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Is Foreign Account Ignorance Bliss?



Should you enter the IRS's [OVDI](#) program for foreign account disclosures if you didn't *intentionally* violate the law? I'm asked [this question](#) frequently. For all the publicity surrounding the IRS foreign account amnesty that formally ends August 31, 2011, it is surprising that the public still views this amnesty as applying only to big time tax cheats. See [IRS](#)

[Amnesty: What's Required By 8/31/11?](#)

In some respects, that is not surprising. Consider the provenance of the OVDI program, emanating from the ashes of the UBS account scandals. Many taxpayers still think the only people who need to come forward are those who willfully stuffed money into [Switzerland](#) or other tax havens, usually money not previously taxed in the U.S.

Yet the OVDI program does not distinguish between taxpayers who knew exactly what they were doing and those who had [no idea](#) they were violating the law. Whether you knew it or not, you were violating the law if you failed to report your worldwide income on your Form 1040 or failed to annually fill out and file a Treasury Form [TD F 90-22.1](#), also known as an [FBAR](#), on your foreign accounts aggregating more than \$10,000. One big reason stopping many from entering the OVDI program is the 25% penalty applying to the highest aggregate account balance.

The fact that you innocently violated the rules doesn't mean you don't need amnesty. Many U.S. citizens and permanent residents didn't know about these rules until recently. See [IRS On What Is A Foreign Account](#). Even so, consider what the IRS says is "[willful](#)." The IRS says willfulness can be a conscious effort to avoid learning about [FBAR reporting](#). Form 1040 Schedule B refers to the instructions to Schedule B, which mention FBARs.

In the IRS view, it takes hardly any diligence to learn of these foreign account reporting requirements. A person with foreign accounts should read the information in government tax forms and instructions. Failing to follow-up on this knowledge may provide evidence of "willful blindness." See [Excerpt From Internal Revenue Manual, 4.26.16.4.5.3, Paragraph 6](#).

The failure to learn of filing requirements coupled with efforts to conceal the existence of the accounts may lead to a conclusion that the violation was willful. Yet "[t]he mere fact that a person checked the wrong box, or no box, on a Schedule B is not sufficient, by itself, to establish that the FBAR violation was attributable to willful blindness."

Although it's [not too late](#), the August 31 deadline is rapidly approaching. Fortunately, an [extension](#) (until November 29, 2011) can provide time if you demonstrate a good faith attempt to produce all materials. See [FAQ 25.1](#). Without the extension, August is the last month to collect foreign bank statements, amend tax returns and complete delinquent [FBARs](#).

To get an extension you must demonstrate a good faith attempt to comply by August 31st and send in properly completed and signed agreements to extend the statute to [assess tax \(including tax penalties\)](#) and to [assess FBAR penalties](#). Written extension requests must include a list of the items you're missing, why they are not included, and the steps you're taking to get them. See [FAQ 25.1](#) and [IRS Updates Voluntary Disclosure Amnesty: What You Should Know](#).

For more, see:

[IRS May Find "Innocent" FBAR Violation Willful](#)

[Another F Word, FBAR!](#)

[Tax Amnesty Goes Hollywood](#)

[California amnesty program for tax dodgers](#)

[Even U.S. Branch Accounts Abroad Trigger FBAR!](#)

[How Do You Opt Out Of IRS Voluntary Disclosure?](#)

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