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THE TAX LAWYER

Jul. 8 2011 — 8:54 am

Some Foreign Account Penalties Unfair, Says Taxpayer Advocate

With the deadline for [FBAR](#) filings now past—the ubiquitous forms were due June 30th—some people are no longer as worried over the do-or-die situation. [Should You File FBAR For The First Time?](#) An FBAR, or Report of Foreign Bank and Financial Accounts, Treasury Form [TD F 90-22.1](#), is part of the compliance required of U.S. citizens and permanent residents. It's a three part obligation:

1. **Report All Your Worldwide Income.** Your U.S. tax return must report it all, even if you pay tax elsewhere.
2. **Check the Foreign Account Box on Schedule B to Your 1040.** If you have \$10,000 or more, disclose that you have foreign accounts on your tax return.
3. **File an FBAR Annually.** If you have \$10,000 or more, file an FBAR annually. See [Are You Getting Enough FBAR?](#)

If you didn't file your first FBAR by June 30, 2011 and are still trying to determine what to do, you're not alone. You could enter the IRS [OVDI](#) program that ends August 31 (in some cases it can be extended to November 29, 2011). See [IRS Updates Voluntary Disclosure Amnesty: What You Should Know](#). If you think the IRS voluntary disclosure is [a mistake for some](#), you could try other means, such as a quiet disclosure. But be aware that the IRS says "[quiet](#)" [foreign account disclosure](#) is not enough.

If you are feeling that the IRS is handling immigrants and expatriates roughly you're not alone. In her [June 30, 2011 Report to Congress](#), U.S. Taxpayer Advocate Nina Olson criticizes the IRS over its Offshore Voluntary Disclosure Program. According to its [mission statement](#), the Taxpayer Advocate Service—an independent organization within the IRS—helps taxpayers resolve problems and recommends changes to prevent them.

Ms. Olson is an effective voice in Washington and has become a bellwether of what needs fixing at the IRS and in Congress. Olson rightly points out in its first offshore amnesty program that ended October 15, 2009, the IRS said if you came forward, “under no circumstances” would you pay larger penalties than if you didn't step forward. That makes sense, of course. Otherwise you might not step forward at all.

Yet on March 1, 2011—more than a year after that first voluntary disclosure program expired—the IRS “clarified” that it would no longer consider whether taxpayers' violations might be subject to a lower penalty under existing statutes. Thus, even if taxpayers' violations were not willful or were based on reasonable cause (and possibly subject to the reduced FBAR penalties), such taxpayers still ended up paying the 20% penalty.

Taxpayers either had to agree to pay more than they believed they owed or withdraw from the program and face potentially massive civil—and perhaps even criminal—penalties. This gotcha struck Taxpayer Advocate Olson as violating longstanding IRS policy, not to mention “[most conceptions of fairness and due process](#).”

It's not clear how this learning applies to the current [OVDI](#) program, since opting out still seems somewhat frightening: [How Do You Opt Out Of IRS Voluntary Disclosure?](#)

For more, see:

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

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

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

[No, Your IRS Data Isn't Safe...](#)

[IRS Mines Real Estate Deeds To Collect Gift Tax](#)

[Latest Foreign Account Prosecution Fuels Fears](#)

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