

Reporting Foreign Financial Accounts on the Electronic FBAR



August 30, 2017

FBAR Background

- Reporting requirement, not tax requirement
- Bank Secrecy Act enacted in 1970
- Codified primarily in Title 31 of U.S. Code
- Requires reporting of foreign financial accounts
- Severe civil and criminal penalties for failure to comply

FBAR Authorities

- Overall Title 31 responsibility is delegated to the Financial Crimes Enforcement Network (FinCEN).
- IRS has FBAR examination and enforcement authority under a delegation from FinCEN.

Form 8938 and FBAR Requirements

- Form 8938 filing requirement doesn't replace or otherwise affect a taxpayer's obligation to file FinCEN Form 114.
- Unlike Form 8938, the FBAR (FinCEN Form 114) isn't filed with the IRS.
- Individuals and domestic entities must determine if they should file Form 8938 or FinCEN Form 114, or both.

FBAR Regulations

- FBAR filing governed by 31 C.F.R. 1010.350
 - Comprehensive revision in 2011
 - Preamble gives guidance and answers to questions from public comment period
- FBAR record retention at 31 CFR 1010.420
- Civil penalty provisions at 31 U.S.C. 5321
- Criminal penalty provisions at 31 U.S.C. 5322

Mandatory E-filing of FBARs

- Effective July 1, 2013, electronic filing on FinCEN's BSA E-File System
 - Reduces filer burden
 - Quick and secure
 - Filing from domestic and foreign locations
 - Instantaneous acknowledgement of receipt
 - Batch-filing capabilities for preparers

E-filing System Requirements

- Discrete filers don't need to register
- Batch filers must register for filing multiple FBARs
- FBAR filing now at FinCEN, not IRS
- Contact FinCEN for e-filing help, including requests for exemption
- Filing due April 15 for prior calendar year
- Automatic extension until October 15

E-filing Forms

- FinCEN Form 114 supersedes TD F 90-22.1
 - Page one allows explanation of late filing and special-program filing
 - No attachments allowed
 - Third-party signature block
- FinCEN Form 114a, Authorization to Electronically File FBARs

FBAR Filing Basics

- Four elements of FBAR filing
- “United States persons” must file if:
 - They have financial interest in or signature authority over an account,
 - That account is a foreign financial account(s) and
 - The aggregate value of the account(s) exceeds \$10,000 at any time during the calendar year.

FBAR Filing: “U.S. Persons”

- “U.S. persons” means:
 - U.S. citizens (no matter where they reside)
 - U.S. residents – IRC 7701(b)
 - U.S. entities – any entity created or organized in U.S. or under U.S. law. Tax status disregarded

FBAR Filing: “U.S. Residents”

- “U.S. residents” mean:
 - Determined under IRC 7701(b)
 - Green card and substantial presence tests
 - Those who elect to be treated as residents under 7701(b) file only FBARs on accounts held during the election period
 - Tax treaty or IRC 6013 (g) or (h) elections disregarded for FBAR purposes

FBAR Filing: “Financial Interest”

- “Financial interest” means U.S. person:
 - Is record owner or holds title directly
 - Is record owner or holds title indirectly
 - ◆ U.S. person owns >50% of entity holding title
 - ◆ Apply to tiered entities
 - ◆ See instructions for details
 - Someone else holds title for benefit of U.S. person

FBAR Filing: “Signature Authority”

- “Signature authority” means:
 - Individual(s) can control disposition of account assets
 - ◆ Can be in conjunction with another
 - By direct communication (oral or written)
- It doesn’t mean supervisory approvals
- Cannot be attributed to entities

FBAR Filing: “Foreign”

- Foreign is any location outside the U.S.
 - The U.S. includes:
 - ◆ The States (including the Indian lands)
 - ◆ D.C.
 - ◆ U.S. territories and possessions
- Physical location of account governs

FBAR Filing: “Financial”

- Both monetary and nonmonetary assets
- Bank, brokerage and investment accounts; insurance and annuity policy cash values; and mutual funds are specifically named
- Generally not real and personal property

FBAR Filing: “Account”

- Relationship with financial institution or person acting as a financial institution
- Not assets directly held

FBAR Filing: “Aggregation”

- “Aggregate value exceeds \$10,000”
- Aggregate accounts with financial interest and those with signature authority
- Aggregate accounts owned “directly” and those owned “indirectly”
- Don’t use family attribution of Title 26

Reportable Accounts

- Bank accounts (checking, savings, CDs)
- Securities or brokerage accounts (buying, selling, holding or trading stocks, bonds, etc.)
- Other financial accounts
 - Other deposit accounts
 - Cash value of insurance or annuities
 - Commodity futures or options accounts
 - Mutual funds or similar pooled funds

Mutual Fund Definition

- “Mutual fund” is defined as:
 - Issues shares to the general public
 - Shares have a regular net asset value determination, and
 - Regular redemptions

Reportable Account Exceptions

- U.S. military banking facility
- Accounts of U.S. governmental entities
- International financial institutions
- Correspondent or “nostro” accounts
- Held in a U.S. IRA (if owner or beneficiary)
- Held in a tax-qualified retirement plan (if participant or beneficiary)
- Consolidated filing

Custodial Accounts

- “Omnibus” foreign accounts held by U.S. banks or other financial institutions to hold investments of multiple persons
- If U.S. person can only access account through U.S. entity and cannot directly access the foreign account, no FBAR reporting is required

