

[http://www.irs.gov/Businesses/Small-Businesses-&-Self-Employed/Workbook-on-the-Report-of-Foreign-Bank-and-Financial-Accounts-\(FBAR\)](http://www.irs.gov/Businesses/Small-Businesses-&-Self-Employed/Workbook-on-the-Report-of-Foreign-Bank-and-Financial-Accounts-(FBAR))

Jan 14, 2013

## Workbook on the Report of Foreign Bank and Financial Accounts (FBAR)

**NOTE: On Feb. 24, 2011, the Treasury Department published in the Federal Register [amended regulations](#) relating to the Form TD F 90-22.1, Report of Foreign Bank and Financial Accounts (FBAR). This Workbook has been revised to reflect the new regulations.**

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### Introduction

The Bank Secrecy Act gave the Department of Treasury authority to establish recordkeeping and filing requirements for United States persons with financial interests in or signature authority over financial accounts maintained with financial institutions in foreign countries. This provision of the law requires that a Form TD F 90-22.1, Report of Foreign Bank and Financial Accounts (FBAR) be filed if the aggregate balances of such foreign accounts exceed \$10,000 at any time during the year (See Exhibit 1, Form TD F 90-22.1)

On April 10, 2003, the Financial Crimes Enforcement Network delegated enforcement authority to the Internal Revenue Service. The IRS is now responsible for:

- Investigating possible civil violations.
- Assessing and collecting civil penalties.
- Issuing administrative rulings.

### Objectives

- Learn the purpose of the FBAR regulation.
- Determine who must file the FBAR.
- Determine the FBAR filing requirements.
- Understand the civil and criminal penalties that may be applicable for noncompliance with the

- FBAR filing requirements.
- Determine who is exempt from the FBAR filing requirements.

## Purpose of the 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.

## Who Must File the FBAR?

A United States person must file an FBAR report if that person has financial interest in or signature authority over any financial account(s) in a foreign country and the aggregate value of these account(s) **exceeds \$10,000 at any time** during the calendar year.

The **account value** is the largest amount of currency and/or monetary instruments that appear on any quarterly or more frequently issued account statement for the applicable year. If a periodic account statement is not issued, the maximum account value is the largest amount of currency and/or monetary instruments in the account at any time during the year. If the aggregate value of accounts exceeds \$10,000 at any time during the calendar year, an FBAR must be filed.

## Definition of a United States Person

A "United States person" is:

- A citizen or resident of the United States.
- A domestic partnership.
- A domestic corporation.
- A domestic trust or estate.

## Definition of Foreign Financial Accounts

Foreign financial accounts include the following accounts:

- Bank accounts such as savings accounts, checking accounts, and time deposits.
- Securities accounts such as mutual funds, brokerage accounts, and securities derivatives or other financial instruments accounts including commodity futures or options account.
- Insurance policy with a cash value (such as a whole life insurance policy) and annuity policy with a cash value.
- Any other account(s) maintained in a foreign financial institution or with a person doing business as a financial institution.

And are located outside the following:

- United States
- Northern Mariana Islands
- District of Columbia
- American Samoa
- Guam
- Puerto Rico
- U.S. Virgin Islands

- Trust Territories of the Pacific Islands

### Definition of Financial Interest

Financial interest includes accounts for which the U.S. person is the owner of record or has legal title, whether the account is maintained on his or her own benefit or for the benefit of others, including non-United States persons.

Financial interest also includes accounts where the owner of record or holder of legal title is a person acting as an agent, nominee, or in some other capacity on behalf of a U.S. person.

**Example:** John, a U.S. citizen who resides in Mexico, granted his brother Paul, a U.S. citizen, a power of attorney to access his Mexican bank accounts. Paul is the owner of record.

John has a financial interest in the account. Paul is acting only as an attorney on behalf of John. Paul also has a financial interest in the account, since he is the owner of record. Both John and Paul must file an FBAR.

