

New FBAR Rules Significantly Increase Employee Filings

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Did you know that if you have a bank account outside of the United States, you may be required to file a Treasury Form 90-22.1 with the U.S. Treasury every year? There are strict penalties in place for those who fail to file this form. Although the regulation is intended to uncover secret off-shore accounts, anyone who has a foreign bank account is swept up by the law.

The Treasury Form 90-22.1, also known as the “Foreign Bank Account Reporting” Form or the FBAR, is a required informational reporting form for reporting off-shore bank accounts to the U.S. Treasury. Every U.S. citizen or U.S. resident, partnership, corporation, estate or trust is required to comply with this filing requirement.

In 2003, the Internal Revenue Service (the “IRS”) took over the enforcement for this reporting requirement. Since then, the IRS has made substantial efforts to increase the rate of compliance. In 2009, the IRS held its first voluntary disclosure initiative, a so-called amnesty program under which citizens with off-shore accounts could disclose that information to the IRS, pay a penalty, and avoid other civil and potential criminal penalties.

The penalties are potentially quite severe, up to the greater of \$100,000 or 50% of the balance in the account, per violation, for a willful failure to file, and criminal charges as well. Even a non-willful failure to file carries a potential penalty of up to \$10,000.

If the aggregate amount of the offshore accounts, including joint accounts and any account one has signatory authority over, reaches \$10,000 at any point during a calendar year, that account must be reported on an FBAR form. For example, a business-owner with signatory authority over business accounts overseas, even if each account separately contains a small amount of money, may be required to report those accounts if they add up to \$10,000 at any time during the year. One account can generate multiple FBAR filings depending on who the owner is and who has signatory authority. This law will affect more and more people as the value of the dollar drops against other currencies.

The IRS is offering a new amnesty program that ends August 31, 2011. Under the 2011 Voluntary Disclosure Initiative, filers can disclose their accounts, pay a relatively modest penalty, and know that they will not be prosecuted for a failure to file.

If you are a CFO with signatory authority over foreign accounts, but no financial interest, you may qualify for an extension until next year. Otherwise, the deadline for a timely filing is June 30th. You should contact a tax attorney to determine your responsibilities.

If you have any questions about your responsibilities regarding the FBAR Form, please contact [Tim Finnerty](#) (237-5394), [Lou Dejoie](#) (237-5387) or [Veronica Johnson](#) (237-5417) to assist you.

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