



**Be adventurous.**

Making your tax world easier to travel.

GTN Newsletter – March 2019

## Foreign Bank Account Reporting

**Tracy Novotny, Director**

GTN West Central

phone: +1.763.252.0320 | email: [tnovotny@gtn.com](mailto:tnovotny@gtn.com)

It is that time of year again when US taxpayers around the world gather information and prepare to file their annual tax returns. US citizens and green card holders working outside of the US are often surprised by this ongoing filing requirement. Citizens of other countries who become tax residents in the US are similarly taken aback when told that their worldwide income is now reportable on a US tax return.

Despite media coverage over the last decade, many taxpayers remain unaware of another potential reporting requirement, one for their non-US (foreign) financial accounts. Here, a US person may have to file the Financial Crimes Enforcement Network (FinCEN) Form 114, Report of Foreign Bank and Financial Accounts (FBAR), if the aggregate value of non-US financial accounts exceeds USD \$10,000 for even one day in a calendar year.

Evolving US case law and US Department of Justice scrutiny make it critical for taxpayers to understand and comply with the FBAR rules. Below we identify key questions and answers relating to FBAR filing requirements. By understanding the rules and taking the appropriate steps to achieve compliance, US persons can safely maintain their non-US accounts and have peace of mind.

### **Who must file an FBAR?**

A US person with financial interest in or signature authority over non-US financial accounts must report these accounts to the US Department of the Treasury annually (on or before April 15, with automatic extension to October 15) if the aggregate account balances exceed USD \$10,000 at any time during the year.

### **Who is a “US person” for FBAR purposes?**

Any “US person” is subject to the foreign account reporting rules. This includes US citizens and residents, and legal entities such as corporations, partnerships, and trusts created under US laws. It is important to note that the ability to claim non-residency for income tax purposes through application of a US income tax treaty with another country does not enable a person to avoid the FBAR filing requirement.

### **What is a Foreign Bank / Financial Account?**

When people think of foreign financial accounts, a bank account is usually the first type that comes to mind. Savings and checking accounts maintained with a branch of a financial institution (such as a bank) that is physically located outside the US are certainly included in the definition of an account needing consideration for FBAR reporting purposes.

However, the definition is broader than this. It includes securities or brokerage accounts, whole life insurance accounts, foreign retirement accounts (not held with a government), and annuities with a cash value maintained outside the US. Bitcoin or other virtual currency accounts should be reported on the FBAR if the account is held in a foreign exchange.

Additionally, the reporting rules apply to US persons who have either a financial interest in, or signature authority over, a foreign account. This affects officers or employees who have the ability to control the disposition of assets in a company's foreign account by direct communication (whether in writing or otherwise) to the foreign financial institution. For example, the Treasurer of a company may have signature authority over (but no financial interest in) his employer's foreign account or the foreign account of a subsidiary of his employer. In this situation, the Treasurer would be subject to the FBAR filing requirements.

For those US persons with an interest in a foreign pension fund, the filing rules do not provide a blanket exemption; however, in certain circumstances, the foreign pension fund may not need to be reported on the FBAR. While a US person may meet the criteria for not reporting the pension on the FBAR, there may be reporting requirements on the US income tax return. The specifics can get very complex. We recommend that US persons with such holdings review their filing responsibilities with their tax or legal advisor.

#### **What information must be reported on the FBAR?**

The account information required to be reported includes the maximum value of the account during the year, the type of account, the account number, and the name and address of the institution. The form must be electronically signed by the account owner. Special rules may apply if the account is jointly owned.

If the form is filed after the extended October 15 deadline, the form includes a place where the reason for late filing needs to be added. As previously mentioned, the form needs to be filed electronically; paper filings are not accepted.

#### **Isn't the FBAR part of the US Form 1040?**

People often assume the foreign bank account reporting process is part of their US individual income tax return preparation, but it is a separate report and submission.

Though the filing of the US Form 1040 does not satisfy the filing reporting requirements for foreign bank accounts, there is a connection to US Form 1040. Earnings from foreign accounts must be reported and taxed on US Form 1040 and the state income tax return. In addition, the taxpayer is required to disclose on Schedule B whether they own any foreign bank accounts and may be required to report the accounts on Form 8938, Statement of Specified Foreign Financial Assets. Failure to answer the question appropriately on Schedule B has been used as evidence of willful noncompliance in recent court cases (see the question regarding potential penalties below).

#### **When is the FBAR filing due?**

The FBAR reports financial information for a given calendar year. The report must be received by the US Department of the Treasury on or before April 15 of the year following the calendar year being reported (i.e., the FBAR reporting information for calendar year 2018 would be due by April 15, 2019). A six-month extension to October 15 is available. This additional extension is automatically granted; a specific extension request is not required.

