



Robert W. Wood

THE TAX LAWYER

TAXES | 12/04/2013

What To Say When (Not If) Your Offshore Bank Asks, 'Are You Compliant With IRS?'

More than 7 million Americans live abroad, and most have bank accounts there. Many other Americans have overseas bank accounts too. Most are receiving letters from their banks about their American status.

Please provide your U.S. tax ID and verify that you are fully tax compliant with the IRS. In many cases, the bank will close your account if you don't respond favorably. But what if you aren't up to snuff with the IRS?

[FATCA](#)—the Foreign Account Tax Compliance Act—takes effect in 2014 and the IRS will start penalizing foreign banks if they don't hand over Americans. Most foreign countries and their banks are getting in line to take their medicine from the IRS. So don't count on bank secrecy **anywhere**.

Besides, on top of FATCA, the U.S. has a treasure trove of data from 40,000 voluntary disclosures, whistleblowers, banks under investigation and cooperative witnesses. So the smart money suggests resolving your issues.



(Photo credit: Images_of_Money)

You can have money and investments anywhere in the world as long as you disclose them.

You must report [worldwide income](#) on your U.S. tax return. If you have a foreign bank account you must check “yes” on Schedule B. You may also need to file an IRS [Form 8938](#) with your Form 1040 to report foreign accounts and assets.

Tax return filing alone isn't enough. U.S. persons with foreign bank accounts exceeding \$10,000 in the aggregate at any time during the year must file an FBAR by each June 30. Tax return and FBAR violations are dealt with harshly. Tax evasion can mean five years in prison and a \$250,000 fine. Filing a false return? Three years and a \$250,000 fine.

Failing to file FBARs can be criminal too. Fines can be up to \$500,000 and prison can be up to ten years. Even civil FBAR cases are scary, with **non-wilful** FBAR violations drawing a \$10,000 fine. For willful FBAR violations, the penalty is the greater of \$100,000 or 50% of the amount in the account for each violation. Each year you didn't file is a separate violation. Those numbers can really add up and be much worse than the 27.5% Offshore Voluntary Disclosure Program penalty.

So what are your choices? These may not be the whole universe, but here are some legitimate ones and some that seem quite unwise.

Tell the bank you're compliant even if you're not? This seems dangerous. The bank or the IRS will find out, maybe not right away, but eventually.

Don't respond? Sure, you can do this for a while. But eventually, the bank will close your account. Banks routinely turn over the names of closed accounts, so that hardly solves the problem.

Join one of two IRS amnesty programs and tell your bank you've done it? This is the safest choice. The primary program is the Offshore Voluntary Disclosure Program. You pay back taxes and penalties but you will not be prosecuted. The other is the IRS's Streamlined program for some U.S. persons abroad. It is far less expensive if you qualify.

File amended tax returns and FBARs and pay any taxes you owe? Then tell the bank you've complied with IRS laws and wait? This may be tough to orchestrate, though it could work in some cases. However, this is considered

a “quiet” disclosure—a correction of past tax returns and FBARs without drawing attention to what you are doing. The IRS warns against it.

Just start filing complete tax returns and FBARs prospectively, without trying to fix the past? Still, you could tell your bank you are complying with IRS rules. Of course, there is a risk your past non-compliance will be noticed. Most people are therefore not comfortable with this one.

This is a skeletal list. Perhaps there are other choices too. But you clearly shouldn't take any action without considering your profile, facts, numbers, actions and risk tolerance. These are serious matters.

Indeed, although the chance of a terrible result might be fairly small, terrible in this case really can mean terrible. Get some advice and try to get your situation resolved in a way that makes sense for your facts, risk profile, and pocketbook.

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.