

## F.A.T.C.A. 24/7

### Authors

Galia Antebi  
Rusudan Shervashidze  
Philip R. Hirschfeld

### Tags

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## D.O.J. SWISS BANK PROGRAM CONTINUES TO COLLECT PENALTIES

The U.S. Justice Department (“D.O.J.”) Swiss Bank Program was launched in 2013 and allows banks to resolve potential criminal charges by disclosing cross-border activities that helped U.S. account holders conceal assets. Under the program, in addition to paying a penalty, banks must provide detailed information on U.S.-related accounts under investigation. Banks can also mitigate their penalties by encouraging U.S. account holders to come into compliance with U.S. tax and reporting obligations. As of December 23, the D.O.J. has reached agreements with 75 Swiss banks and imposed penalties in excess of \$1 billion.

The latest resolution reached under the D.O.J.’s Swiss Bank Program was on January 6, 2016. Under the agreement, Union Bancaire Privée, UBP SA (“UBP”) will pay a penalty of over \$187 million in return for the department’s agreement not to prosecute UBP for tax-related criminal offenses. This is the second largest settlement under the program, surpassed only by the \$211 million penalty paid by BSI SA in March 2015. According to a statement made by UBP, the penalty will be paid from its 2015 profits and will not affect its Tier 1 ratio, the result being that the bank will remain one of the most well-capitalized banks in Switzerland.

Since the D.O.J. program began, many Swiss banks have adopted a policy of forcing U.S. clients to disclose undeclared accounts to the I.R.S. in hopes of mitigating their penalties; however, some banks have ignored the official policy and continued to assist U.S. clients in avoiding taxes. U.B.P. admitted that it assisted two such clients in closing their accounts and withdrawing gold bars valued more than \$50 million, thereby eliminating the paper trail back to the U.S. undeclared funds.

In December 2015, a total of 18 banks signed an agreement under the Swiss Bank Program. This includes an agreement signed on December 15, according to which three Swiss banks collectively agreed to pay \$130 million to avoid charges on aiding U.S. persons to avoid tax. The Swiss banks had aided tax avoidance by setting up overseas entities, including in Panama, to hold client funds and conceal the owners’ true identities from U.S. tax authorities and allowing for untraceable withdrawals of large sums of cash or gold. The three banks that joined the program in mid-December are the Zurich-based unit of France’s Crédit Agricole, the Basel-based Dreyfus Sons & Co, and Baumann & Cie, Banquiers. The Zurich-based bank, which managed about 954 U.S.-related accounts worth more than \$1.8 billion, paid \$99.2 million of the total \$130 million penalty. On December 23, five more Swiss banks agreed to pay collectively more than \$178 million. Among these five banks are Bank J. Safra Sarasin AG and Coutts & Co Ltd.

According to the D.O.J. website, there have been 76 non-prosecution agreements reached since March 2015 and more than \$1 billion has been collected from the banks.

Chief Richard Weber of I.R.S. Criminal Investigation said in a December 23 announcement that “with the wealth of information gathered from the Swiss Bank Program, we have already begun to track those individuals who think they are above the law and continue to hide their money offshore.” U.S. account holders at the banks that reached a resolution with the D.O.J. and who have yet to come into compliance may still be eligible to participate in the I.R.S. Offshore Voluntary Disclosure Program, but the price of such disclosure has increased.

## **NEW INSTRUCTIONS FOR FORM 8966, F.A.T.C.A. REPORT**

At the end of 2015, the I.R.S. issued 2015 instructions for foreign financial institutions (“F.F.I.’s”) filing a F.A.T.C.A. report. The updated instructions outline changes to the form, including the addition of a checkbox that allows the filer to indicate that it has no accounts to report. This box is optional for filers other than direct reporting non-financial foreign entities (“N.F.F.E.’s”) and sponsoring entities filing on behalf of a sponsored direct reporting N.F.F.E. For these types of filers, the new line 1b in Part I was added; it requests a two-digit category code instead of the checkbox that previously appeared in Part II, line 5, and has now been eliminated.

## **F.A.T.C.A. ON YOUTUBE**

The I.R.S. released six new [YouTube videos](#) educating viewers on the improvements made to the F.A.T.C.A. Online Registration System. The topics include how certain F.F.I.’s may change their F.F.I. type, how a member F.F.I. can transfer to its expanded affiliated group, and how sponsoring entities can both add several sponsored entities by uploading a single file and also manage their sponsored entities and their subsidiary branches.

## **EXTENSION OF TIME TO FILE F.A.T.C.A. REPORT**

The I.R.S. recently updated Frequently Asked Question (“F.A.Q.”) #14, which outlines the procedures for requesting an extension of time to file a Form 8966, *F.A.T.C.A. Report*. According to F.A.Q. #14, Form 8809-1 must be used to request an initial or additional extension of time. The form must be filed as soon as the F.F.I. knows that an extension is necessary, but not before January 1 of the filing year. The form must be filed by the due date of Form 8966, which is generally March 31 of the year following the reporting year of the return. For example, to request an extension for filing a report for 2015 a request can first be filed on January 1, 2016.

F.A.Q. #14 also clarifies that F.F.I.’s located in a Model 1 I.G.A. jurisdiction and reporting on behalf of themselves (or on behalf of another entity located in a Model 1 jurisdiction) may not request an additional extension of time to file Form 8966 because the F.F.I.’s must file a report directly to the Model 1 jurisdiction’s tax authority.

## UPGRADES TO F.F.I. LIST

The F.F.I. List published by the I.R.S. on their F.A.T.C.A. Portal currently allows a person to search and download the list, either in full or in part. It also allows a person to narrow down the search by Global Intermediary Identification Number (“G.I.I.N.”), name of the F.F.I., and country/jurisdiction.