## Extended Filing Deadline for Certain Individuals

FinCEN issued Notice 2018-1 that extends the FBAR filing deadline for calendar years 2010 through 2018 until April 15, 2020 for the following individuals:

- An employee or officer of a covered entity who has signature or other authority over, and no financial interest in, a foreign financial account of another entity more than 50 percent owned, directly or indirectly, by the entity (a “controlled person”).
- An employee or officer of a controlled person of a covered entity who has signature or other authority over, and no financial interest in, a foreign financial account of the entity or another controlled person of the entity.
- An employee or officer of an investment advisor registered with the Securities and Exchange Commission who has signature or other authority over, but no financial interest in, a foreign financial account of persons that are not registered investment companies.

This extension applies to individuals with signature authority over accounts held during the 2018 calendar year, as well as all reporting deadlines previously extended by the earlier notices (i.e., for calendar years 2010 through 2017). Notice 2018-1 is titled *FBAR Filing Requirement for Certain Financial Professionals - Extended Filing Date Related to Notice 2017-1*, dated December 4, 2018, and can be found on the FinCEN website.

*Important* - The extension does not apply to foreign financial accounts in which these individuals have an actual financial interest or to personal accounts over which they have signature or other authority. Thus, an FBAR filing may be required to report calendar year 2018 accounts by April 15, 2019 (or by extension to October 15, 2019). In these situations, an amended FBAR would need to be filed later to report any corporate accounts not originally required to be reported because of the FinCEN extension.

### **What are the potential penalties for noncompliance?**

Current penalties for noncompliance with the FBAR rules are severe. The IRS provides a list of potential penalties in the [IRS FBAR Reference Guide](#). A sample of potential FBAR non-reporting penalties (not income tax related penalties) are as follows:

- Taxpayers who are found to have willfully failed to file or retain records of account can receive a civil penalty as high as the greater of \$100,000 or 50% of the amount in the account at the time of the violation.
- Criminal penalties can apply for cases of willful noncompliance and can include *prison* and fines of up to \$500,000.
- Non-willful violations are subject to a civil penalty of up to \$12,459 per violation.

Clearly, the penalty structure is such that US persons should take their obligation to file FBAR forms very seriously as well as to pay the tax associated with income from the accounts.

### **What can I do if I have not complied with the FBAR filing requirements?**

The IRS recognizes that some US taxpayers may not be aware of the filing and disclosure requirements. They understand that these taxpayers should not be exposed to harsh penalties for a non-willful failure to comply with these reporting requirements. As a result, the IRS currently has programs available to help taxpayers become compliant.

The IRS allows individuals who do not have a need to disclose additional income through delinquent or amended tax returns to file late FBARs through the Delinquent FBAR Submission Procedures. Taxpayers need to meet certain criteria in order to file under these procedures. The IRS provides guidance on the eligibility requirements and submission procedures: [IRS Delinquent FBAR Submission Procedures](#).

For taxpayers who have non-willfully failed to report foreign financial assets, submit information returns, report income, and pay tax due, the IRS provides Streamlined Filing Compliance Procedures. Depending on whether the taxpayer resides in the US or outside of the US, separate procedures will apply. While the submission requirements for taxpayers residing in or out of the US are similar, the most notable difference is that taxpayers residing in the US are subject to a miscellaneous offshore penalty of 5%. The IRS provides detailed information for those eligible for the procedures: [IRS Streamlined Filing Compliance Procedures](#).

If the IRS has initiated a civil examination of your returns for any taxable year, you are not eligible for the IRS Streamlined Filing Compliance Procedures.

Many foreign financial institutions are currently providing taxpayers with reports detailing the financial account information that has been shared with the IRS. As such, it is only a matter of time before the IRS learns about your foreign accounts. Given the complexity and potential penalties, we recommend you contact your tax or legal advisor should you have any questions regarding delinquent FBAR filings.

Given the potential cost and personal risk associated with improperly reporting non-US financial and bank accounts, it is critical to understand and comply with the rules. GTN focuses exclusively on handling the tax challenges faced by today's mobile workforce. Schedule your free, 30-minute consultation with an expert from our team.

FREE CONSULTATION

If you have questions regarding this, please contact me at [tnovotny@gtn.com](mailto:tnovotny@gtn.com) or +1.763.252.0320, or visit our [Mobility Tax Services](#) page to see what assistance we can provide.

*The information provided above is for general guidance only and should not be utilized in lieu of obtaining professional tax and/or legal advice.*

**Author: Tracy Novotny**



Tracy Novotny is a Director in GTN's West Central region. She has over 10 years of experience in the global mobility service area and is recognized by her clients for her focus on customer experience and an ability to explain complex tax matters in an understandable and actionable manner. She is a frequent writer and speaker on mobility tax topics, including cross-border and domestic payroll, delinquent filings, and business travelers.

