



Robert W. Wood THE TAX LAWYER

Nov. 4 2012

Undisclosed Foreign Bank Accounts? They're Even More Explosive Now

In 2009, UBS paid \$780 million to the IRS and upended Swiss banking forever by handing over Americans. Many other banks have followed suit, some quietly, some not. IRS amnesty programs in 2009, 2011 and today have offered a limited form of relief. But generally, Americans caught in this pickle have had no choice.



Disclosure and penalties are vastly better than the alternative. And discovery by the IRS is looking more and more likely. Merely closing a foreign bank account does not solve disclosure problems. See [Is Closing Foreign Bank Accounts An Alternative To Disclosure?](#) For those who don't step forward, the IRS and Department of Justice (DOJ) are making clear that they have even more resources at their disposal.

In fact, Kathryn Keneally, Assistant Attorney General for the Tax Division of the DOJ recently told a group of tax advisers at an NYU program that the way UBS was handled is no model. Famously, UBS at least alerted account holders ahead of time that their names would be disclosed to the IRS. Now, said Ms. Keneally, account information is flooding in from many sources, often with no advance warning.

She made ominous statements noting that prosecutions would be forthcoming where there was no indication that the federal government was pursuing a particular institution or account holders. She delivered a stern warning that failing to come into the offshore disclosure programs is dangerous. Although she declined to identify particular programs, she noted her expectation that FATCA would ramp up worldwide transparency.

Here's a refresher on what's most important:

- 1. You Must Report Worldwide Income.** You must report your [worldwide income](#) on your U.S. income tax return. Plus, if you have an interest in a foreign bank or financial account you must check "yes" (on Schedule B). This is true even if you live outside the U.S. or pay foreign taxes on your foreign income.
- 2. FBARs Too.** Tax return filing alone isn't enough. All U.S. persons with foreign bank accounts exceeding \$10,000 at any time during the year must file an FBAR by each June 30. See [Primer For First Time FBAR Filers](#).
- 3. New Form.** Now with your tax return, you may also need to file an IRS [Form 8938](#) to report your foreign accounts and assets. See [IRS Form 8938 Or FBAR?](#) and [More On IRS Form 8938 vs. FBAR](#).
- 4. There Are Big Penalties.** Failures can be considered tax evasion and fraud. The criminal statute of limitations is six years. Plus, the statute of limitations never expires on civil tax fraud.
- 5. FBAR Penalties Are Worse.** The [penalty](#) for failing to file an FBAR is \$10,000 for each non-willful violation. If willful, the penalty is the greater of \$100,000 or 50 percent of the amount in the account for each violation. Each year you didn't file is a separate violation. See [Despite FATCA, FBAR Penalties Still Under Fire](#).
- 6. You Can Even Go To Jail.** Tax evasion can carry a prison term of up to five years and a fine of up to \$250,000. Filing a false return can mean up to three years in prison and a fine of up to \$250,000. Failing to file a tax return can mean a one year prison term and a fine of up to \$100,000. Failing to file FBARs can be criminal too with monetary

penalties up to \$500,000 and prison for up to ten years. See [IRS May Find “Innocent” FBAR Violation Willful](#).

7. Voluntary Disclosure Is Still An Option. If you admit your failures to the IRS and say you want to make it right, you’ve made a “voluntary disclosure.” You will pay back taxes and penalties but not be prosecuted. See [Revised IRS Voluntary Disclosure Practice](#).

8. “Quiet Disclosures” Are Discouraged. A “quiet” disclosure is a correction of past tax returns and FBARs without drawing attention to what you are doing. The IRS warns against it. See [“Quiet” Foreign Account Disclosure Not Enough](#).

9. Prospective Compliance Only Is Risky. Can you start filing complete tax returns and FBARs prospectively, but not try to fix the past? Maybe, but the risk is that your past non-compliance will be noticed and it may then be too late to make a voluntary disclosure.

10. Disclosure Is The Key. You can have money and investments anywhere in the world as long as you disclose your foreign accounts. When in doubt, disclose. See [IRS Form 8938 Or FBAR?](#) There’s widespread confusion, misinformation and noncompliance. See [More On IRS Form 8938 vs. FBAR](#). Get some professional advice and try to get your situation resolved.

*Robert W. Wood practices law with [Wood LLP](#), in San Francisco. The author of more than 30 books, including *Taxation of Damage Awards & Settlement Payments* (4th Ed. 2009 with 2012 Supplement, [Tax InSTITUTE](#)), he can be reached 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.*