



Robert W. Wood

THE TAX LAWYER

TAXES 6/29/2014

Should You File First Time FBAR Or Wait?

Missing a filing deadline is not something to take lightly, especially when the IRS, the Financial Crimes unit of the Treasury Department, and the Justice Department are all over FBARs these days. June 30 is the FBAR—also called Form 114—filing deadline for 2013. [FinCEN](#) now requires them to be filed electronically. [Filing FBAR. Form 114.](#)

And unlike the April 15 tax return filing deadline that can be extended by 6 months, the FBAR deadline can't. If you had foreign accounts in 2013 that in the aggregate topped \$10,000 at any time during the year, you should file on time, right? The default answer is yes, clearly.

Yet for many, there is no perfect answer. Indeed, for some taxpayers, the question is more about where they are going long term with their issues, how quickly they plan to act, and whether they have good and accurate information to file now. In fact, for someone just addressing foreign accounts and income for the first time, filing a first FBAR on time may be a mistake.

Why? 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?



Internal Revenue Service office in midtown New York. (Photo credit: Wikipedia)

Thinking these issues through before you act seems wise. You don't want to rush to file and have to amend it shortly thereafter. Plus, some worry that once you file your first FBAR, they might ask questions. Is filing your first FBAR admitting to a crime? Hardly, but this is a common worry.

For some, filing on time seems paramount, since 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? A GAO report, [Offshore Tax Evasion: IRS Has Collected Billions of Dollars, but May be Missing Continued Evasion](#), starts with key findings:

- 39,000 disclosures to the IRS scooped up \$5.5 billion in taxes and penalties.
- The median foreign account balance (of 10,000 cases from the 2009 OVDP) was \$570,000.
- 6% paid IRS penalties over \$1 million. More than half involved UBS.

GAO says the IRS knows there are many quiet disclosures. The GAO analyzed 2003-2008 amended tax returns, matched them to offshore accounts and found even more quiet disclosures than the IRS. First time reporters of offshore accounts skyrocketed. The IRS is missing out on many. Find them, says the GAO.

Reports of foreign accounts nearly doubled to 516,000 from 2007-2010. If 39,000 people applied for IRS amnesty, what about the hundreds of thousands who didn't? Many people don't participate and make "quiet disclosures" by amending returns or just reporting prospectively. And that means several tens of billions of dollars.

Among other things, GAO says the IRS should:

- Explore options to more effectively detect and pursue quiet disclosures; and
- Analyze first-time offshore account reporting trends to catch people trying to avoid paying what they owe.

In fact, GAO says the IRS should identify, ferret out and pursue quiet disclosures. While the IRS is free to take action however it wants, GAO says it should look at Schedule B and see if the “I have a foreign account” box has been checked. If it wasn’t checked the prior year, GAO says IRS should check it out!

The same with new FBARs. Why didn’t you file an FBAR last year, sir? Just when was that account opened anyhow? See [FBAR Penalties: When Will IRS Let You Off With A Warning?](#)

As for the IRS, it agreed with all of the GAO’s recommendations. That means audits, investigations, and action. How many and how serious they will be is anyone’s guess. But with the changes to the OVDP and the new Streamlined program, taking time to plan ahead and be careful may make sense.

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.