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Is Filing Your First FBAR Admitting To A Crime?

Is filing your first FBAR admitting to a crime? Hardly, but this is a common worry. Perhaps you learned only recently that you had to file annual FBARs for foreign accounts. Now that you do, should you file? See [Should You File FBAR For The First Time?](#)



Surely the answer is yes. After all, you can't ignore the rules without risking civil penalties and even criminal charges. However, if you file currently and not for the past, aren't you asking for trouble? Many people worry about filing their [first FBAR](#), Treasury Form [TD F 90-22.1](#).

If you make a voluntary disclosure to the IRS you will file delinquent or amended FBARs as part of the program. Thereafter, every June 30, you must file again as long as you have foreign accounts holding more than \$10,000. But what if you are **not** in the IRS program?

Starting to file FBARs can appear to be a [quiet disclosure](#), something the IRS discourages. See [FAQ 15](#). Some taxpayers consider:

- Starting to file FBARs prospectively but not addressing the past;
- Filing three years of past due FBARs, perhaps one per envelope so as not to draw undue attention;

- Filing six years of past due FBARs, one per envelope; or
- Filing three or six years of FBARs with a letter explaining that you didn't know of the filing requirement, are now complying, and asking that no penalties be imposed.

One big variable is whether your failure was solely concerning FBARs or whether you **also** didn't report income. If your income on your tax returns was accurate, you have much more flexibility and much less risk. The [2011 FAQs](#) state that such filers were not required to enter the Offshore Voluntary Disclosure Initiative ([OVDI](#)). See [FAQ 17](#), suggesting that no post-OVDI voluntary disclosure is required either.

In general, starting to file FBARs makes sense even if you do not try to correct the past with late FBARs. The IRS **could** assess penalties for your past failure to file FBARs, but you could contest the penalties. Moreover, if you reported all income from your foreign account(s) or wouldn't owe additional taxes even if you had (for example, because of foreign tax credits), you should file an FBAR.

In fact, if you don't owe additional taxes, filing past due FBARs too with an explanation is often advisable to clean up the past. If you didn't disclose the accounts on your tax returns, owe taxes from the past, and didn't file FBARs, you face a far tougher choice. For the basic rules of FBAR filings, see [Are You Getting Enough FBAR?](#) Clearly, the safest alternative is the OVDP. See [OVDP page](#).

Indeed, if you proceed quietly and file your first FBAR, what if the IRS asks for past FBARs or asks questions about your past returns? How you respond is sensitive. See [When IRS Criminal Agents Come Calling](#). If you are in any of these situations, get some professional advice tailored to your specific facts and circumstances and be careful.

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