

U.S. Tax Foreign Bank Account Reporting (FBAR) Disclosure

Over the last several years the Internal Revenue Service's (IRS) focus has shifted more and more toward finding and bringing US persons with foreign income and assets into compliance. Reporting accounts and financial assets located outside the US is a key part of this initiative. This initiative has a two pronged approach- the first is the completion and submission of [Report 114- Report of Foreign Bank and Financial Accounts \(FBAR\)](#) to the US Department of Treasury and the second is the completion of [Form 8938-Statement of Specified Foreign Financial Assets](#) with your Form 1040 tax return. Failure to file either of these forms can result in very large penalty assessments. Your American Expat Tax Services (AET) cross border tax specialist will be able to help you determine your obligations and assist with completing and/or filing the required forms.

Foreign Account Tax Compliance Act (FATCA)

This piece of legislation requires all Foreign Financial Institutions (FFI), such as Canadian banks, to report information to the IRS about their US clients; including financial accounts and the values of those accounts. If the FFIs do not comply, the IRS will penalize them. FATCA measures serve to identify US citizens who are not tax compliant and have been able to remain anonymous thus far. The Canada Revenue Agency is required to support the IRS in its enforcement of US tax obligations of US Citizens residing in Canada.

Who Must File an FBAR? *ALL of the following 5 conditions must apply.*

- The filer is a US person as defined under the US Tax Code
- The US person has one or more financial accounts;
- The financial account(s) is/are located outside of the United States;
- The US person has a financial interest in or signature authority over the foreign financial account(s); and
- The aggregate value of all foreign financial accounts exceeded USD \$10,000 at any time during the reporting period (calendar year)

If an FBAR is required, additional records must be kept for five years after the due date of the FBAR, to include but not limited to: name in which the account is maintained, number or other designation of the account, name and address of the foreign bank, type of account and maximum value of each account during the reporting period.

Who Is a US Person?

- A citizen of the United States.
- Green card holders, even if the card is expired.
- Non-US individuals who meet the substantial presence test including those who file taxes as a US non-resident under the tax treaty and snowbirds that have not filed Form 8840 Closer Connection and have met the substantial presence test.
- A non-citizen who makes the first year election to file as a US tax resident.
- US business entities, trusts, and estates.

When and How:

The FinCEN Report 114 **MUST** be electronically filed and received by the US Treasury no later than April 15 of each year following the calendar year being reported. As of 2017 there is an extension available. Information on how to enroll and e-file can be found at the Bank Secrecy Act (BSA) E-Filing System web site. The address is: <http://bsaefiling.fincen.treas.gov/main.html>.

Alternatively, your Cross Border Tax Specialist can prepare and e-file your FBAR on your behalf.

Foreign Financial Account:

- The location of an account, not the nationality of the financial institution with which the account is held, determines whether the account is in a foreign country. Any financial account (except accounts maintained with a U.S. military banking facility) that is located in a foreign country should be reported, even if the account is held with a branch of a United States financial institution located abroad.

- Types of financial accounts that require disclosure include but are not limited to:
 - Bank account, such as a savings, demand, checking, deposit, time deposit, or any other account maintained with a financial institution or other person engaged in the business of a financial institution.
 - A bank account set up to secure a credit card account.
 - An insurance policy having cash surrender value.
 - An annuity policy with a cash value.
 - Securities, securities derivatives, or other financial instruments account.
 - Other financial accounts generally encompass any accounts in which the assets are held in a comingled fund and the account owner holds an equity interest in the fund. A mutual fund account is an example of such an account.
 - Any pooled fund that is available to the general public with a regular net asset value and regular redemptions.
 - Any account maintained at a financial institution; RESP, DPSP, ESPP, etc.
 - Accounts belonging to your employer or family members that you have signing authority over.

Signature or Other Authority Over a Foreign Financial Account

- A person having signature or other authority over a foreign financial account must file the FBAR even if the person has no financial interest in the account. A person has signature authority over an account if that person can control the disposition of money or other property in it by delivery of a document containing his signature (or his signature and that of one or more other persons) to the financial institution where the account is maintained.
- A person has other authority if the person can exercise power comparable to signature authority over an account through communication to the financial institution where the account is maintained, either orally or by some other means.

Account Valuation:

- The FBAR is required for each calendar year during which the aggregate amount(s) in the account(s) exceeded \$10,000 valued in U.S. dollars at any time during the calendar year. The maximum value of an account is the largest amount of currency and non-monetary assets that appear on any quarterly or more frequent account statement issued for the applicable year. For example, if the statement closing balance is \$9,000 but at any time during the year a balance of \$15,000 appears on a statement, the maximum value is \$15,000.
- Convert foreign currency by using the official exchange rate in effect on December 31 of the calendar year. The official quarterly Treasury Reporting Rates of Exchange can be obtained at: <https://www.fiscal.treasury.gov/fsreports/rpt/treasRptRateExch/currentRates.htm> or by calling the Department of the Treasury, Financial Management Service International Funds Team at (202) 874-7994.

Penalties:

- Civil and criminal penalties can be assessed for negligence, pattern of negligence, non-willful and willful violations.
- FBAR penalties are determined per account for each person required to file. Penalties apply for each account, each year of violation.
- Monetary penalties can be very large and can exceed the monetary value of the accounts not disclosed. The penalty for failure to file can be a minimum of \$10,000 USD per year to a maximum of \$100,000 USD or more per year.

Missed Filings

The statute of limitations on FBAR filing is six years; the current year and the previous five years are required. If you have not filed an FBAR (FinCEN Form 114) for any of these six years, it is very important to file them as soon as possible. An American Expat Tax Services cross border tax specialist can assist you with this.

Compliance Programs

If filing FinCEN Form 114 in accordance with compliance programs such as Streamlined or Offshore Voluntary Disclosure, it is imperative that they be e-filed at the same time the compliance package is mailed. Please be sure to coordinate this filing with your Cross Border Tax Specialist to ensure complete and accurate compliance