



## **IRS Deadline for Foreign Financial Accounts Reporting is June 30, 2012**

**What is a FBAR and who must file?** The FBAR isn't a new filing requirement and isn't a tax return. Initially implemented by the Bank Secrecy Act in 1972, the FBAR form is used to report financial interest in, or signature authority over, one or more financial accounts located in foreign countries. Generally, if a taxpayer owns or has **signature authority** over one or more financial accounts in a foreign country and the total of the foreign investments exceeds \$10,000, then these taxpayers are required to file an IRS [Form TD F 90-22.1](#). This form must be received by the IRS no later than June 30, 2012—not just mailed by that date. The IRS requires you to report all significant account information including both the average daily balance and the highest balance for the year.

This reporting requirement is not just for bank accounts. Brokerage accounts, mutual funds, annuities or any other type of investment account is also included in the reporting requirements. Currently, foreign credit cards are not considered a financial account unless you use the card as a debit card or in a check cashing card capacity. Once a foreign credit card is used as a debit card or check card, however, a FBAR form must be filed.

**Are the non-compliance penalties severe?** If you failed to file because you did not know, a civil penalty of \$10,000 per violation is imposed. Thus, if a taxpayer has two accounts and unknowingly fails to file for three years, penalties could be as high as \$60,000.

Knowingly violating the reporting requirement is even more severe, carrying a penalty of the greater of \$100,000 or 50% of the balance in the account. Additionally, the IRS may invoke criminal penalties including a fine of up to \$250,000 and imprisonment of 5 years. What constitutes "knowing?" The IRS appears to be taking the issues of penalties quite seriously and does not allow taxpayers to merely bury their head in the sand. Under the Internal Revenue Manual, a "willful blindness" may constitute "knowingly" violating the reporting requirement. See [IRS Manual, 4.26.16.4.5.3, Paragraph 6](#).

**Now that you have my attention, are there any other reporting requirements?** Maybe. FACTA takes the FBAR one step further and generally requires taxpayers holding foreign assets with an aggregate value of more than \$50,000 to report certain information concerning those assets on an IRS Form 8938. This form was required for the 2011 tax year and should be included with this year's tax return.

With regards to penalties under FATCA, there is an initial penalty of \$10,000 per violation that jumps to \$50,000 if the taxpayer continues to fail to report following IRS notification. Additionally, if any tax underpayments are attributable to the non-disclosed funds, the IRS imposes a stiff 40% understatement penalty on the additional tax.

**If I don't file, how will the IRS know?** Accountability is fast approaching. FACTA extends beyond reporting requirements by taxpayers. FACTA requires foreign financial institutions ("FFI") to report to the IRS all financial accounts held by U.S. taxpayers and resident aliens in the United States if the balances in such accounts exceed \$50,000. If a FFI refuses to be compliant with the law, they face a stiff withholding tax of 30% on all relevant US-sourced payments paid to them, such as dividends and interest paid by U.S. corporations. The same penalty to the financial institution will also be applied when a sale of a relevant U.S. asset occurs. The only recourse foreign financial institutions would have is to avoid all business dealings with the United States.

The impact of these new laws will be far reaching, particularly in well-known of offshore banking locations such as the Caribbean, Luxembourg, Singapore and Hong Kong. The law requires agreements between the IRS and the FFI to be complete no later than July 1, 2013 and reporting implementation to begin in the first quarter of 2014. Thus, count on the IRS knowing about your financial accounts in foreign countries by 2014.

**If the FBAR has been around since 1972, why are the reporting requirements just being enforced now?** While it is clear our economy is more global and the IRS believes that billions of tax dollars are lost every year through foreign banks, the government's goals extend well beyond collection of more tax revenue. This major push was part of the U.S. Patriot Act passed in 2001 and is controlled by Treasury Department's Financial Crimes Enforcement Network ("FinCEN"). This bureau of the Treasury Department serves to enforce laws against money laundering and organized crime, including illegal drug trade and terrorist financing activities.

**Where does reporting end?** The complexities of these sweeping laws have yet to be fully understood and the push-back by both taxpayers as well as foreign entities has been enormous. Aside from the increased anti-U.S. sentiment, the final resolution for many of these matters will likely only be resolved in international courts. In the meantime, taxpayers are advised to find a reputable tax professional to help guide them through these complex reporting issues.

### **About the Authors**

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