2010
Investigations Initiated	149	166	227
Prosecution Recommendations	111	140	125
Indictments/Informations	85	86	100
Sentenced	75	95	76
Incarceration Rate*	74.7%	76.8%	71.1%
*Incarce Average Months to Serve detention, or some combination thereof.	25	30	35

Data Source: Criminal Investigation Management Information System