



Robert W. Wood

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Tax Tips From Manafort Conviction That Might Keep IRS Away

The conviction of former Trump campaign chairman [Paul Manafort on eight counts](#) of financial crimes nets the first conviction for Special Counsel Robert Mueller.

Political commentators on both sides are jabbering over this. They also have the guilty plea by former Trump fixer Michael Cohen to talk about. But aside from politics, there are some serious tax lessons here for everyone. And they are surprisingly simple.

The IRS wants you to report your worldwide income on your taxes, and (separately) to report your foreign accounts. That sounds simple, but there has long been temptation with hidden accounts. FBARs, the foreign bank account reporting form Manafort failed to file, have been required by law since 1970, so the requirement is hardly new. It is very easy for the government to win FBAR cases, and the penalties--both civil and criminal--are steep, worse than tax evasion.

Much of the scrambling started about ten years ago. The IRS and Justice Department took on Swiss banking, and in 2008, started to win big in court. With huge potential exposure for helping Americans, UBS settled with the U.S. government in 2009 for \$780 million. Since then, vast numbers of Swiss and other banks faced criminal charges or made big civil settlements. And American taxpayers have too, with the [IRS offshore account collections haul topping \\$10 billion](#). For ten years, the IRS has run its [Offshore Voluntary Disclosure Program](#) (OVDP), a type of tax amnesty. This program will [formally](#)

[close on September 28, 2018](#). The IRS Streamlined program will still exist, but [Streamlined cases are subject to audits](#). For the protection of the OVDP, there's not much time left.

I'll bet Manafort wishes now that he had cleaned up his accounts voluntarily before he was in the cross hairs. Another lesson from Manafort is about IRS access to information. Often, they get it. Consider [FATCA](#)—the Foreign Account Tax Compliance Act. It penalizes foreign banks if they don't hand over Americans. The vast majority of foreign countries and their banks comply, so don't count on bank secrecy anywhere. On top of FATCA, the U.S. has a treasure trove of data from 50,000 voluntary disclosures, whistleblowers, banks under investigation and cooperative witnesses. So the smart money suggests resolving your issues. You can have money and investments anywhere in the world as long as you disclose them.

The biggest lesson from Manafort? Declare all your income and your foreign accounts, and don't obscure or cover up the facts. Sure, you can make mistakes. But your mistake must be credible. If there are too many oversights or glitches, you might just appear to be willful. Negligence, inadvertence, or mistake is OK. Intent to conceal or to evade taxes is not. Consider that the IRS's offshore Streamlined program requires one to:

Provide specific reasons for your failure to report all income, pay all tax, and submit all required information returns, including FBARs. If you relied on a professional advisor, provide the name, address, and telephone number of the advisor and a summary of the advice. If married taxpayers submitting a joint certification have different reasons, provide the individual reasons for each spouse separately in the statement of facts.”

If you *knew* you were supposed to report, the IRS may say you were willful. What's more, the IRS uses a concept of “willful blindness.”

Essentially, it is a conscious effort to avoid learning about the IRS or FBAR reporting. Willfulness involves a voluntary, intentional violation of a known legal duty. In taxes, it applies for civil and criminal violations. The failure to learn of filing requirements, coupled with efforts to conceal the facts, can spell willfulness.

If you don't want to end up like Manafort, what other things do you want to avoid? Avoid setting up trusts or corporations to hide your ownership. Avoid filing some tax forms and not others. Avoid keeping two sets of books. Avoid telling your bank not to send statements. Avoid using code words over the phone. Avoid cash deposits and cash withdrawals. You get the idea. Even if you can explain one failure to comply, repeated failures can morph conduct

from inadvertent neglect into reckless or deliberate disregard. That may have been part of Manafort's problem.

This is not legal advice. For tax alerts or tax advice, email me at Wood@WoodLLP.com.