The recent upgrades include enabling users to locate sponsored entities and their subsidiary branches and searching for branches by name.

The I.R.S. cautions users that two or more valid G.I.I.N.’s for the same F.F.I. may be reflected on the F.F.I. List for a short period of time because of upgrades to the F.A.T.C.A. Online Registration System, including those mentioned above and featured on YouTube.

## UPDATED FORM 1040NR-EZ INSTRUCTIONS REFLECT CHANGES FOR DUAL RESIDENTS WHO MAY NOT HAVE TO FILE FORM 8938 FOR 2015

A U.S. taxpayer is required to file Form 8938, *Statement of Specific Foreign Financial Assets*, to disclose specified foreign financial assets with an aggregate value exceeding \$50,000. Higher thresholds apply to U.S. taxpayers who file a joint tax return or who reside outside the U.S. Form 8938 must be attached to the taxpayer’s annual income tax return. Final Regulations issued in December 2014 provided an exclusion from filing to dual residents that timely file their U.S. tax return as nonresidents, pursuant to an applicable treaty between the U.S. and their country of residence, and also claim a treaty benefit on Form 8833. On January 6, 2016, the I.R.S. released the updated instructions for Form 1040NR-EZ, *U.S. Income Tax Return for Certain Nonresident Aliens With No Dependents*, in which it addressed this exception and clarified that certain dual residents do have to report specified foreign financial assets on Form 8938 for 2015.

The updated instructions for Form 1040NR-EZ also provide guidance on how to claim treaty benefits pursuant to a competent authority determination requiring that the taxpayer attach a copy of such determination to his or her return.

## SATISFYING F.A.T.C.A. REQUIREMENTS WITH FORM 1099-B

On December 2, the I.R.S. released new instructions for Form 1099-B, *Proceeds From Broker and Barter Exchange Transactions*, outlining how F.F.I.’s and U.S. payers may use this form to comply with their F.A.T.C.A. obligations. A new checkbox was added to the form to identify an F.F.I. or a U.S. payer filing the form to satisfy their F.A.T.C.A. reporting requirements. The I.R.S. announced in June that it would enable F.F.I.’s to use Form 1099 for F.A.T.C.A. reporting pursuant to the regulations, and it is now delivering on its promise.



## POLAND EXPECTED TO EFFECT NEW REGULATIONS UPDATING F.A.T.C.A. REPORTING

On December 8, the Polish Ministry of Finance opened the draft regulations for consultation and requested comments by December 11. The new regulations cover updates to electronic forms and the transmission method for financial information using an electronic signature to ensure authenticity. The regulations are expected to enter into force January 1, 2016.

## MOLDOVA TO RATIFY MODEL 2 I.G.A.

The Moldovan Parliament, which signed a Model 2 I.G.A. with the U.S. on November 26, 2014, has now passed a bill to ratify the I.G.A. This ratification enters the I.G.A. into force, although the U.S. treats Moldovan financial institutions as having a Model 2 I.G.A. in effect as of June 30, 2014.

## INDIA UPDATES F.A.T.C.A. GUIDANCE

On December 31, 2015, India's Central Board of Direct Taxes ("C.B.D.T") issued an updated version to the guidance note on F.A.T.C.A. reporting. The guidance note provides an explanation of the reporting requirements under F.A.T.C.A. and the Common Reporting Standard ("C.R.S."). The guidance note requests feedback and suggestions from affected taxpayers for future updates.

## CURRENT I.G.A. PARTNER COUNTRIES

To date, the U.S. has signed, or reached an agreement to sign, more than 100 Model 1 I.G.A.'s. An I.G.A. has become a global standard in government efforts to curb tax evasion and avoidance on offshore activities and encourage transparency.

At this time, the countries that are Model 1 partners by execution of an agreement or concluding an agreement in principle are listed below:

Algeria	Gibraltar	New Zealand
Angola	Greece	Norway
Anguilla	Greenland	Panama
Antigua & Barbuda	Grenada	Peru
Australia	Guernsey	Philippines
Azerbaijan	Guyana	Poland
Bahamas	Haiti	Montserrat
Bahrain	Greece	Netherlands
Barbados	Holy See	Qatar
Belarus	Honduras	Romania
Belgium	Hungary	Saudi Arabia
Brazil	Iceland	Serbia
British Virgin Islands	India	Seychelles
Bulgaria	Indonesia	Slovak Republic

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Cabo Verde	Ireland	Slovenia
Cambodia	Isle of Man	South Africa
Canada	Israel	South Korea
Cayman Islands	Italy	Spain
China	Jamaica	St. Kitts & Nevis
Colombia	Jersey	St. Lucia
Costa Rica	Kazakhstan	St. Vincent & the Grenadines
Croatia	Kosovo	Sweden
Curaçao	Kuwait	Thailand
Cyprus	Latvia	Trinidad & Tobago
Czech Republic	Liechtenstein	Tunisia
Denmark	Lithuania	Turkey
Dominica	Luxembourg	Turkmenistan
Dominican Republic	Macao	Turks & Caicos Islands
Estonia	Malaysia	Ukraine
Finland	Malta	United Arab Emirates
France	Mauritius	United Kingdom
Georgia	Mexico	Uzbekistan
Germany	Montenegro	

The countries that are Model 2 partners by execution of an agreement, or concluding an agreement in principle, are: Armenia, Austria, Bermuda, Chile, Hong Kong, Iraq, Japan, Macao, Moldova, Nicaragua, Paraguay, San Marino, Switzerland, and Taiwan.

This list will continue to grow.