**Example:** Given the information in the above example, if Paul is a Mexican citizen, must he file the FBAR?

No, Paul is not considered to be a U.S. person.

Financial interest in an account also includes a corporation in which a U.S. person directly or indirectly owns more than 50 percent of the total value of the shares of stock.

**Example:** A Florida corporation that owns 100 percent of a foreign company that has foreign financial accounts has to file an FBAR because the corporation is a U.S. person and the owner of record or holder of legal title is a corporation that directly owns more than 50 percent of the total value of the shares of stock.

**Example:** A U.S. person who owns 75 percent of the Florida corporation in the previous example has to file an FBAR because he indirectly owns more than 50 percent of the total value of shares of stock of the foreign corporation.

Financial interest also includes an account where the owner of record or holder of legal title is:

- A partnership in which the U.S. person owns interest in more than 50 percent of the profits; or
- A trust in which the U.S. person either has a present beneficial interest in more than 50 percent of the assets or receives more than 50 percent of the current income.

### Definition of Signature Authority

A U.S. person has account signature authority if that person can control the disposition of money or other property in the account by direct communication (whether in writing or otherwise) to the bank or other financial institution with whom the account is maintained.

**Example:** A person who has the power to direct how an account is invested but cannot make disbursements or deposits to the account does not have to file an FBAR because the person has no power of disposition.

### Reporting for Joint Accounts

If two persons jointly maintain an account, or if several persons each own a partial interest in an

account, then each U.S. person has a financial interest in that account and each person must file an FBAR.

A spouse having a joint financial interest in an account with the filing spouse should be included as a joint account owner in Part III of the FBAR. The filer should write "spouse" on line 26 after the last name of the joint spousal owner. If the filer's spouse is required to report only jointly owned financial accounts that are reported on the filer's FBAR, the filer's spouse need not file a separate FBAR but must also sign the filer spouse's FBAR to fulfill his or her reporting obligation. If the filer's spouse is required to file an FBAR for any account that is not jointly owned with the filer, the filer's spouse must file a separate FBAR for all of the accounts, including those owned jointly with the other spouse.

## Recordkeeping

FBAR records should be kept for five years from the due date of the report, which is June 30 of the following calendar year. The records should contain the following:

- Name maintained on each account.
- Number or other designation of the account.
- Name and address of the foreign bank or other person with whom the account is maintained.
- Type of account.
- Maximum value of each account during the reporting period.

## Filing Exceptions

The following types of accounts and persons are excepted from the FBAR filing requirement.

- Certain foreign financial accounts jointly owned by spouses. The spouse of an individual who files an FBAR is not required to file a separate FBAR if all the financial accounts that the nonfiling spouse is required to report are jointly owned with the filing spouse.
- United States person included in a consolidated FBAR.
- Correspondent/Nostro Accounts; accounts maintained by banks and used solely for bank-to-bank settlements.
- Foreign financial accounts owned by any government entity of the United States and financial accounts owned by an international financial institution in which the United States government is a member.
- IRA owners and beneficiaries.
- Participants in and beneficiaries of tax-qualified retirement plans described in Internal Revenue Code 401(a), 403(a) or 403(b).
- Certain individuals with signature authority over but no financial interest in a foreign financial account, including:
  - Banks examined by the Office of the Comptroller of the Currency, the Board of Governors of the Federal Reserve System, the Federal Deposit Insurance Corporation, the Office of Thrift Supervision, or the National Credit Union Administration.
  - Financial institutions registered with and examined by the Securities and Exchange Commission or Commodities Futures Trading Commission.
  - Authorized service providers that provide services to investment companies registered with the SEC.
  - Entities with a class of securities listed (or American depository receipts listed) on any U.S. national securities exchange.
  - U.S. corporations with a class of equity securities registered (or American depository receipts in respect of equity securities registered) under section 12(g) of the Securities Exchange Act (for example, corporations with more than \$10 million in assets and more than 500 shareholders of record).
- Trust beneficiaries with a financial interest if the trust, trustee or agent of the trust is a U.S.

