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7 Sins With Bank Accounts? FATCA Makes Them Deadly

Over the last few years, IRS subpoenas and prosecutions have caused banks to name names of U.S. citizens and residents with foreign accounts. But that was a drop in the bucket. The biggest sea change is FATCA, a 2010 law that takes effect in 2014. It's the reason overseas banks are asking questions about who is American. Here are 7 sins to avoid:



(Photo credit: kenteegardin)

1. Don't Fail to Report Worldwide Income. You must report worldwide income on your U.S. taxes, including interest, earnings, dividends and more. If you have a foreign account, check "yes" (on Schedule B). You may be entitled to foreign tax credits or an exclusion for income earned abroad. But you still must report it. As part of your tax return (starting in 2011), file Form 8938 where your foreign assets (generally) exceed \$50,000 in value.

2. Don't Forget FBARs. You *also* must file an FBAR annually if the aggregate of your foreign accounts exceeds \$10,000 at any time during the year. FBARs have been in the law since 1970, but enforcement is now at an all-time high. Pay attention to these forms. The government sure does.

3. Don't Ignore Penalties. If you fail to report your worldwide income or fail to check the foreign account box, it can be considered tax evasion or fraud. The criminal statute of limitations is six years. The statute of limitations never expires on civil tax fraud, so the IRS can pursue you 10 or 20 years later. Bills can include a 20% penalty or a 75% civil fraud penalty.

Failing to file an FBAR carries a civil penalty of \$10,000 for each non-willful violation. If *willful*, the penalty is the greater of \$100,000 or 50 percent of the account balance *for each year* you didn't file. Filing a false tax return is a felony that can mean up to five years in jail and a fine of up to \$250,000. Failing to file FBARs can be criminal too, carrying fines up to \$500,000 and up to ten years in prison.

4. Don't Dismiss IRS Program. An IRS amnesty program is still underway. You submit up to 8 amended tax returns and 8 FBARs. You pay taxes, interest and a 20% penalty on your unreported income. When all those are processed, you pay a penalty equal to 27.5% of the highest balance in your foreign accounts over the 8 years. You aren't prosecuted.

There's a special IRS program for some Americans overseas. For those who qualify, it only involves 3 tax returns, 6 FBARs, and no penalties.

5. Don't Make Quiet Disclosure Without Care. A "quiet" disclosure means amending tax returns and filing FBARs outside the IRS amnesty program. The IRS says it will treat you harshly if it catches you. But some people are comfortable doing it and it's better than doing nothing.

If you don't owe U.S. taxes (because of foreign tax credits, for example), filing past due FBARs shouldn't be considered a quiet disclosure. Even if you didn't report your offshore income or disclose your account, you may be able to recompute your taxes to fit within this rule and avoid penalties. And while both tax returns and FBARs are important, FBARs are arguably even more sensitive than tax returns.

Civil and criminal penalties for failing to file FBARs are worse than tax penalties. That's one reason filing FBARs can make a huge difference even if minor errors on your tax returns are not corrected. You can avoid FBAR penalties if you had "reasonable cause," but the grounds for waiving penalties aren't terribly clear. Get some advice and be careful.

6. Don't Fail To Address the Past. Some people just start filing accurate tax returns and FBARs *prospectively*. However, the risks can be high. The IRS may ask about the lack of prior FBARs and tax returns disclosing a foreign account.

7. Don't Merely Close Accounts. If you are considering not trying to clean up past tax returns and FBARs, you may be tempted to close your foreign account. In fact, many foreign banks will do it for you now that FATCA has complicated their compliance. Tying off the problem *prospectively* may make sense, but can make your lack of compliance even worse if your actions are viewed as efforts to conceal your previous offshore activities. Don't take any of these steps without professional advice.

There's widespread confusion and noncompliance involving foreign bank accounts, and the situation is unlikely to get better. Get some professional advice and try to get your situation resolved.

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.