

# Guide to Foreign Bank and Financial Account Reporting (FBAR) and the FinCEN Form 114

The Tax Samaritan guide is intended to provide general information for U.S. taxpayers who have an obligation to file the FBAR or are unsure about whether they have an obligation to file.

At Tax Samaritan, our philosophy is that it is important that all taxpayers have a baseline understanding of their U.S. taxation and reporting requirements because whether you are self-preparing your own returns or work with a professional, nobody knows your situation better than yourself and together we can bring about more optimal outcomes on your return.

While our FBAR guide will help you understand the basics of FBAR reporting, it is not intended as a replacement for professional tax representation and preparation. For the sake of full disclosure, we believe that the risks and penalties of an inaccurate and incomplete FBAR disclosure in today's FATCA environment and era of global information sharing far outweigh the potential savings.

## Background Of The FBAR

The Bank Secrecy Act (BSA) gave the Department of Treasury authority to collect information from United States persons who have financial interests in or signature authority over financial accounts maintained with financial institutions located outside of the United States.

This provision of the BSA requires that the FinCEN Form 114, Report of Foreign Bank and Financial Accounts (FBAR) be filed if the aggregate maximum values of the foreign financial accounts exceed \$10,000 at any time during the calendar year.

FinCEN Report 114 replaces the Treasury Form TD F 90-22.1 and is used to report a financial interest in or signature authority over a financial account. The form is available online and must be electronically filed through the BSA E-Filing System.

In April, 2003, the Financial Crimes and Enforcement Network (FinCEN) delegated enforcement authority regarding the FBAR to the Internal Revenue Service (IRS). The IRS is now responsible for:

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

## Purpose Of The FBAR

Overseas financial accounts are maintained by U.S. persons for a variety of legitimate reasons, including convenience and access. However, the FBAR is required because foreign financial institutions are generally not subject to the same reporting requirements as domestic financial institutions and as a result many taxpayers have historically utilized offshore accounts to escape U.S. taxation on earnings from these foreign accounts.

As a result of this gap in reporting income subject to taxation, the FBAR is used as a tool used by the United States government to identify persons who may be using foreign financial accounts to circumvent United States tax law.

## Who Must File The FBAR?

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

## Who Is A United States Person?

A “United States person” means:

- A citizen or resident of the United States;
- An entity created or organized in the United States or under the laws of the United States. The term “entity” includes but is not limited to, a corporation, partnership, and limited liability company;
- A trust formed under the laws of the United States; or
- An estate formed under the laws of the United States.
- Entities that are United States persons and are disregarded for tax purposes may be required to file an FBAR. The federal tax treatment of an entity does not affect the entity’s requirement to file an FBAR.

FBARs are required under a Bank Secrecy Act provision of Title 31 and not under any provisions of the Internal Revenue Code.

## United States Resident

A United States resident is an alien residing in the United States. To determine if the filer is a resident of the United States, apply the residency tests in 26 U.S.C. § 7701 (b). When applying the § 7701 (b) residency tests use the following definition of United States: United States includes the States, the District of Columbia, all United States territories and possessions (e.g., American Samoa, the Commonwealth of the Northern Mariana Islands, the Commonwealth of Puerto Rico, Guam, and the United States Virgin Islands), and the Indian lands as defined in the Indian Gaming Regulatory Act.

**Example:** *Matt is a citizen of Australia. He has been physically present in the United States every day of the last three years. Because Matt is considered a resident by application of the rules under 26 U.S.C. § 7701 (b), he is required to file an FBAR.*

**Example:** *Kyle is a permanent legal resident of the United States. Kyle is a citizen of the United Kingdom. Under a tax treaty, Kyle is a tax resident of the United Kingdom and elects to be taxed as a resident of the United Kingdom. Kyle is*

required to file an FBAR. Tax treaties with the United States do not affect FBAR filing obligations.

## **Financial Interest**

A United States person has a financial interest in the following situations:

1. The United States person is the owner of record or holder of legal title, regardless of whether the account is maintained for benefit of the United States person or for the benefit of another person, including non-United States persons.
2. The owner of record or holder of legal title is a person acting as an agent, nominee, attorney, or a person acting on behalf of the United States person with respect to the account.

