



FBAR – Financial Reporting Requirements for U.S. Persons

What is the FBAR?

FBAR stands for “Foreign Bank Account Report”, and refers to the FinCen Form 114, Report of Foreign Bank and Financial Accounts. It is a reporting form only without any tax implications. The Bank Secrecy Act of 1970 (BSA) established this report.

Who Must File an FBAR?

All United States Persons are required to file an FBAR if:

1. the U.S. Person had any financial interest in, or signature authority, over a financial account located outside of the United States; and
2. the aggregate value of *all* foreign financial accounts exceeded \$10,000 at any one time during the calendar year reported.

United States Person definition:

1. A citizen or resident (green-card holder) of the United States, or
2. Any domestic legal entity, such as a partnership, corporation, estate, trust, or limited liability companies, created or organized in the United States or under the laws of the United States.

What does *aggregate value* mean?

Aggregate value would mean the total of all of the foreign financial accounts that the person has an interest. The requirement is that if the combination of all of the accounts reach over \$10,000 at any one day during the calendar year, it would trigger the requirement to file a FBAR.



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What are financial accounts?

Financial accounts are not inclusive of only bank accounts. The accounts would first need to be from foreign institutions located outside of the United States. It would not include an account at a foreign bank located in New York, for example.

The types of accounts would include:

- Bank accounts such as savings, checking, deposit money market accounts
- Securities accounts which invests the funds - brokerage, derivatives, banks
- Pension accounts from private companies, employers
- Life Insurance accounts with cash value balances
- Mutual Funds
- Any other accounts maintained in a foreign financial institution
- Any online account, such as PayPal (non-US), gambling online accounts

Exceptions to the Reporting Requirement

There are some exceptions to the FBAR reporting requirements, which includes:

- Certain foreign financial accounts jointly owned by spouses
- United States persons included in a consolidated FBAR
- Foreign financial accounts owned by a governmental entity
- Foreign financial accounts owned by an international financial institution
- Certain individuals with signature authority over, but no financial interest in, a foreign financial account
- Trust beneficiaries (but only if a U.S. Person reports the account on an FBAR filed on behalf of the trust)
- Foreign financial accounts maintained on a United States military banking facility overseas



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Reporting and Filing Information

The U.S. Person holding a foreign financial account may have a reporting obligation even when the account produces no taxable income. The reporting obligation is met by indicating on the tax return about foreign accounts, which is found on Schedule B and by filing an FBAR.

A U.S. Person is required and responsible for filing their FBAR. A foreign bank will NOT take that responsibility. A foreign bank will request all U.S. Persons to complete an IRS W-9 form, “Request for Taxpayer Identification Number and Certification”. The foreign bank may possibly report all U.S. Persons with accounts at their facility to the U.S. Department of Treasury. However, these actions do not supersede the U.S. Person from filing their own FBAR to the U.S. Department of Treasury.

The FBAR is a calendar year report and must be filed on or before April 15 of the year following the calendar year being reported. However, an automatic extension is given with the deadline of October 15 ... and no further extensions. The FBAR must be filed electronically through FinCEN’s BSA E-Filing System. The FBAR is not filed with a federal tax return but tax professionals have the ability with some professional tax softwares to include the FBAR.

What Information is Reported

For the FBAR, the U.S. Person should report the following information:

- Person reporting with their address, date of birth and social security number
- Name of bank or institution
- Address of bank including city, country, postcode
- Account number
- Country of account location
- Highest balance of account in USD during tax year (exchange rate to be used as of December 31)



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- Type of account (securities, bank, pension)
- Is there a co-owner(s) on the account? Name, address, and social security of co-owners are reported.

Non-filing Penalties

If a U.S. Person who is required to file the FBAR but fails to properly file a complete and correct FBAR, they may be subject to penalties, at times severe. The U.S. Government defines if the U.S. Person is willfully, or nonwillfully being compliant in their reporting.

- Nonwillful violations: The U.S. Person may be subject to a civil penalty not exceeding \$10,000 per violation for nonwillful violations due to reasonable causes. Willfulness is defined under FBAR under Title 31.
- Willful violations: The penalty may be the greater of \$100,000, or 50 percent of the balance in the account at the time of the violation, for each violation especially for “willful blindness”.
- Willfulness Blindness: The U.S. Person takes deliberate actions to avoid confirming a high probability of wrongdoing and when he can almost be said to have actually known the critical facts.
- Recklessness Standard: The U.S. Government may deem that the taxpayer clearly ought to have known and that the taxpayer was in a position to find out very easily.
- For guidance on circumstances including natural disasters that prevent timely filing of an FBAR, see the instructions on the BSA filing webpage.

Amnesty Programs

The IRS have held several amnesty programs to assist U.S. Persons who fell behind in their reporting obligations. However, The OVDI is the program that assists most for those who were “willful”, but the IRS is ending it this month permanently.



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The various amnesty programs with the IRS currently are:

- Offshore Voluntary Disclosure Initiative (OVDI) - Program **ends** September 28, 2018.
- Streamlined Domestic Offshore
- Streamlined Foreign Offshore

FATCA Filing Form 8938

Foreign Account Tax Compliance Act (FATCA) was signed into law in 2010 by President Barack Obama. It essentially stated that U.S. taxpayers with “specified foreign financial assets” that exceed certain thresholds must report those assets to the IRS on Form 8938, “Statement of Specified Foreign Financial Assets,” which is to be filed with the annual income tax return. Those foreign financial assets could include the same foreign accounts reported on an FBAR. However, additional information may be required on each account. The Form 8938 filing requirement is an additional one to the FBAR filing requirement. A chart providing a comparison of the Form 8938 filing requirements is depicted below:

Filing Situation	Value on last day of the tax year is at least this amount:	Or, at any time during the tax year, the value is greater than:
Single or Married Filing Separate taxpayers <i>living</i> in the U.S.	\$50,000	\$75,000
Married Taxpayers filing jointly <i>living</i> in the U.S.	\$100,000	\$150,000
Taxpayers not filing jointly who are living <i>outside</i> the U.S. and would qualify for the foreign earned income exclusion	\$200,000	\$300,000
Married Taxpayers filing jointly who are living <i>abroad</i> and would qualify for the foreign earned income exclusion	\$400,000	\$600,000



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Additional Information Websites and Contact

- IRS website: (<https://www.irs.gov>)
- BSA website (<https://bsaefiling.fincen.treas.gov/main.html>)
- Additional tax information website (www.mirtaxes.com)
- Send inquiries to Carl Mir at info@mirtaxes.com

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