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Robert W. Wood

THE TAX LAWYER

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Still Have A Foreign Bank Account?

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If you have a foreign bank account holding more than \$10,000 at any time during the year, you have several important IRS obligations:

- Check the "yes" box on [Schedule B](#) to your IRS [Form 1040](#) disclosing that you have a foreign account.
- Report your worldwide income including interest on the foreign account and other earnings even if the foreign income is taxed elsewhere.
- File an annual disclosure on Treasury Form, TD F 90-22.1 — commonly called an [FBAR](#) (Report of Foreign Bank and Financial Accounts). FBARs are due each June 30 for the preceding year.

You sign tax returns under penalties of perjury, so failures can be considered tax evasion or fraud. Tax evasion carries a prison term of up to five years and a fine of up to \$250,000. Filing a false return carries a prison term of up to three years and a fine of up to \$250,000. Failing to file a tax return carries a prison term of up to one year and a fine of up to \$100,000. The penalties for failure to file an FBAR are even worse: a prison term of up to ten years and criminal penalties up to \$500,000 for **each** FBAR.

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If you failed to comply you can make a “voluntary disclosure” to the IRS. Historically, the IRS almost never prosecutes someone who steps forward before being caught. But this should be done carefully and through a tax lawyer. A lawyer is preferable to an accountant because discussions with an attorney import attorney-client privilege, and that’s important in case something goes awry. If no criminal tax case is already underway, your case should be referred to the civil branch of the IRS for processing and amended return filings.

Some taxpayers prefer a “quiet disclosure,” amending tax returns and filing past due FBARs without making a formal voluntary disclosure. Although some advisers recommend quiet disclosures, others consider them no solution. Another idea is to file proper tax returns and FBARs prospectively but not for the past. Most advisers don’t consider this a good solution either.

One special IRS voluntary disclosure program expired October 15, 2009. Most taxpayers who got in before that deadline are still being processed, so it takes time. There are suggestions there may be a new program but so far the IRS has not announced details.

However, one can make a voluntary disclosure even without a special program. In fact, some advisers feel clients may fare better, since special programs generally have no flexibility in penalties based on individual circumstances. Formula penalties in a special program may be lower or higher than the IRS would assess on an individual basis.

Fortunately, in many cases, the IRS seems not to be assessing penalties on failures to file FBARs provided you attend to late filings voluntarily. However, the government is still making [examples](#) of some violators, making the stakes high. Failing to report income or disclose the existence of a foreign account on a tax return is serious.

Moreover, the duration of the tax statute of limitations hinges on filing returns. In most cases, the IRS has three years after filing to audit tax returns, or six years in cases of substantial (25%) understatements of income. Yet if a return or FBAR is **never** filed, the statute of limitations **never** runs so the IRS can audit indefinitely.

When clients with undisclosed foreign accounts ask what to do, it’s hard to respond with a one size fits all solution. The safest alternative is full voluntary disclosure, but many clients fear huge penalties. Some clients want to simply close their foreign account, but even that can involve significant risks if not coupled with disclosures.

Although knowledgeable professionals can disagree which approach is workable on a given set of facts, most agree that ignoring the situation is inadvisable. Whatever you do, get some advice and consider your situation carefully.

For more see:

[What To Do If Your Foreign Account Is A PFIC](#)

[Still More Foreign Account Worries!](#)

[Six Questions About Secret Foreign Bank Accounts](#)

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ABOUT ME

Robert W. Wood is a prominent tax lawyer with a national practice. A partner with Wood & Porter (www.woodporter.com), he is admitted to practice law in California, New York, the District of Columbia, Texas, Montana, Arizona, Washington and Wyoming. He is Certified as a Specialist in Taxation and Qualified as a Solicitor in England.

Named among the best tax lawyers in America, Wood is a Fellow of the American College of Tax Counsel and consults with clients in tax matters nationwide. He serves as an expert witness, speaks nationally to professional groups, and hosts The Legal Broadcast Network’s Tax Channel.

The author of over 30 books and hundreds of articles, Wood is most well-known for advising litigants on the tax treatment of settlement and judgments. His book, *Taxation of Damage Awards and Settlement Payments* (4th Ed. Tax Institute © 2009), is in wide use by lawyers, judges, mediators and courts nationwide. He has advised plaintiffs and defendants in airline disaster, toxic spill and catastrophic injury cases, landmark whistleblower, fraud, trade secrets and patent litigation, celebrity divorce and palimony cases. He has advised on the tax consequences of marquis antitrust, civil rights and wrongful conviction cases, SEC restitution, and environmental contamination litigation. He has also had significant victories litigating tax cases, including invalidating a long-standing provision in the Treasury Regulations. He can be reached at wood@woodporter.com. See my profile »

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Robert W. Wood practices law with [Wood & Porter](#), in San Francisco. The author of more than 30 books, including *Taxation of Damage Awards & Settlement Payments* (4th Ed. 2009, [Tax Institute](#)), he can be reached at wood@woodporter.com. This discussion is not intended as legal advice, and cannot be relied upon for any purpose without the services of a qualified professional.

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