**Example:** Corey is a United States citizen. His brother Fred maintains bank accounts in Mexico on behalf of Corey. The accounts are held in Fred's name but Fred only accesses the accounts in accordance with his brother's instructions. Corey has a financial interest in the Mexican bank accounts for FBAR reporting purposes. If his brother Fred is a United States citizen or resident, he also has an FBAR reporting requirement with respect to the accounts.

3. The owner of record or holder of legal title is a corporation in which a United States person owns directly or indirectly: (i) more than 50 percent of the total value of shares of stock; or (ii) more than 50 percent of the voting power of all shares of stock.

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

**Example:** A United States person who owns 75 percent of the California 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 that owns foreign financial accounts.

4. The owner of record or holder of legal title is a partnership in which the United States person owns directly or indirectly: (i) an interest in more than 50 percent of the partnership's profits (distributive share of partnership income taking into account any special allocation agreement); or (ii) an interest in more than 50 percent of the partnership capital.
5. The owner of record or holder of legal title is a trust of which the United States person: (i) is the trust grantor; and (ii) has an ownership interest in the trust for United States federal tax purposes. See 26 U.S.C. §§ 671- 679 to determine if a grantor has an ownership interest in a trust.

**Example:** Mary, a United States citizen, is a grantor of a Foreign Asset Protection Trust but does not control trust assets nor does she receive distributions from the trust. Mary, as grantor and deemed owner of the trust assets for federal tax purposes, is required to report the trust's foreign financial accounts.

7. The owner of record or holder of legal title is a trust in which the United States person has a greater than 50 percent present beneficial interest in the assets or income of the trust for the calendar year.

**Example:** Connie, a United States citizen, has a remainder interest in a trust that has a foreign financial account. Connie is not required to report the trust's foreign financial account because a remainder interest is not considered a present beneficial interest for FBAR purposes.

7. The owner of record or holder of legal title is any other entity in which the United States person owns directly or indirectly more than 50 percent of the voting power, total value of equity interest or assets, or interest in profits.

### **Signature Authority**

Signature authority is the authority of an individual (alone or in conjunction with another individual) to control the disposition of assets held in a foreign financial account by direct communication (whether in writing or otherwise) to the bank or other financial institution that maintains the financial account.

**Example:** Kayla, a United States resident, has a power of attorney on her elderly parents' accounts in India, but she has never exercised the power of attorney. Kayla is required to file an FBAR if the power of attorney gives her signature authority over the financial accounts. Whether or not the authority is ever exercised is irrelevant to the FBAR filing requirement.

### **Financial Account**

A financial account includes the following types of accounts:

- Bank accounts such as savings accounts, checking accounts, and time deposits (or other person performing the services of a financial institution),
- Securities accounts such as brokerage accounts and securities derivatives or other financial instruments accounts,
- Commodity futures or options accounts,
- Insurance policies with a cash value (such as a whole life insurance policy),
- Annuity policy with a cash value,
- Mutual funds or similar pooled funds (i.e., a fund that is available to the general public with a regular net asset value determination and regular redemptions),
- Offshore gambling accounts (online or brick-and-mortar),
- Any other accounts maintained in a foreign financial institution or with a person performing the services of a financial institution.

**Example:** A Canadian Registered Retirement Savings Plan (RRSP), Canadian Tax-Free Savings Account (TFSA), Mexican individual retirement accounts (Fondos para el Retiro) and Mexican Administradoras de Fondos para el Retiro (AFORE) are foreign financial accounts reportable on the FBAR.

**Example:** Foreign hedge funds and private equity funds are not reportable on the FBAR. The FBAR regulations issued by FinCEN on February 24, 2011 do not require the reporting of these funds at this time.

### **What Is A Foreign Financial Account**

A **foreign** financial account is one that is located outside of the United States. The United States includes the following places:

- United States, including the District of Columbia;
- United States territories and possessions, such as:
  - Commonwealth of the Northern Mariana Islands, District of Columbia, American Samoa, Guam
  - Commonwealth of Puerto Rico, United States Virgin Islands, Trust Territories of the Pacific Islands
  - Indian lands as defined in the Indian Gaming Regulatory Act.

