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IRS May Find “Innocent” FBAR Violation Willful

To the IRS, foreign account compliance is a major enforcement effort. The IRS [2011 Offshore Voluntary Disclosure Initiative](#) offers what IRS Commissioner Shulman called the “last, best chance” to come clean. Many U.S. taxpayers—even with professional tax advisers—neglected to answer a pivotal question on [Form 1040](#) Schedule B: do you have a foreign bank account, yes or no?

Some ignored the question or inaccurately checked “no.” Even those answering “yes” may not have filed an annual FBAR (Treasury Form [TD F 90-22.1](#), Report of Foreign Bank and Financial Accounts). Regardless of amounts, you must report all your income—even foreign interest. Plus, if you have one or more foreign accounts containing more than \$10,000 in the aggregate, you must:

1. Check the “yes” box on [Schedule B](#) to your IRS [Form 1040](#) disclosing that you have a foreign account.
2. File an annual disclosure on Treasury Form, TD F 90-22.1—commonly called an [FBAR](#). FBARs are due each June 30 for the preceding year.

Many U.S. citizens and permanent residents didn’t know about these rules until recently. See [IRS On What Is A Foreign Account](#). But it’s harder today to remain ignorant. See [IRS Offshore Amnesty: Second \(Last\) Chance](#).

You can still enter the IRS OVDI program until August 31, 2011, though time is short. Unlike the 2009 IRS amnesty that required you only to **enter** the program by October 15, 2009, the current OVDI program requires to you supply everything—even payment—by August 31 unless you qualify for an extension (once granted, extensions allow up to November 29, 2011). See [IRS Updates Voluntary Disclosure Amnesty: What You Should Know](#).

Much of the current focus in these waning weeks is on [How Do You Opt Out Of IRS Voluntary Disclosure?](#) But to opt out you first must enter the program. See [Opt Out and Removal Guide for the 2009 OVDI and 2011 OVDI](#) for the procedures for opting out. Others consider [quiet disclosure](#), something that to the IRS is a dirty word.

As you evaluate alternatives, consider what the IRS says is “willful.” Among other things, this analysis will influence whether you can qualify for reduced penalties upon opting out. The IRS says willfulness can be a **conscious effort** to avoid learning about FBAR reporting. Form 1040 Schedule B refers to the instructions to Schedule B, which mention FBARs.

The IRS says that with hardly any diligence, the person **could have** learned of the requirements quite easily. A person with foreign accounts **should** read the information the government specifies in its tax forms and instructions. Failing to follow-up on this knowledge may provide evidence of “willful blindness.” See [Excerpt From Internal Revenue Manual, 4.26.16.4.5.3, Paragraph 6](#).

The failure to learn of filing requirements coupled with efforts to conceal the existence of the accounts may lead to a conclusion that the violation was willful. Yet “[t]he mere fact that a person checked the wrong box, or no box, on a Schedule B is not sufficient, by itself, to establish that the FBAR violation was attributable to willful blindness.”

For more, see:

[IRS Voluntary Disclosure A Mistake For Some](#)

[Even U.S. Branch Accounts Abroad Trigger FBAR!](#)

[Should You File FBAR For The First Time?](#)

[Can IRS Force Your Accountant To Talk?](#)

[Beware IRS And Foreign Account Data Swaps](#)

[IRS Foreign Account Disclosure: What About The States?](#)

[Latest Foreign Account Prosecution Fuels Fears](#)

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