



Gastvortrag von Nina Olson Center for Taxpayer Rights (US)

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Besprechungsraum AOW, Universitätsstraße 7, 1010 Wien

"IRS Offshore Voluntary Disclosure Initiatives: An analysis"

Tax agencies frequently use settlement initiatives as a means to address troubling areas of noncompliance while saving resources by avoiding intensive and expensive audit campaigns. In 2009, the US Internal Revenue Service announced a sweeping initiative designed to encourage US taxpayers who had offshore accounts and taxable income to voluntarily come forward. The IRS has declared the 2009 and successive initiatives to be a resounding success, bringing in over \$ 11.1 billion through 2018. Nina Olson, Executive Director of the Center for Taxpayer Rights, will discuss the structure of these initiatives and taking a deeper look at what they have and have not accomplished, showing that the regressive penalty structure of the initiatives may have harmed taxpayers with inadvertent errors and proved a boon to taxpayers intentionally placing assets offshore to avoid taxation.

Links to blogs:

<https://taxpayeradvocate.irs.gov/news/nta-blog-analysis-of-tax-settlement-programs-as-amnesties-part-1>

<https://taxpayeradvocate.irs.gov/news/nta-blog-an-analysis-of-tax-settlement-programs-as-amnesties-why-irs-s-offshore-voluntary-disclosure-settlement-programs-posed-risks-to-voluntary-compliance-part-2-of-3>

<https://taxpayeradvocate.irs.gov/news/an-analysis-of-tax-settlement-programs-as-amnesties-a-discussion-of-belated-alternatives-to-the-offshore-voluntary-disclosure-program-and-recommendations-for-further-improvements-part-3-of-3>



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Voluntary Disclosure Programs

TBOR: The Right to Privacy

- IRS Publication 1 provides:

“Taxpayers have the right to expect that any IRS inquiry, examination, or enforcement action will comply with the law and be no more intrusive than necessary”
- Thus, the right to privacy incorporates a fundamental proportionality principle.

IRS Offshore Voluntary Disclosure Settlement Programs

- Pre 2004, persons with foreign accounts over \$10,000 were required to file a Report of Foreign Bank and Financial Accounts (FBAR). (See 31 USC 5314)
- According to US Treasury Department, there was virtually no imposition of FBAR penalties before 2004. In fact, FBAR penalties were imposed in only 2 cases between 1993 and 2002.
- In 2004, Congress enacted 31 USC 5321(a)(5), creating a new penalty for non-willful failure to file an FBAR (not to exceed \$10,000) and increasing the penalty for willful failure to file an FBAR to the greater of \$100,000 or 50 % of the account balance at the time of the violation.
- Congress provided that there would be no penalty if the failure to file was due to “reasonable cause” and the account balance was properly reported.

IRS OVD Programs

- IRS 2009 OVD Program: taxpayers may achieve settlement if opt in and pay all unpaid taxes on income from undisclosed foreign accounts, a 20% accuracy-related penalty, and an offshore penalty of 20% of the highest offshore account balance plus foreign assets held during the 6 year period from 2003 to 2008.
- FAQ 34: If you opt out, “all relevant years and issues will be subject to a complete examination ... [and] all applicable penalties (information return and FBAR penalties) will be imposed.”
- Per FAQs, “quiet” disclosures could be criminally prosecuted.

IRS OVD Programs, cont'd.

- 2011 OVD initiative: full paid tax, 20% accuracy penalty, and 25% of highest account balance over 8 years.
- 2012 OVD program: full paid tax, 20% accuracy penalty, and 27.5% of highest account balance over 8 years.
- 2014 OVD initiative: full paid tax, 20% accuracy penalty, and up to 50% of highest account balance over 8 years, but possibility of 5% and 12.5% penalties.
- IRS claims it has collected over \$11.1 billion USD through these programs. Fewer than 2% of offshore penalties were assessed at the lower 5% and 12.5% rates.

OVD: Success at what cost to taxpayer rights?

FIGURE 1, Comparison of Median Offshore Penalties to Unreported Tax by Median Account Size and Representation for the 2009 OVD Program

	Bottom 10%	Middle 80%	Top 10%
Offshore account(s) balance	\$44,855	\$607,875	\$7,259,580
2009 OVD penalty	\$8,540	\$117,803	\$1,410,517
Additional tax, tax years 2002-2011	\$1,472	\$30,894	\$452,966
Offshore penalty as a percent of tax assessed	580%	381%	311%
Unrepresented percent	31%	11%	4%
Offshore penalty as a percent of tax assessed (unrepresented taxpayers only)	772%	474%	398%

OVD: Success at what cost to taxpayer rights?

FIGURE 2, Comparison of Median Offshore Penalties to Unreported Tax by Median Account Size and Representation for the 2011 OVD Program

	Bottom 10%	Middle 80%	Top 10%
Offshore account(s) balance	\$17,368	\$183,993	\$3,833,152
2011 OVD penalty	\$2,202	\$41,238	\$888,943
Additional tax, tax years 2002-2011	\$268	\$5,845	\$190,579
Offshore penalty as a percent of tax assessed	821%	706%	466%
Unrepresented percent	53%	30%	10%
Offshore penalty as a percent of tax assessed (unrepresented taxpayers only)	788%	736%	705%

OVD: Success at what cost to taxpayer rights?

Figure 1, Comparison of Median Offshore Penalties to Unreported Tax by Median Account Size and Representation for the 2012 OVD Program

	Bottom 10%	Middle 80%	Top 10%
Offshore account(s) balance	\$19,480	\$287,726	\$3,354,782
2012 OVD penalty	\$2,420	\$73,004	\$914,110
Additional tax, tax years 2003-2015	\$681	\$14,009	\$220,365
Offshore penalty as a percent of tax assessed	355%	521%	415%
Unrepresented percent	26%	16%	10%
Offshore penalty as a percent of tax assessed (unrepresented taxpayers only)	454%	515%	398%