- person and files an FBAR disclosing the trust's foreign financial accounts.
- Foreign financial accounts maintained on a United States military banking facility located outside of the United States.

## Penalties

A person who is required to file an FBAR and fails to properly file may be subject to civil penalties, criminal penalties or both. The application of civil penalties was significantly increased for FBAR violations occurring after Oct. 22, 2004.

- Civil Penalties (31 USC §5321)
  - Non-willful violation penalties were established for individuals and entities up to \$10,000. If there is reasonable cause for the failure and the balance in the account is properly reported, no penalty will be imposed.
  - A person who willfully fails to report an account or account identifying information may be subject to a civil monetary penalty equal to the greater of \$100,000 or 50 percent of the balance in the account at the time of the violation.
- Criminal Penalties (30 USC §5322)
  - Criminal violations of the FBAR rules can result in a fine of not more than \$250,000 or five years in prison, or both. Where the failure to file an FBAR is part of a pattern of illegal activity, the fine is up to \$500,000 and up to 10 years in prison, or both.

## Putting It All Together

In this lesson you learned:

- What is the purpose of the FBAR regulation.
- Who must file the FBAR.
- What are the FBAR filing requirements.
- What civil and criminal penalties may be assessed for noncompliance with FBAR filing and recordkeeping requirements.
- Who is exempt from the FBAR filing requirement.

## Exercises

### 1) True or False

All foreign accounts of U. S. persons must be reported to the Department of Treasury.

### 2) Which of the following is a U.S. person? (Circle all that apply.)

- a. a citizen
- b. a domestic corporation
- c. a domestic partnership
- d. a domestic trust or estate
- e. all of the above

### 3) True or False

A savings account may be a type of foreign financial account.

### 4) True or False

An FBAR is not required if the foreign account generates neither interest nor dividend income.

**5) True or False**

If a person has a foreign account in the year 2012 that requires reporting, the FBAR is due April 15, 2013.

**6) How long should account holders keep a copy of the filed FBAR?**

- a. 3 years
- b. 5 years
- c. 7 years
- d. 10 years

**7) Does a U.S. person need to file an FBAR for his eurodollar account in the Cayman Islands?**

**8) A N.Y. corporation owns a foreign company that has foreign accounts. The corporation will file an FBAR for the foreign company's accounts. Does a shareholder who owns 65 percent of the company's stock need to file an FBAR?**

**9) True or False**

Accounts in U.S. military banking facilities, operated by a United States financial institution to serve U.S. Government installations abroad, are not reportable on a FBAR.

(See Exhibit 2 for answers to exercises.)

**Exhibit 1**

[Form TD F 90-22, Report of Foreign Bank and Financial Accounts \(PDF\)](#)

**Exhibit 2, Answers to Exercises**

**1) False**

Only foreign accounts with an aggregate value of more than \$10,000 at any time during the calendar year must be reported.

**2) e.**

All of the choices are a U.S. person. A United States person is:

- A citizen or resident of the United States
- A domestic partnership
- A domestic corporation
- A domestic estate or trust

**3) True**

A "financial account" includes bank, securities, securities derivatives or other financial instruments accounts. The term also means any savings, demand checking, deposit, or any other account maintained with a financial institution.

**4) False**

An FBAR must be filed whether or not the foreign account generates any income.

**5) False**

The FBAR is due by June 30, 2013. The FBAR must be received by the Department of Treasury on or before June 30 of the subsequent year after the account holder meets the more than \$10,000 threshold.

**6) b.**

Copies of the FBAR must be kept for a period of five years.

**7) Yes**

The Cayman Islands account is a foreign account.

**8) Yes**

An FBAR must be filed by any owner that directly or indirectly owns more than 50 percent of the total value of the shares of stock.

**9) True**

Accounts in U.S. military banking facilities, operated by a United States financial institution to serve U.S. Government installations abroad, are not reportable.

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