Valuing Accounts for FBAR

- Each account valued separately at its highest value
- Periodic statements may be relied upon
- Multiply the highest account value in the foreign currency by the exchange rate for December 31
- Aggregate all accounts
- Don't double count for determining threshold

Example 1

- Bank A account = \$8,000
- Move entire amount to a new account
- New Bank B account = \$8,000
- Total of accounts = \$16,000
- But, U.S. person only had \$8,000 in foreign financial accounts (not more than \$10,000) at any given time during the year
- So, filing not required

Example 2

- Bank A account = \$8,000
- Bank C account = \$4,000
- Move Bank A account to new account
- New Bank B account = \$8,000
- Total of accounts now exceeds \$10,000
- So, filing required reporting all three accounts

Signature Authority Exceptions

- Officer or employee (no financial interest) of:
 - Bank examined by U.S. federal regulators
 - SEC or CFTC regulatory institution
 - Authorized service provider (SEC registered)
 - U.S. listed entity (foreign or domestic)
 - A U.S. subsidiary of a U.S. listed entity
 - Entity registered under 12(g) of SEC

Trust Beneficiary Exceptions

- Trust beneficiary doesn't need to file if trust, trustee or agent is a U.S. person and files an FBAR disclosing the trust's foreign financial accounts
- Reportable beneficial interest doesn't include remainder interest
- Discretionary beneficiary filing not required based on discretionary status

Special Filing Rules

- Truncated filing for 25 or more accounts
 - Financial interest filers
 - ◆ Check 14a “yes,” give # of accounts
 - ◆ No account detail in Parts II or III (maintain records)
 - Signature authority filers
 - ◆ Check 14b “yes,” give # of accounts
 - ◆ Provide account owner’s info in Part IV (items 34-43 and maintain records)

Special Filing Rules (continued)

- Consolidated filing (Part V)
 - Allowed for all types of entities
 - Parent information in Part I
 - All foreign accounts owned directly or indirectly by parent or any subsidiary must be shown in Part V (except for 25 or more)
 - All account owners, direct and indirect, must be shown in Part V

Special Filing Rules (continued)

- Spouses can file one combined FBAR if:
 - Nonfiling spouse has only joint accounts with the filing spouse
 - All joint accounts reported on single FBAR
 - Spouses use FinCEN Form 114a, Authorization to Electronically File FBARs, to authorize one spouse to file for both spouses

Record Keeping Requirements

- Maintain account records for five years
- Exception: officers or employees who file an FBAR because of signature authority over the foreign financial account of their employers are not expected to personally maintain the records of these foreign financial accounts
- FinCEN Form 114a, Record of Authorization to Electronically File FBARs

Administrative Guidance

- FinCEN Notice 2011-1
- FinCEN Notice 2011-2
- FinCEN Notice 2012-1
- FinCEN Notice 2012-2
- FinCEN Notice 2013-1

Question 1

- How do I file an amended FBAR?
 - Answer:
 - ◆ Check the “Amended” box in the upper right-hand corner of the FBAR on page 2
 - ◆ Complete the entire Form 114 with the corrected information
 - ◆ Explain the reason for amending on page 1 of the form

Question 2

- How is a CD reported when it acquires a new account number upon each renewal?
 - Answer:
 - ◆ The issuance of a new certificate with a new account number upon each renewal, by itself, is not treated as a transfer of funds to a new financial account for FBAR purposes. The funds are considered to be deposited in one financial account, a CD with the bank.

Question 3

- Do I need to file an FBAR for my infant son who's a U.S. citizen and has foreign financial accounts but isn't required to file a tax return?

—Answer:

- ◆ Yes. There are no age limitations on FBAR filing. An FBAR should be filed on behalf of your son if he has reportable foreign financial accounts. Remember — tax filing status isn't a consideration for FBAR.

Question 4

- An individual has the power to direct how an account is invested but cannot make dispositions from the account. Is that individual required to file the FBAR?

—Answer:

- ◆ No. The FBAR is not required because the person who cannot make dispositions from an account is not considered to have signature authority over the account.

Question 5

- Is a U.S. resident with POA over his parents' reportable financial accounts in Canada required to file FBAR, even when that authority has never been exercised?

—Answer:

- ◆ Yes. Person holding POA is U.S. person required to file FBARs on reportable accounts as long as the authorization remains in force. Whether that authority has ever been exercised is not relevant.

Question 6

- Are Canadian RRSP and TFSA accounts reportable on the FBAR? Are accounts administered by Mexico's AFORE?

—Answer:

- ◆ Yes. The exemption in new regulations for IRAs is for U.S. accounts; it doesn't extend to similar foreign accounts. In general, foreign defined contribution retirement accounts are reportable.

Question 7

- Is an account holding certificates representing an interest in gold bullion considered a reportable account?

—Answer:

- ◆ Yes. An account with a financial institution located in a foreign country is a reportable account, whether the account holds cash or nonmonetary assets.

FBAR Help

- IRS.gov
- FinCEN.gov
- FBAR questions:
 - Email to FBARquestions@irs.gov
 - Callers within the U.S., 866-270-0733
 - Callers outside the U.S., 313-234-6146
- BSA e-filing questions:
 - Email to BSAEFilingHelp@fincen.gov
 - Callers within the U.S., 866-346-9478

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