Typically, a financial account that is maintained with a financial institution located outside of the United States is a foreign financial account.

**Example:** An account maintained with a branch of a United States bank, such as Citibank, that is physically located in the United Kingdom is a foreign financial account.

**Example:** An account maintained with a branch of a Swiss bank, such as UBS, that is physically located in New York is not a foreign financial account.

**Example:** William, a United States citizen, purchased securities of a Singapore company through a securities broker located in Boston. William is not required to report these securities because he purchased the securities through a financial institution located in the United States.

### **Maximum Account Value**

The maximum value of an account is a reasonable approximation of the greatest value of currency or nonmonetary assets in the account during the calendar year. Periodic account statements may be relied upon to determine the maximum value of the account, provided that the statements fairly reflect the maximum account value during the calendar year. How to determine the maximum value of a foreign financial account: Determine the maximum account value in the currency of the account. After the maximum value of the account is determined, convert the maximum account value for each account into United States dollars using the exchange rate on the last day of the

calendar year.

**Example:** A foreign financial account that is located in Japan would typically be valued in Yen. Determine the maximum value of the account in Yen. Next, convert the maximum value of the account into United States dollars.

### **Converting Foreign Currency To U.S. Dollars**

When converting between a foreign currency and United States dollars, taxpayers must use the Treasury Reporting Rate of Exchange for the last day of the calendar year.

If no Treasury Financial Management Service rate is available, use another verifiable exchange rate and provide the source of that rate. In valuing currency of a country that uses multiple exchange rates, use the rate that would apply if the currency in the account were converted into United States dollars on the last day of the calendar year.

**Example:** Craig, a United States person, owns foreign financial accounts X, Y, and Z with maximum account values of \$100, \$12,000 and \$3,000, respectively. Craig is required to file an FBAR because the aggregate value of the accounts is \$15,100. Craig must report foreign financial accounts X, Y, and Z on the FBAR even though accounts X and Z have maximum account values below \$10,000.

**Example:** Kristin, a United States person, owns foreign financial accounts A, B and C with account balances of \$3,000, \$1,000 and \$8,000, respectively. Kristin is required to report accounts A, B and C because the aggregate value of the accounts is over \$10,000. It does not matter that no single account exceeded \$10,000.

**Example:** Diane, a United States person, owns a foreign financial account with a maximum value of \$15,000 but the account does not produce income. Diane is required to file an FBAR to report the account. Whether or not an account produces income does not affect the requirement to file an FBAR.

### **Reporting Jointly Held Accounts**

If two persons jointly maintain a foreign financial account, or if several persons each own a partial interest in an account, then each United States person has a financial interest in that account and each person must report the entire value of the account on an FBAR.

Limited Joint Filing by Spouses: The spouse of an individual who files an FBAR is not required to file a separate FBAR if the following conditions are met: (1) all the financial accounts that the non-filing spouse is required to report are jointly owned with the filing spouse; (2) the filing spouse reports the jointly owned accounts on a timely filed FBAR electronically signed (PIN) in item 44; and (3) the filers have completed and signed FinCEN Form 114a, Record of Authorization to Electronically File FBARs (maintained with the filers records). Otherwise, both spouses are required to file separate FBARs and each spouse must report the entire value of the jointly owned accounts.

## Modified Reporting Requirements

- **Reporting a Financial Interest in 25 or More Foreign Financial Accounts:** A United States person with a financial interest in 25 or more foreign financial accounts should check the Yes box in Part I, item 14a, and indicate the number of accounts in the space provided. The United States person should not complete Part II or Part III of the report but maintain records of the information. If the group of entities covered by a consolidated report has a financial interest in 25 or more foreign financial accounts, the reporting parent corporation need only complete Part V (for consolidated reporting), items 34 through 42, for the identity information of the account owners, but need not complete the account information.
- **Reporting Signature Authority Over 25 or More Foreign Financial Accounts:** A United States person who has signature authority over 25 or more foreign financial accounts should check the Yes box in Part I, Item 14b, and indicate the number of accounts in the space provided. Complete Part IV, Items 34-43, for each person for which the filer has signature authority.

