



5.3 FBAR

3. Potential Penalties

4. Distinctions Between FBAR and Form 8938



5.3 FBAR Understanding Financial Accounts

1. Filing Requirements and Due Dates

2. Covered Accounts

FBAR Purpose

- Combat the use of foreign financial accounts to circumvent US law
- Provide leads to investigators to identify and trace funds used for illicit purposes
- Serve as an additional prosecutorial tool to combat money laundering and other crimes

FBAR- Who Must File?

Any United States Person who has a direct or indirect financial interest in or signature authority over foreign financial accounts, if the aggregate value of accounts exceeds \$10,000 at any time during calendar year.

United States

Any geographical area located in the 50 United States, Washington DC, Indian lands, and US Commonwealths; Puerto Rico, Northern Mariana Islands, US Territories; US Virgin Islands, Guam, and American Samoa

Person

Individual; Citizen or Resident under IRC 7701(b)

Domestic Entity; Corporation, Partnership, LLC, Trust,
or Estate.

U.S. Residents

U.S. Residents mean:

- U.S. Resident 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.

Direct Financial Interest

Includes account where US Person is owner of record or has legal title whether:

- Account maintained for his or her own benefit of
- For benefit of others, including non-US persons

Indirect Financial Interest

Account where the owner of record or holder of legal title is an:

- Individual: US Person has power of attorney over the foreign financial account
- Corporation: US Person owns directly or indirectly more than 50% of total value of stock.
- Partnership: US Person owns interest in more than 50% of profits or capital
- Trust: US Person has beneficial interest in more than 50% of assets or receives more than 50% of current income

Signature Authority

A person who can control disposition of money or other property in account by direct communication to financial institution maintaining financial account.

Signature Authority Exceptions

Officer or employee (no financial interest) of:

- Bank examined by US federal regulators
- SEC or CFTC registered institution
- Authorized Service Provider (SEC registered)
- US listed entity (foreign or domestic)
- A US subsidiary of a US listed entity
- Entity registered under 12(g) of SEC

Foreign

Any geographical area located outside the 50 United States, Washington DC, Indian lands and

- US Commonwealths; Puerto Rico, Northern Mariana Islands
- US Territories; US Virgin Islands, Guam, American Samoa

Financial Accounts

- Bank accounts
- Mutual funds or similar pooled fund
- Securities derivatives
- Annuity or insurance policy with a cash value
- Foreign retirement accounts
- Offshore on line gaming accounts

Valuing Accounts for Filing

- Did the aggregate value of all accounts exceed \$10,000 on any day during the year?
- Account statements may be relied on to determine account value
- Accounts stated in non-US currency, convert by using Treasury's Financial Management Service exchange rate from last day of calendar year

Valuing Accounts for Reporting

- Each account valued and reported separately at its maximum value
- Periodic statements may be relied upon
- Value in local currency is converted to US dollars at 12/31 rate

FBAR Filing Exceptions

- Consolidated FBAR
- IRS and US tax qualified retirement plans owners, participants and beneficiaries
- Military banking facility
- Publicly-traded entity exception
- Others

FBAR for Joint Account

If two or more US Persons have a financial interest in the same account, then each person may have to file an FBAR and report the entire value of the jointly-owned accounts

Filing FBAR

The due date filing Fin Cen Form 114 is the same as the due date of your tax return April 15, 2020. However if you alive abroad, your FBAR filing deadline will match the automatically extended deadline for your tax return June 15, 2020.

FBARs are filed electronically through the BSA W-Filing System. This system supports electronic filing of Bank Secrecy Act (BSA) forms through FinCEN secure network.

Extensions granted for federal tax returns do not extend due date for FBAR filings.

Retain records for five years

BSA E- Filing System

The BSA E-Filing system supports electronic filing of BSA forms, provides a faster, more convenient, more secure, and cost-effective method for submitting BSA forms.

FBAR e-filing, mandatory as of July 1, 2013

E-File advantages;

- Streamlined form submission process
- No cost and faster routing of information
- Greater data security and privacy
- Acknowledgement received

Penalties

Civil penalties (31 USCS Rule 5321)

- Non-willful violation
- Willful

Criminal penalties (31 USCS Rule 5322)

- Willful
- Knowingly and willingly filing false FBAR

Civil penalties may be imposed in addition to criminal penalties

FBAR and Professional Responsibility

Rule 10.22 Diligence as to Accuracy (Circular 230)

- Should make reasonable inquiries when client provides information suggesting participation in overseas transactions/accounts subject to FBAR
- Should advise client of potential penalties at associated with non compliance of FBAR requirements

Two Reporting Regimes

FinCEN Form 114, Report of Foreign Bank and Financial Accounts (FBAR)

- Title 31, Rule 5314
- Stand-alone report, must be electronically filed on or before April 15, 2020. An automatic extension can be granted until October 15th for individuals who missed the April 15th deadline.

Form 8938, Statement of Specified Foreign Financial Assets

- Title 26, Rule 6038D
- Attached to Income Tax Return

Two Reporting Regimes (Cont.)

A taxpayer may have both an FBAR (Title 31) and F8939/FATCA (Title 26) reporting requirement

- Form 8938 disclosure does not relieve a taxpayer of any required FBAR reporting requirement (vice-versa)
- FBAR and for 8938 penalties can be asserted concurrently

FBAR's reporting requirement has a lower threshold of 10,000, while FATCA covers a wider scope of foreign financial accounts and foreign assets