

FBAR Filings: The Element of Control

Under the FBAR instructions, signatory authority may be present and a FBAR may be required when there is an indirect element of control. The FBAR instructions state: "Authority exists in a person who can exercise comparable power over an account by direct communication to the bank or other person with whom the account is maintained, either orally or by some other means."

If a foreign corporation holds a foreign account and a US Person owns more than 50% of the shares, a FBAR must be filed. US Persons who are officers or directors of foreign corporations and have signatory authority over foreign corporate accounts must also individually file a FBAR whether or not they own shares of the corporation (certain publicly traded corporations and banks under US control are exceptions to this rule).

For partnerships owning foreign accounts, if the US Taxpayer holds more than a 50% interest in the partnership profits, they are required to file a FBAR.

If the US Person is the owner of a foreign life insurance policy or a foreign annuity contract with cash surrender value in excess of \$10,000, he must file a FBAR. The owner of the contract has no direct authority over the accounts in which the premiums are deposited or invested. However, the owner has the authority to withdraw cash from the policy or contract. The owner has a financial interest in the policy or contract and has an indirect financial interest in the underlying accounts.

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