

Foreign Account Reporting Requirements (FBAR)

Some years ago, Senate hearings revealed that many Americans were hiding millions of dollars in Swiss and other foreign banks and not reporting the income from these accounts. They also were not complying with foreign bank account reporting (FBAR) rules that require every U.S. citizen and resident who has a financial interest in or signature or other authority over any foreign financial accounts (including bank, securities, or other types of financial accounts in a foreign country) to report that relationship if the aggregate value of the accounts exceeds \$10,000 at any time during the year.

As a result, the Treasury Department began aggressively pursuing U.S. taxpayers with offshore accounts through its Financial Crimes Enforcement Network (FinCEN) and through international banking channels. New laws were enacted that allowed FinCEN to begin forcing foreign banks and financial institutions to reveal the names of Americans with accounts.

Although FBAR reporting was legally required as far back as 1970, few Americans knew about it or took it seriously. This has changed in the last few years because of FinCEN's aggressive search for violators and the draconian penalties that apply. For non-willful violations, civil penalties up to \$10,000 may be imposed; the penalty for willful violations is the greater of \$100,000 or 50% of the account's balance at the time of the violation. Willful violators are also subject to criminal prosecution, which can result in fines up to \$250,000 and jail time up to five years!

CAUTION: Schedule B of the Form 1040 tax return asks if you have a financial interest in or signature authority over a financial account located in a foreign country. If you answer "yes" but don't file the FBAR, the IRS may consider your failure to file "willful," which means it can impose the larger fines and jail time penalties.

Keep in mind that "financial account" includes securities, brokerage, savings, checking, deposit, time deposit, or other accounts at a financial institution. Commodity futures and options accounts, mutual funds, and even non-monetary assets such as gold are also included. It becomes a "foreign financial account" if the financial institution is located in a foreign country. If you own shares of a foreign stock or a mutual fund that invests in foreign stocks, and the stock or fund is held in an account

at a financial institution or brokerage located in the U.S., this is not considered a foreign financial account, and the FBAR rules don't apply to it. An account maintained with the branch of a foreign bank physically located in the U.S. also is not a foreign financial account.

You may have an FBAR requirement and not even realize it. For instance, perhaps you have relatives residing in a foreign county and they have put you on their bank account in case something happens to them. If the value of the account exceeds \$10,000 at any time during the year, you will need to file the FBAR. Or if you are gambling on the Internet, that online casino may be located in a foreign country, and if your account exceeds the \$10,000 limit at any time during the year, you will have an FBAR reporting requirement.

FBAR reporting is accomplished by filing FinCEN Form 114 on or before June 30 of the following year, and there are currently no extensions. However, beginning for returns due in 2017, the due date changes to April 15 and a six-month extension will be available.

You may also have an additional requirement to file Form 8938, which is similar to the FBAR requirement. Form 8938 applies to a much wider range of foreign assets, but with a higher threshold before filing is required.

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