



## IRS Continues Pursuit of Taxpayers with Foreign Bank Accounts

Damian M. Hovancik

Approximately 100 Swiss banks have agreed to participate in the Department of Justice's *Program for Non-Prosecution or Non-Target Letters for Swiss Banks* (the "Program"), which requires participant banks to provide specific information concerning foreign bank accounts held by U.S. taxpayers. As a result, U.S. taxpayers who have not disclosed foreign accounts in such banks could have their information provided to the IRS. These taxpayers are at risk of criminal prosecution, or at a minimum, risk being subject to significant civil penalties for failure to disclose such offshore accounts.

To gain immunity from prosecution under the Program, the banks participating in the Program generally must pay penalties to the U.S. government based on the value of the undisclosed accounts of U.S. taxpayers. Generally, these penalties will be reduced for accounts that are reported by their accountholders under the IRS's Offshore Voluntary Disclosure Program ("OVDP"). As a result, Swiss banks participating in the Program have been contacting their current and former U.S. account holders and urging them to enter the OVDP in an effort to reduce their own monetary exposure. The disclosure by the banks of U.S. accountholder information increases the risk accountholders face because they will be unable to enter the OVDP once their information has been disclosed to the IRS. Note that the failure to disclose foreign accounts in any offshore bank, even in those banks that are not covered by the Program, produces a significant risk to the U.S. taxpayer of civil and potentially criminal action by the U.S. government.

Taxpayers can participate in the OVDP by requesting entry into the program from the IRS. Only in limited circumstances will entry be denied. The OVDP provides a way to comply with U.S. tax laws and bring finality to the taxpayer's noncompliance, including the taxpayer's ultimate liability, without risk of criminal prosecution. Taxpayers who are accepted into the OVDP are required to amend their income tax returns for the prior eight years and pay taxes, interest and potential penalties on any previously unreported income from the foreign accounts. Taxpayers must also report certain information on their foreign bank accounts held at any time during the prior eight years and pay a penalty of 27.5% on the highest balance in those accounts.

Taxpayers who continue to fail to report foreign bank accounts and choose not to participate in the OVDP may face criminal prosecution for tax evasion as well as substantial penalties well in excess of those imposed in the OVDP. As indicated, if the taxpayer's foreign bank accounts are disclosed by any offshore bank, the taxpayer will be unable to participate in the OVDP and the risk of U.S. government action against such taxpayer should increase.

Individuals with questions about the reporting requirements for foreign bank accounts, assets or entities, or who are considering using the OVDP, should consult experienced tax counsel to understand the benefits and risks. Unlike communications with an attorney, communications with accountants and other financial advisors are not privileged and may have to be disclosed to the IRS. Therefore, any individual considering the ODVP should consult a tax lawyer prior to making any disclosures to their accountants or other financial advisors. If you have any questions, feel free to contact Damian Hovancik at 404.873.8518.

## Authors and Contributors

---

**Damian M. Hovancik**

Partner, Atlanta Office

404.873.8518

damian.hovancik@agg.com

not *if*, but *how*.<sup>®</sup>

## About Arnall Golden Gregory LLP

---

Arnall Golden Gregory, a law firm with more than 150 attorneys in Atlanta and Washington, DC, employs a “business sensibility” approach, developing a deep understanding of each client’s industry and situation in order to find a customized, cost-sensitive solution, and then continuing to help them stay one step ahead. Selected for The National Law Journal’s prestigious 2013 Midsize Hot List, the firm offers corporate, litigation and regulatory services for numerous industries, including healthcare, life sciences, global logistics and transportation, real estate, food distribution, financial services, franchising, consumer products and services, information services, energy and manufacturing. AGG subscribes to the belief “not if, but how.” Visit [www.agg.com](http://www.agg.com).

**Atlanta Office**

171 17th Street NW  
Suite 2100  
Atlanta, GA 30363

**Washington, DC Office**

1775 Pennsylvania Ave., NW,  
Suite 1000  
Washington, DC 20006

To subscribe to future alerts, insights and newsletters: <http://www.agg.com/subscribe/>

©2014. Arnall Golden Gregory LLP. This client alert provides a general summary of recent legal developments. It is not intended to be, and should not be relied upon as, legal advice. Under professional rules, this communication may be considered advertising material.