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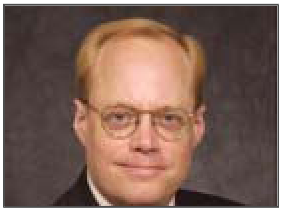

Robert W. Wood

THE TAX LAWYER

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Americans Are Unwanted Worldwide (At Least By Banks)

(Photo credit: Wikipedia)

As 2014 dawns, it's a different world for Americans. Although America is still admired, for banks around the globe, Americans bring a new taint. In Switzerland and many other countries, banks are scrambling to hand over U.S. account data to the IRS. Banks are first "asking" account holders, but not giving them much time to answer.

Tell us we can disclose, banks say, or we'll close your account–in which case we'll ***still*** tell. Should Americans respond, ignore the letters, or close their accounts? FATCA—the Foreign Account Tax Compliance Act—takes effect in 2014 and the IRS penalizes foreign banks if they don't hand over Americans. Most foreign countries and their banks are lining up, so forget bank secrecy.

Plus, the U.S. has data from 40,000 voluntary disclosures, whistleblowers, banks under investigation and cooperative witnesses. The smart money suggests resolving your issues, but that can cost. Americans must report worldwide income on their taxes. For many, FATCA also requires an IRS Form 8938 to report foreign accounts and assets.

Americans with a foreign bank account over $10,000 at any time during the year must check "yes" on Form 1040 Schedule B, plus file an annual FBAR. Tax return and FBAR violations are dealt with harshly. Tax evasion can mean five years in prison and a $250,000 fine. Filing a false return brings three years and a $250,000 fine.

Failing to file FBARs can bring fines up to $500,000 and prison up to ten years. Even civil FBAR penalties are high. ***Non-wilful*** FBAR violations draw a $10,000 fine, and that's per year, per account. The penalty for willful FBAR violations is the greater of $100,000 or 50% of the account balance.

Each year you didn't file is a separate violation. Those numbers can exceed the total account so are much worse than the 27.5% Offshore Voluntary Disclosure Program penalty. The choices seem few:

- Tell the bank you're compliant even if you're not? The bank and the IRS are likely to find out eventually.
- Don't respond and do nothing? The bank will close your account, and banks routinely turn over the names of closed accounts.
- Close your account and move elsewhere? You'll likely end up with ***two*** banks disclosing your name.
- File amended tax returns and FBARs, tell the bank you've complied with IRS laws, and wait? This is considered a "quiet" disclosure–a correction of past tax returns and FBARs. The IRS warns against it.
- Just start filing complete tax returns and FBARs prospectively, without trying to fix the past? You could tell your bank you are complying with IRS rules, but there is a risk your past non-compliance will be noticed.

Some people facing these choices are racing to prove they aren't American after all, but that's tough without official documentation. Providing another passport at account opening may help some slip under the radar, but that too isn't safe. In many cases, the chances of catastrophic fines or prison seem fairly small, but for most people the risk isn't worth it.

That's one reason there's another decided uptick in the IRS Offshore Voluntary Disclosure Program. Whatever you do, vet your facts carefully and get some objective professional advice. Try to get your situation resolved in a way that makes sense for your facts, risk profile, and pocketbook. It's a new and open world.

You can reach me at Wood@WoodLLP.com. This discussion is not intended as legal advice, and cannot be relied upon for any purpose without the services of a qualified professional.