



Robert W. Wood

THE TAX LAWYER

TAXES 6/30/2016

Reporting Cash, Gold And Safety Deposit Boxes On FBARs?

Reports of [offshore accounts are due June 30, but many worry that filing your first one is admitting a crime](#). The IRS has the power to match them against tax returns, something the GAO is urging the IRS to do. The IRS can just look at Schedule B to your Form 1040. Is the foreign account box checked? If it wasn't checked the prior year, GAO says IRS should check it out.

With initial [FBARs](#), it is also logical to ask, why didn't you file an FBAR last year? When was that account opened anyhow? Audits, investigations, and even prosecutions are possible. If you had foreign accounts over \$10,000 in the aggregate at any time during 2015, you should file an FBAR—also called Form 114. June 30, 2016 is the filing deadline, and [FinCEN](#) requires that you [file your FBAR, Form 114 electronically](#). FBAR penalties can include willful and non-willful civil penalties and even criminal violations.



One ounce 24 carat gold bars are placed into a safety deposit box at the Sharps Pixley Ltd gold showroom, in this arranged photograph in London, U.K., on Monday, Jan. 11, 2016. (Photo Credit: Simon Dawson/Bloomberg)

Filing without thinking carefully about such issues can be a mistake. And many professionals debate questions like these. Should you file for precious metals and currency held in a box or custody? Is it clear when a safe deposit box is itself a financial account? Is it clear that a safe deposit box's contents are aggregated with financial accounts to reach a higher dollar total?

Some of it depends on what is considered a financial institution, and whether safe deposit boxes with precious metals or currency are considered financial accounts. Adding to the difficulty is the fact that the particulars between the taxpayer and the institution can influence whether reporting is required. In most cases, though, filing is now required, even on gold and currency, and that can raise worrisome questions about the past.

It is hard to argue with the wisdom of going overboard when FBAR penalties are so big. If the safe deposit box can be accessed by a financial institution, the safe deposit holds precious metal certificates, or the financial institution provides insurance or other services for the contents within the safe deposit box, then the safe deposit box, and its contents, are more likely to be subject to U.S. income tax reporting and disclosure obligations. The U.S. depositor may not even know about all the terms and conditions applying to the box. Many people do not read or retain a form agreement they sign with a bank.

And, what of the internal record-keeping of the financial institution? For example, should it matter whether we are discussing a standalone safe deposit box at foreign bank X, or a safe deposit box that is somehow linked to a bank account at foreign bank X? Arguably, the risk of the safe deposit box being deemed a financial account—even if the institution does not have access to it—goes up when there is a connection to a traditional bank account.

Will filing one FBAR prompt questions from the IRS, the Financial Crimes unit of the Treasury Department, or the Justice Department? Why didn't you file in the past, and what about your tax return? Did you indicate that you had a foreign account and report the income?

Since the statute of limitations for civil or criminal violations is [generally six years](#), opening yourself up to that kind of exposure is frightening. If you are belatedly addressing foreign accounts and income for the first time, and not trying to address the past, filing a first FBAR is worth reflection.

You want to have an organized plan for what you are doing and how you are doing it. Will you go [Streamlined or OVDP](#)? Which tax years will count? Will you do a quiet disclosure or just start filing prospectively? Do you have all

your accounts now or only some? Do you have statements? You don't want to rush to file and have to amend it shortly thereafter. These forms are filed under penalties of perjury.

A GAO report on [offshore tax evasion said the IRS](#) has done a good job of collecting \$5.5 billion in taxes and penalties from 40,000 offshore disclosures. But the report goes on to say that [the IRS is missing out on quiet disclosures](#). That is one big reason one of these IRS programs may be preferable if it fits your facts:

- [2012 Offshore Voluntary Disclosure Program](#)
- [Streamlined Filing Compliance Procedures](#)
- [Delinquent International Information Return Submission Procedures](#)

Be careful out there.

For alerts to future tax articles, email me at Wood@WoodLLP.com. This discussion is not legal advice.