
MEMORANDUM

RE: INTERNATIONAL TAX COMPLIANCE
FOREIGN ASSETS (U.S. TAXPAYERS)
#2: FOREIGN BANK ACCOUNTS (“FBAR” – TD F 90-22.1)

The FBAR rules are established in the 1970 Bank Secrecy Act (since 2003 the IRS enforces these rules).

U.S. Donor: FBAR form

The FBAR filing requirement applies if a U.S. person has a signatory power over or financial interest in a foreign bank account or securities account if the aggregate value of the accounts exceeds \$10,000.

The U.S. donor/grantor may be required to file Form TD F 90-22.1 (Report to Foreign Bank and Financial Accounts), also known as the FBAR form, if the trust has a foreign bank account or securities account. The U.S. donor/grantor will be considered to have a reportable interest in the trust’s bank or securities accounts if he has a present beneficial interest in more than 50% of the trust assets or receives more than 50% of trust income.

The FBAR form must be filed by June 30 of the year following the year in which the U.S. person possessed the signatory power or financial interest in the foreign account. It is filed independently of the U.S. individual income tax return and there are no extensions. The civil penalty for failure to file the FBAR form is \$10,000. In the case of willful violations, the penalty is the greater of \$100,000 or 50% of the value of the account. Although this is a Treasury Department form, the IRS is now responsible for auditing compliance with this informational reporting requirement.

Financial Interest Or Authority

A U.S. Person has a financial interest in a foreign account if he or she is the legal or beneficial owner. Attribution rules apply in making this determination. A person serving as a shareholder,

partner, and trustee may be deemed to hold a financial interest if the owner of the account is (i) a person acting as an agent on behalf of the U.S. Person, (ii) a corporation where the U.S. Person owns, directly or indirectly, more than 50 percent of the outstanding stock, (iii) a partnership in which the U.S. Person owns more than 50 percent of the profits, or (iv) a trust in which a U.S. Person has either a present interest in more than 50 percent of the assets or from which the U.S. Person receives more than 50 percent of the income. If these thresholds are met, the U.S. Person has an FBAR reporting obligation, regardless of whether he or she has any *authority* over the account.

Non-owners with *authority* over a foreign account are also subject to the FBAR reporting rules. *Authority* means the U.S. Person has the ability to order a distribution or disbursement of funds or other property held in the account. This is not limited to signature authority, but includes the ability to order distributions by verbal commands or other communication. *Authority* does *not* include persons who have the right to invest, but not distribute, the foreign account funds.

Financial Account In A Foreign Country

The term *financial account* is broadly defined as any asset account and encompasses simple bank accounts (checking or savings), as well as securities or custodial accounts. It also includes a life insurance policy or other type of policy with an investment value (i.e., surrender value).

Foreign country refers to any country other than the United States. Puerto Rico, U.S. possessions and territories are included as part of 'the United States'.

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