

Foreign Banks and Financial Accounts

If you own or have an interest in or signatory authority over foreign financial accounts, then you should be aware of FBAR or Foreign Bank Account Report.

FBAR **Form TD F 90-22.1** must be filed by U.S. Persons (citizens, residents and certain other persons) if the person has an interest in, or signatory authority over a foreign financial account, and the aggregate value of these accounts exceeds \$10,000, at any time, during the calendar year. This report is **DUE BY JUNE 30TH OF EACH YEAR AND THERE ARE NO EXTENSIONS.**

Until recent years the US Treasury did not enforce the above requirements. However, starting with 2009 there was an amnesty for late filers and again in 2011, there was another amnesty. Since then awareness has increased and so is the enforcement of these rules.

U.S. persons are required to report all their income, including amounts that are in foreign accounts.

2011 AND FUTURE YEARS

Starting with your 2011 tax return, you must disclose on your tax return if you have a foreign account even if it was below \$10,000.

Also starting in 2011 you must disclose with your annual tax filing, on form 8938, if on the **last day of the year**, you have a foreign account whose value is:

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| Single Individuals or Married filing Separately and Living in the US | More than \$50,000 or more than \$75,000 at anytime during the year. |
| Married filing Jointly and Living in the US | More than \$100,000 or more than \$150,000 at anytime during the year. |
| Single Individuals or Married filing Separately and Living Abroad | More than \$200,000 or more than \$300,000 at anytime during the year. |
| Married filing Jointly and Living Abroad | More than \$400,000 or more than \$600,000 at anytime during the year. |

PENALTIES

Penalties for not filing and reporting income and form TD F 90-22.1 are severe and draconian.. The TD F-0-22.1 instructions states that a person may be subject to civil penalty not to exceed \$10,000 per violation. It then goes on to state that if there is a reasonable cause for the failure to file, no penalty will be imposed. However, if the IRS deems the cause not reasonable then the penalties are much harsher.

WHAT TO DO

If you reported all your foreign accounts income, but have not filed the FBAR reports, then you should take steps to file six years of prior FBAR reports with a note of explanation. The IRS announced that all delinquent FBAR reports filed by September 9, 2011 will not be subject to any penalties. It is possible that the IRS will continue this policy.

If you did not report all your foreign accounts income and did not file the FBAR reports, then you should follow the IRS guidelines issued on January 9, 2012 called 2012 Offshore Voluntary Disclosure Initiative (OVDI). This initiative offers reduced penalties for taxpayers who failed to report their foreign accounts and assets on Form TD F 90-22.1 and failed to report the income from those accounts. Taxpayers will need to file amended tax returns for the last eight years with a note of explanation.

The civil penalty scheme under the 2012 OVDI is as follows:

- 1)** a one-time 27.5 percent penalty on the highest aggregate annual balance in the unreported accounts during the look-back period (an increase from the 20 percent penalty under the 2009 program and 25 percent penalty under the 2011 program) and
- 2)** a 20 percent accuracy-related penalty or delinquency (late filing and late payment) penalties on the amount of U.S. income tax that should have been paid during the last eight years (2003 through 2010).