***Example:** Doug has a financial interest in 12 foreign financial accounts and signature authority over 17 foreign financial accounts. Doug must complete the entire FBAR because he has a financial interest in fewer than 25 foreign financial accounts and signature authority over fewer than 25 foreign financial accounts.*

- **Reporting for United States Persons Employed and Residing Outside of the United States:** A United States person who is an officer or employee employed and residing outside of the United States and who has signature authority over a foreign financial account that is owned or maintained by the individual's employer is only required to complete Part I and Part IV, Items 34-43 of the FBAR, as well as the signature section of the FBAR.

***Example:** Julia is a United States person who lives in Ireland and is employed by an Irish company. She is only required to complete Part I and Part IV, Items 34-43, and the signature section of the FBAR to report her signature authority over the foreign financial accounts of her employer.*

***Example:** Given the above example, if Julia lived in the United States she would not be able to take advantage of the modified reporting requirement. Filing Exceptions The following persons are excepted from the FBAR filing requirement:*

- **Consolidated FBAR.** A United States person that is an entity and is named in a consolidated FBAR filed by a greater than 50 percent owner is not required to file a separate FBAR.
- **IRA Owners and Beneficiaries.** An owner or beneficiary of an IRA is not required to report a foreign financial account held in the IRA.
- **Participants in and Beneficiaries of Tax-Qualified Retirement Plans.** A participant in or beneficiary of a retirement plan described in Internal Revenue Code § 401(a), 403(a),

or 403(b) is not required to report a foreign financial account held by or on behalf of the retirement plan.

- **Signature Authority.** Individuals who have signature authority over, but no financial interest in, a foreign financial account are not required to report the account in the following situations:
  - An officer or employee of a bank that is 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 is not required to report signature authority over a foreign financial account owned or maintained by the bank.
  - An officer or employee of a financial institution that is registered with and examined by the Securities and Exchange Commission or Commodity Futures Trading Commission is not required to report signature authority over a foreign financial account owned or maintained by the financial institution.
  - An officer or employee of an Authorized Service Provider is not required to report signature authority over a foreign financial account that is owned or maintained by an investment company that is registered with the Securities and Exchange Commission. Authorized Service Provider means an entity that is registered with and examined by the Securities and Exchange Commission and provides services to an investment company registered under the Investment Company Act of 1940.
  - An officer or employee of an entity that has a class of equity securities listed (or American depository receipts listed) on any United States national securities exchange is not required to report signature authority over a foreign financial account of such entity.
  - An officer or employee of a United States subsidiary is not required to report signature authority over a foreign financial account of the subsidiary if its United States parent has a class of equity securities listed on any United States national securities exchange and the subsidiary is included in a consolidated FBAR report of the United States parent.
  - An officer or employee of an entity that has 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 is not required to report signature authority over a foreign financial account of such entity.
- **Trust Beneficiaries.** A trust beneficiary with a direct or indirect financial interest in more than 50 percent of the trust assets or income is not required to report the trust's foreign financial accounts on an FBAR if the trust, trustee of the trust, or agent of the trust: (1) is a United States person; and (2) files an FBAR disclosing the trust's foreign financial accounts.

- The following types of foreign financial accounts are excepted from the FBAR filing requirement:
  - **Certain Accounts Jointly Owned by Spouses.** The spouse of an individual who files an FBAR is not required to file a separate FBAR if certain conditions are met as previously discussed; refer to “Reporting Jointly Held Accounts.”
  - **Correspondent/Nostro Account.** Correspondent or nostro accounts (maintained by banks and used solely for bank-to-bank settlements) are not required to be reported.
  - **Governmental Entity.** A foreign financial account of any governmental entity is not required to be reported by any person.

