Season 1 – Episode 19 - Navigating the Complex World of FBARs and Foreign Asset Reporting

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Welcome to Tax Blueprints, a Rohr CPAs podcast. I'm Daniel Rohr, the managing shareholder of Rohr and Associates, a premier CPA firm based in California. I'm a CPA, Personal Financial Specialist and Enrolled Agent. I have extensive experience advising individuals and business owners with tax minimization and personal financial planning strategies. On each episode of Tax Blueprints, I delve into the intricacies of tax laws, explain the subtleties of business tax planning, and guide individuals towards a path of financial stability. Whether you're a business owner navigating the murky waters of taxation or an individual planning for a worry-free retirement, Tax Blueprints will provide you with the tools and knowledge you need. I hope you enjoy this episode.

In today's episode, we're going to discuss the topic of foreign bank and financial accounts reports, or F bars. For those of you with international ties. Whether you're a U.S. Citizen living abroad, a resident alien, or even A-U-S.

Resident with foreign assets, this one is especially for you. An F bar is a report filed with the US. Treasury financial crimes enforcement unit, or FinCEN. Not the IRS. The F bar provides information about foreign financial accounts you may hold if you have a financial interest in or signature authority over foreign financial accounts and the aggregate value of those accounts exceed $10,000 at any time during the calendar year, you are required to report them. So let's say you're a US. Resident and have three bank accounts in Canada. One account has 3000, the other has 4000, and the third has 5000. Individually, none of these accounts exceed the $10,000 threshold. However, when combined, they aggregate the 12,000 and thus you're required to file an FBAR. The penalties for failing to file an FBAR can be severe, both civil and criminal. In 2023, civil penalties can range from $15,611 for non-willful violations to the greater of 156, 107 or 50% of the balance in the account for willful violations.

The penalties apply for each year that the account was not disclosed in an FBAR filing. There are also potential criminal penalties that could lead to imprisonment. A landmark case regarding f bar penalties is United States v. Williams. His case serves as a cautionary tale for all U. S. Persons with obligations to file F bars. Williams was a successful businessman with accounts in Switzerland. In his case, the foreign accounts at hand were with Swiss bank UBS, and the amount in those accounts exceeded $7 million. Mr. Williams failed to report these accounts on his FBAR filings or on his tax returns, where you're asked if you have foreign accounts. When the UBS case blew up, UBS being the Swiss bank that was under scrutiny for aiding US. Citizens in tax evasion Mr. Williams came forward. He paid the back taxes, interest and penalties. He also pleaded guilty to tax evasion.

Now, you'd think that'd be the end of it, but it was just the beginning. The government pursued additional civil penalties specific to the FBAR requirements. Mr. Williams argued that his failure to file was non willful essentially mean that he didn't knowingly or intentionally violate the law. However, the court found his argument unconvincing. What's noteworthy here is how the court determined willfulness in failing to file an F bar. The court stated that Williams had signed his tax returns, which included a section asking about foreign accounts. By failing to check that box, even though he later argued that he hadn't paid attention to it, he was deemed to have. Willfully neglected his obligation to file an FBAR. Now, what was the cost? A civil penalty amounting to 50% of the highest aggregate balance of Mr. Williams Swiss accounts for each year. And given that the highest balance was over 7 million, the penalty was a staggering amount running into the millions of dollars.

This case sets a precedent on how the courts view willfulness in the context of FBAR violations. Willfulness doesn't necessarily mean you purposely invaded the law. It can also mean that you were recklessly ignorant of it. The Williams case underscores that the responsibility falls on the individual to understand their filing requirements, especially when it comes to foreign accounts. Ignorance, as it turns out, is not a viable defense. So what if you're in the position of having FBAR filing requirements but have yet to do so? There is a way out, and you'll want to contact an attorney with expertise in these areas. The way forward for you is to use the voluntary disclosure program. This program is essentially a lifeline for US.

Taxpayers who have neglected their reporting duties foreign accounts but wish to correct that oversight. So why would someone want to voluntarily disclose unreported foreign accounts?

It's simple. It is to minimize the risk of criminal prosecution and to limit the financial penalties they may face. The process in using disclosure program involves providing all required documentation and paying all due taxes and penalties for the disclosure period, typically covering the most recent six tax years. You'll need to submit full and accurate amended returns and FBARs for this period, and additionally, you must cooperate fully with the IRS throughout the process. Now, generally, you'll pay a penalty of 50% of the highest aggregate balance of your foreign accounts during the disclosure period, or 100,000, whichever is greater. This is an improvement compared to the potentially higher penalties that can be levied if you get caught before you come clean, as was the case with Williams, whom we discussed earlier. This is beneficial for a few reasons. Firstly, it provides a structured way for taxpayers to become compliant with tax laws while potentially avoiding criminal charges.

Secondly, although the financial penalty can still be significant, it's generally less than what you would have faced if the IRS discovered your noncompliance on its own. So let's say you have 500,000 in a foreign account that you haven't reported for the past six years. If the IRS catches you, the penalty could be as high as 50% of the highest aggregate balance for each year you didn't comply, which would rapidly escalate to more than the account's total balance. But under the voluntary disclosure program, your penalty is limited to 50% of the highest balance over those six years, or 100,000, whichever is greater. That would mean a penalty of 250,000, assuming the balance remained consistent. By offering a path of voluntary disclosure, the IRS is essentially extending an olive branch to noncompliant taxpayers. It's a way of saying, let's correct this together and minimize the damage for everyone involved.

It's a far better alternative than getting caught and facing the full brunt of the penalties and potential criminal prosecution. Now, in addition to F bars, specified foreign assets must also be reported to the government if the assets exceed certain thresholds. Specified foreign assets include, but are not limited to, foreign bank accounts, foreign savings accounts, foreign investment accounts, foreign securities accounts, foreign mutual funds, foreign trusts, foreign retirement plans, foreign businesses and or corporate accounts, and foreign life insurance policies. If you are unmarried and live in the US. The threshold is $50,000 on the last day of the tax year or $75,000 at any time during the year. For married taxpayers, the thresholds are double at 100,000 the last day of the tax year, or 150,000 at any time during the year. Specified foreign assets are reported on form 89 38, and they're separate from the FBAR, and they are filed with your annual tax return.

This form, 89 38, has its own set of penalties for noncompliance, including a $10,000 failure to file penalty, an additional $10,000 for every 30 days of non-filing after the IRS notices your failure up to a maximum of $50,000. So to wrap up FBARs and reporting of specified foreign assets may seem cumbersome, but they are essential requirements for U. S. Citizens, resident aliens and trusts or estates with foreign interests. The penalties for noncompliance are harsh, and as seen in the Williams case, ignorance is not a way out. It's essential to consult a tax or legal professional well versed international tax matters to ensure that you're in full compliance.

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