

May 2014



IRS issues Reference Guide on FBAR



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IRS has issued its "Reference Guide on the Report of Foreign Bank and Financial Accounts (FBAR)" on April 29, 2014, which summarizes and augments previously published information on that report that must be filed by U.S. persons who have financial interests in or signature authority over financial accounts maintained with financial institutions located outside of the U.S.

Background. The Bank Secrecy Act (BSA) gave the Treasury Department authority to collect information from U.S. persons who have financial interests in or signature authority over financial accounts maintained with financial institutions located outside of the U.S. This provision of the BSA requires that a 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 FinCEN Form 114 superseded Treasury Form TD F 90-22.1 and must be filed electronically through the BSA E-Filing System.

The FBAR is not filed with a federal tax return. A filing extension, granted by IRS to file an income tax return, does not extend the time to file an FBAR. There is no provision to request an extension of time to file an FBAR.

The Financial Crimes and Enforcement Network (FinCEN) has delegated enforcement authority regarding the FBAR to IRS.

Rules and instructions for filing FBAR are contained in 31 CFR 1010.350 (Reports of foreign financial accounts), 31 CFR 5321 and 31 CFR 5322 (Civil penalties and Criminal penalties), and Miscellaneous IRS Documents [fincen20131028](#) (FBAR (FinCEN 114) Line Item Electronic Filing Instructions).

The IRS Reference Guide clarifies some definitions and rules, provides some new rules, and provides examples. The IRS Reference Guide augments the above previously existing sources for rules and instructions by clarifying some definitions and rules, providing some new rules, and providing examples. The following are among the more significant items contained in the Reference Guide:

U.S. person: As noted above, the FBAR rules apply to U.S. persons. 31

CFR 1010.350(b)(3) provides the following catchall category of U.S. persons: "an entity, including but not limited to, a corporation, partnership, trust, or limited liability company created, organized, or formed under the laws of the United States." The Reference Guide specifies that an estate formed under the laws of the U.S. is a U.S. person. It also provides that entities that are U.S. persons and are disregarded for tax purposes may be required to file an FBAR. That is, 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.

Financial account: The Reference Guide notes that 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. But, foreign hedge funds and private equity funds are not reportable on the FBAR.

Applying the \$10,000 rule: The Reference Guide provides the following example of how the \$10,000 rule applies:

Illustration: Kristin, a U.S. 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.

Where holder of legal title to an account is an agent: A U.S. person has a financial interest in each bank, securities or other financial account in a foreign country for which the owner of record or holder of record title is a person acting as an agent of the U.S. person. (31 CFR 1010.350(e)(2)(i)) The Reference Guide provides the following example of the application of this rule:

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

Signature authority: The Reference Guide provides the following example of whether someone has signature authority:

Illustration: Megan, a U.S. resident, has a power of attorney on her elderly parents' accounts in Canada, but she has never exercised the power of attorney. Megan 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.

Reporting for United States persons employed and residing outside of the U.S.: The Reference Guide provides that a U.S. person who is an officer or employee employed and residing outside of the U.S. 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 (Filer Information) and Part IV (Owner Information) of the FBAR, as well as the signature section of the FBAR.

Illustration: Julia is a U.S. person who lives in Ireland and is employed by an Irish company. She is only required to complete Part I and Part IV and the signature section of the FBAR to report her signature authority over the foreign financial accounts of her employer.

Illustration: If Julia lived in the U.S., she would not be able to take advantage of the above modified reporting requirement.

Recordkeeping: The Reference Guide provides that, 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: a) name maintained on each account; b) number or other designation of the account; c) name and address of the foreign bank or other person with whom the account is maintained; d) type of account; and e) maximum value of each account during the reporting period. Retaining a copy of the filed FBAR can help to satisfy the recordkeeping requirements. An officer or employee 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.

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

Resources for FBAR filers: The Reference Guide provides an inside-the-U.S. toll free phone number and a not-inside-the-U.S. non-toll-free phone number for help with FBAR. It also provides the following email address: FBARquestions@irs.gov. Filers residing abroad may also contact the U.S. embassies and consulates for assistance.

Source: Thomson Reuters CCH.

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