***Example:** A state administered college or university is not required to file an FBAR because it is a governmental entity.*

***Example:** A government employee retirement or welfare benefit plan is not required to file an FBAR because it is a governmental entity.*

- **International Financial Institution.** A foreign financial account of any international financial institution (if the United States government is a member) is not required to be reported by any person. Examples are the World Bank and the International Monetary Fund (IMF).
- **United States Military Banking Facility.** A financial account maintained with a financial institution located on a United States military installation is not required to be reported, even if that military installation is outside of the United States.

## **Recordkeeping**

Generally, records of accounts required to be reported on the FBAR should be kept for five years from the due date of the report, which is June 30 of the year following the calendar year being reported. 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. Retaining a copy of the filed FBAR can help to satisfy the record keeping requirements. An officer or employee, however, who files an FBAR to report signature authority over an employer's foreign financial account is not required to personally retain records regarding these foreign financial accounts. Penalties Failure to file an FBAR when required to do so may result in civil penalties, criminal penalties, or both. When a United States person learns that an FBAR should have been filed for a previous year, the filer should electronically file the delinquent FBAR report using the [BSA E-Filing System](#) website. The system allows the

filer to enter the calendar year reported, including past years, on the online FinCEN Report 114. It also offers an option to “explain a late filing” or to select “Other” to enter up to 750-characters within a text box where the filer can provide a further explanation of the late filing or indicate whether the filing is made in conjunction with an IRS compliance program. If the foreign financial account is properly reported on a late-filed FBAR, and IRS determines that the FBAR violation was due to reasonable cause, no penalty will be imposed. For additional guidance when circumstances, such as natural disasters, prevent the timely filing of an FBAR, see FinCEN guidance, [FIN-2013-G002](#) (June 24, 2013).

### Civil And Criminal Penalties

The following chart highlights the civil and criminal penalties that may be asserted for not complying with the FBAR reporting and recordkeeping requirements.

<b>Violation</b>	<b>Civil Penalties</b>	<b>Criminal Penalties</b>
Negligent Violation	Up to \$500	N/A
Non-Willful Violation	Up to \$10,000 for each negligent violation	N/A
Pattern of Negligent Activity	In addition to penalty under § 5321(a)(6)(A) with respect to any such violation, not more than \$50,000	N/A
Willful - Failure to File FBAR or retain records of account	Up to the greater of \$100,000, or 50 percent of the amount in the account at the time of the violation.	Up to \$250,000 or 5 years or both
Willful - Failure to File FBAR or retain records of account while violating certain other laws	Up to the greater of \$100,000, or 50 percent of the amount in the account at the time of the violation.	Up to \$500,000 or 10 years or both
Willful - Failure to File FBAR or retain records of account while violating certain other laws	Up to the greater of \$100,000, or 50 percent of the amount in the account at the time of the violation.	Up to \$500,000 or 10 years or both
Knowingly and Willfully Filing False FBAR	Up to the greater of \$100,000, or 50 percent of the amount in the account at the time of the violation.	\$10,000 or 5 years or both

Civil and Criminal Penalties may be imposed together. 31 U.S.C. § 5321(d).

It is possible to assert civil penalties for FBAR violations in amounts that exceed the balance in the foreign financial account.

### **Procedural and Reporting Information**

Fulfilling the Reporting Requirement: Filers report their foreign accounts by: (1) completing FBAR-related questions on federal tax and information returns, such as questions 7a and 7b on Form 1040 Schedule B, box 3 on the Form 1041 "Other Information" section, box 10 on Form 1065 Schedule B, or boxes 6a and 6b on Form 1120 Schedule N, as applicable; and (2) completing and timely electronically filing the FBAR.

### **FBAR Due Date**

The FBAR is a calendar year report and must be received by the Department of Treasury on or before June 30th of the year following the calendar year being reported. It must be filed electronically through FinCEN's BSA E-Filing System.

The granting, by the IRS, of an extension to file federal income tax returns does not extend the due date for filing an FBAR. Unfortunately, filers cannot request an extension of the FBAR due date.

If a filer does not have all the available information to file the return by June 30, the filer should file as complete a return as possible by June 30 and amend the report when additional or new information becomes available.