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When Foreign Banks Ask For U.S. Taxpayer ID, How Should You Respond?

Approximately eight million Americans live abroad. Most have bank accounts where they live. Many other Americans also have overseas accounts. Most are receiving letters from their banks asking for their U.S. tax ID numbers. Some want you to certify you are compliant with the IRS. American citizens, residents—even people with a U.S. address or phone number—should be prepared. Possible American status means proving you’re compliant with the IRS, or proving you’re not American after all. The bank may close your account if you don’t respond favorably.

[FATCA](#), the Foreign Account Tax Compliance Act, penalizes foreign banks that don’t hand over Americans. American citizens and green card holders must report [worldwide income](#) on U.S. tax returns. 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. And then there are FBARs, reports of foreign

bank accounts that in the aggregate exceed \$10,000 at any time during the year. Violators are dealt with harshly. Tax evasion can mean five years in prison and a \$250,000 fine. Filing a false return can mean 3 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 *nonwilful* FBAR violations draw a \$10,000 fine. The penalty for willful FBAR violations 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. When the IRS slapped [Mr. Carl R. Zwerner](#) with civil FBAR penalties totaling 150% of his account, the [court upheld the FBAR penalties even though they exceeded his account balance](#).

So what are your choices? Don't respond? Some people react like a deer in the headlights. But the bank's letter or call is unlikely to evaporate. Failing to respond in any way is likely to mean the bank will close your account, if it isn't closed already. Banks routinely turn over the names of closed accounts, and may even be more likely to disclose closed accounts than active ones.

Should you tell the bank you're compliant even if you're not? This is dangerous. The bank or the IRS will find out, maybe not right away, but eventually. Instead, you could 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. It is far less expensive if you qualify. But unlike the OVDP, the Streamlined program does not end in a closing agreement. There is always the risk of audit.

There's a Domestic Streamlined program for people in the U.S., and a Foreign Streamlined program for those living abroad. Whether you are abroad for the requisite time is its own issue, but the real difference is in the penalty. For clients who are comfortable with the willfulness issue, either Streamlined program is a comparative bargain.

Another route is to file amended tax returns and FBARs and pay any taxes you owe. Then tell the bank you've complied with IRS laws and wait. 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. Ironically, the IRS policy may encourage some people to just start filing complete tax returns and FBARs prospectively, without trying

to fix the past. It might enable you to tell your bank you are now complying with IRS rules. Yet just starting to file FBARs and report foreign income and accounts can look conspicuous. There is a risk your past non-compliance will be noticed.

In all of these alternatives, consider your numbers, and review your facts realistically. If you have moved banks multiple times to avoid having to disclose, it is hard to see this as non-willful. So don't kid yourself when you assess your fact pattern and conduct.

Meanwhile, the IRS Offshore Voluntary Disclosure Program or OVDP looks even more attractive than it did before. In the OVDP, you pay back taxes and penalties but you will not be prosecuted. Taxes on previously unreported income, interest, and a 20% penalty are palatable, and at the end of the case, you pay 27.5% of the highest account balance over 8 years. A certain 27.5% is far more attractive than the risk of 150% or even more. Many taxpayers seem to assume that the feds can't and won't prosecute everyone. That may be true, yet it is still a serious gauntlet to run.

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