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Offshore Account FBAR Forms Are Due June 30, But Is Filing Your First Admitting A Crime?

If you had foreign accounts in 2015 that *in the aggregate* topped \$10,000 at any time during the year, you should file an FBAR—also called Form 114. June 30, 2016 is the filing deadline, and [FinCEN](#) now requires that you [file your FBAR, Form 114](#) electronically. Given the Draconian FBAR penalties—that can include willful and nonwillful civil penalties and even criminal violations—FBARs are nothing to ignore.

Yet that is precisely why some people think twice. The assumption is that the IRS, the Financial Crimes unit of the Treasury Department, and the Justice Department are all over FBARs these days. Will filing one FBAR prompt questions about whether you had the account in the past? Why didn't you file then? And what about your tax return? Did you indicate that you had a foreign account and report the income? Since the statute of limitations for civil or criminal violations is generally six years, opening yourself up to that kind of exposure is frightening.



For some taxpayers, there is no perfect answer. You don't want to ignore a filing obligation now that you know about FBARs. But one should consider where you are going long term with your issues, how quickly you plan to act, and whether you have good and accurate information to file now. If you are belatedly addressing foreign accounts and income for the first time, and not trying to address the past, filing a first FBAR is worth reflection.

You want to have an organized plan for what you are doing and how you are doing it. Will you go Streamlined or OVDP? Which tax years will count? Will you do a quiet disclosure or just start filing prospectively? Do you have all your accounts now or only some? Do you have statements?

You don't want to rush to file and have to amend it shortly thereafter. These forms are filed under penalties of perjury. Plus, some worry that a first FBAR might prompt questions. Is filing your first FBAR admitting to a crime? Hardly, but this is a common worry. Some taxpayers consider filing on time to be paramount. They don't want to be seen as ignoring the rules, which could risk civil penalties or even criminal charges.

A GAO report on [offshore tax evasion said the IRS](#) has done a good job of collecting \$5.5 billion in taxes and penalties from around 40,000 offshore disclosures. But the report goes on to say that [the IRS is missing out on quiet disclosures](#). Classically, a quiet disclosure involves filing one or more FBARs and one or more amended tax returns. It may sound innocuous but can be a dangerous path.

The GAO analyzed amended tax returns, matched them to offshore accounts and found more quiet disclosures than the IRS did. First time reporters of offshore accounts have skyrocketed, and the GAO urged the IRS to find them and crack down. In fact, the GAO says the IRS should identify and pursue quiet disclosures. The IRS can just look at Schedule B to your Form 1040. Is the "I have a foreign account" box checked? If it wasn't checked the prior year, GAO says IRS should check it out.

The same with initial FBARs. Why didn't you file an FBAR last year? When was that account opened anyhow? Audits, investigations, and even prosecution in extreme cases are possible. That is one big reason the three IRS programs may be preferable, depending on the facts:

- [2012 Offshore Voluntary Disclosure Program](#)
- [Streamlined Filing Compliance Procedures](#)

- [Delinquent International Information Return Submission Procedures](#)

The latter is for taxpayers who do not need to use either the OVDP or the Streamlined Filing Compliance Procedures. But as with any IRS program, there are qualifiers. For example, the taxpayer cannot be under a civil examination or a criminal investigation by the IRS. The taxpayer also cannot have already been contacted by the IRS about delinquent FBARs.

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