

Foreign Bank and Foreign Accounts reporting in the United States

As a US person, if you have a financial interest in or signature authority over a foreign financial account, including a bank account, brokerage account, mutual fund, trust, or other type of foreign financial account, the Bank Secrecy Act may require you to report the account yearly to the Internal Revenue Service by filing Form TD F 90-22.1, Report of Foreign Bank and Financial Accounts (FBAR).

The FBAR is required because foreign financial institutions may not be subject to the same reporting requirements as domestic financial institutions. The FBAR is a tool to help the United States government identify persons who may be using foreign financial accounts to circumvent United States law. Investigators use FBARs to help identify or trace funds used for illicit purposes or to identify unreported income maintained or generated abroad.

Recent FBAR Guidance

On February 24, 2011, the Treasury Department published final regulations amending the FBAR regulations. These regulations became effective on March 28, 2011, and apply to FBARs required to be filed with respect to foreign financial accounts maintained in calendar year 2010 and for FBARs required to be filed with respect to all subsequent calendar years. The FBAR form and instructions have been revised to reflect the amendments made by the final regulations.

Who Must File an FBAR?

United States persons are required to file an FBAR if:

- The United States person had a financial interest in or signature authority over at least one financial account located outside of the United States; and
- The aggregate value of all foreign financial accounts exceeded \$10,000 at any time during the calendar year to be reported.

United States person means United States citizens; United States residents; entities, including but not limited to, corporations, partnerships, or limited liability companies created or organized in the United States or under the laws of the United States; and trusts or estates formed under the laws of the United States.

Exceptions to the Reporting Requirement

Exceptions to the FBAR reporting requirements can be found in the FBAR Instructions. There are filing exceptions for the following United States persons or foreign financial accounts:

- Certain foreign financial accounts jointly owned by spouses;
- United States persons included in a consolidated FBAR;
- Correspondent/nostro accounts;
- Foreign financial accounts owned by a governmental entity;
- Foreign financial accounts owned by an international financial institution;
- IRA owners and beneficiaries;
- Participants in and beneficiaries of tax-qualified retirement plans;

- Certain individuals with signature authority over, but no financial interest in, a foreign financial account;
- Trust beneficiaries; and
- Foreign financial accounts maintained on a United States military banking facility.

Look to the FBAR instructions to determine eligibility for an exception and to review exception requirements.

Reporting and Filing Information

A person who holds a foreign financial account may have a reporting obligation even though the account produces no taxable income. Checking the appropriate block on FBAR-related federal tax return or information return questions (e.g., on Schedule B of Form 1040, the "Other Information" section of Form 1041, Schedule B of Form 1065, and Schedule N of Form 1120) and filing the FBAR, satisfies the account holder's reporting obligation.

The FBAR is not filed with the filer's federal income tax return. The granting, by the IRS, of an extension to file federal income tax returns does not extend the due date for filing an FBAR. You may not request an extension for filing the FBAR. The FBAR must be received by the IRS on or before June 30 of the year following the calendar year being reported. File by mailing the FBAR to:

United States Department of the Treasury
P.O. Box 32621
Detroit, MI 48232-0621.

If an express delivery service is used, file by mailing to:

IRS Enterprise Computing Center
ATTN: CTR Operations Mailroom, 4th Floor
985 Michigan Avenue
Detroit, MI 48226

Account holders who do not comply with the FBAR reporting requirements may be subject to civil penalties, criminal penalties, or both.

KNAV View

The FBAR filing requirements engulf, not only US citizens and residents, but also Corporations doing business in the United States. The penalties for non reporting are onerous. A careful and timely analysis of the filing requirements under FBAR is required to ensure compliance.

Source : Internal Revenue Service

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