

Report of Foreign Accounts

IRS Form TD F 90-22.1, aka "FBAR"

The IRS made major revisions in 2008 to the Form TD F 90-22.1, *Report of Foreign Bank and Financial Accounts* (FBAR). The Bank Secrecy Act affects U.S. persons, citizens or residents of the United States, including any domestic legal entity (partnership, corporation, estate or trust) that has a financial interest in, signature authority, or other authority (e.g. corporate control) over one or more financial accounts. The FBAR filing is required if at any time during the calendar year foreign bank accounts, brokerage accounts, mutual funds, unit trusts, Canadian RRSP/RIFs, or "other financial accounts", had an aggregate value exceeding \$10,000. The deadline for filing remains June 30 of the following year. *There is no provision for an extension.*

The major revisions:

1. FBAR is now also required for self-employed nonresident aliens engaged in a US business, and also for foreign corporations with a US presence that have US employees who have applicable signing authority. The regulations cover "Green Card" holders, and other US residents on visa, as well as "snowbirds" who meet the "Substantial Presence Test" calculation (and fail to file IRS Form 8840, Closer Connection Exception Statement for Aliens).
2. The civil penalty for failure to file varies according to the circumstances, see the attached table. Non-willful violations can result in a penalty as high as \$10,000 for each violation to a maximum of \$50,000 -- per account. Willful failure to file, or retain records for 5 years(!), can be the greater of \$100,000 or 50% of the account. Criminal violations of the FBAR rules can result in a fine and/or prison.
3. The maximum value during the year of each account must now be specifically stated, rather than only selecting from a range of values as before.
4. The new five page form now has five parts. Part II covers separately owned accounts; Part III covers joint accounts; Part IV covers accounts where the filer has signature or other authority but no financial interest (e.g. accountant for a business); and Part V covers consolidated reports by corporations. Account information includes the institution address and account number.
5. Finally, (for individuals needing extra income) the reward for informants is the lesser of 25% of the amount collected or \$150,000.

The FBAR is required because foreign financial institutions that do not conduct business in the United States may not be subject to the same reporting requirements as domestic financial institutions (such as filing a Form 1099 to report interest paid). There are legitimate purposes for having a foreign account however the FBAR is a tool to help the U.S. government identify persons who may be using foreign financial accounts to circumvent U.S. law.

Form filing information needed for each account:

1. Highest balance during the year, in US Dollars, using the year-end exchange rate. If unknown, then write "Value unknown"
2. Type of Account (bank, brokerage, RRSP/RIFF, trust).
3. Name of institution and address.
4. Account Number.
5. Categorical reporting for each account is as follows:
 - a. Separately owned (Part II)
 - b. Jointly owned (Part III)
 - c. Accounts with signing authority but no financial interest as a bookkeeper/accountant who signs checks. (Part IV)

Part V is for corporate filers. Always keep a copy of the form your send.

Again, the deadline for filing remains June 30 of the following year. *There is no provision for an extension.* However, if it is sent late then attach an explanation.

The FBAR is not an income tax return and should not be mailed with any income tax returns. The FBAR must be mailed on or before June 30 of the following year to: *U.S. Department of the Treasury, P.O. Box 32621, Detroit, MI 48232-0621.*

The form is available online at www.irs.gov or by telephone at 1-800-829-3676. Questions regarding the FBAR may also be sent to FBARquestions@irs.gov.

Violation	Civil Penalties	Criminal Penalties	Legislative Source
Negligent Violation	Up To \$500	N/A	31 U.S.C. § 5321(a)(6)(A) 31 C.F.R. 103.57(h)
Non-Willful Violation	Up To \$10,000 For Each Negligent Violation	N/A	31 U.S.C. § 5321(a)(5)(B)
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	31 U.S.C. 5321(a)(6)(B)
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.	31 U.S.C. § 5321(a)(5)(C) 31 U.S.C. § 5322(a) And 31 C.F.R. § 103.59(b) For Criminal. The Penalty Applies To All U.S. Persons.
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.	31 U.S.C. § 5322(b) And 31 C.F.R. § 103.59(c) For Criminal. The Penalty Applies To All U.S. Persons.
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.	18 U.S.C. § 1001, 31 C.F.R. § 103.59(d) For Criminal. The Penalty Applies To All U.S. Persons.
Civil And Criminal Penalties May Be Imposed Together. 31 U.S.C. § 5321(d).			