



Robert W. Wood

THE TAX LAWYER

TAXES 11/10/2014

FATCA Letters Promise Disclosure To IRS, What To Do?

If you have a bank account anywhere outside the U.S., chances are you will receive a letter saying that your bank must hand over the details of any American accounts, including yours. The letters vary with the country and with individual institutions. But the overall message is that the IRS is about to get your information.

As unnerving as this message is, FATCA is here, and ignoring your offshore accounts isn't wise. You might well think that your accounts are not big or juicy enough to be noticed. But that is a dangerous game of chance and isn't worth the risk. Indeed, for most people, the cure isn't likely to be too painful.

Many American citizens and Green Card holders are receiving letters (and in some cases even phone calls) from their banks about their American status. Some ask for your U.S. tax ID and ask you to verify that you are fully tax compliant with the IRS. Some don't require a response and just say your information will be sent.

Some say the bank will close your account if you don't respond favorably. But what if you aren't up to snuff with the IRS?



[FATCA](#)—the Foreign Account Tax Compliance Act—is America’s global disclosure law. It penalizes foreign banks if they don’t hand over Americans. Most foreign countries and their banks are getting in line to comply, so don’t count on bank secrecy anywhere.

Besides, on top of FATCA, the U.S. has a treasure trove of data from 40,000 voluntary disclosures, whistleblowers, banks under investigation and cooperative witnesses. So the smart money suggests resolving your issues. You can have money and investments anywhere in the world as long as you disclose them.

You must report [worldwide income](#) on your U.S. tax return. If you have a foreign bank account, you must check “yes” on Schedule B. You may also need to file an IRS [Form 8938](#) with your Form 1040 to report foreign accounts and assets. Yet tax return filing alone isn’t enough.

U.S. persons with foreign bank accounts exceeding \$10,000 in the aggregate at any time during the year must file an FBAR—now rebranded as a [FinCEN Form 114](#)—by each June 30. 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? Three years and a \$250,000 fine.

Failing to file FBARs can be criminal too. Fines can be up to \$500,000 and prison can be up to ten years. Even civil FBAR cases are scary, with non-wilful violations drawing a \$10,000 fine. For [willful FBAR violations](#), the penalty is the greater of \$100,000 or 50% of the amount in the account for each violation. Each year you didn’t file is a separate violation.

Those numbers can add up fast and easily be much worse than the 27.5% penalty that generally applies under the IRS Offshore Voluntary Disclosure Program. With the range of penalties, it is sensible to consider reacting to a FATCA letter carefully. For example, you might at first be tempted to tell the bank you're compliant even if you're not. This seems dangerous. The bank or the IRS will find out, maybe not right away, but eventually.

You also might consider failing to respond or just closing your account. Again, this is dangerous. Banks routinely turn over the names of closed accounts, so that hardly solves the problem.

Plainly, joining one of the IRS amnesty programs and telling your bank you've done it is the safest choice. The primary program is the [Offshore Voluntary Disclosure Program](#) (OVDP). You pay back taxes and penalties but you will not be prosecuted. The other program is the IRS's [Streamlined program](#).

Under changes announced by the IRS in June of 2014, the Streamlined programs are a good deal. They can apply not only to overseas Americans but also to those living in the U.S. The Streamlined program is far less expensive than the OVDP if you qualify. Although the Streamlined program does not have the certainty of the OVDP, it works just fine for many people. See [Which IRS Offshore Amnesty Program Is Right For You?](#)

Some people want to fly beneath the radar. Yet filing amended tax returns and FBARs outside one of the IRS programs is considered a "quiet" disclosure. Such a correction of past tax returns and FBARs without drawing attention to what you are doing can be dangerous, and the IRS warns against it. Just filing properly on a prospective basis is also not the best choice. After all, there is a risk your past non-compliance will be noticed.

Don't take any action without considering your profile, facts, numbers, actions and risk tolerance. These are serious matters. Indeed, although the chance of a terrible result might be fairly small, terrible in this case really can mean terrible. Get some advice and try to get your situation resolved in a way that makes sense for your facts, risk profile, and pocketbook.

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.