

Foreign Bank Account Reporting (FBAR) Changes to Form and Procedure

June 2014

OVERVIEW

This serves as our annual reminder of the requirement to file Reports of Foreign Bank and Financial Accounts (“FBAR”). For the calendar year 2013, FBARs are required to be filed on or before June 30, 2014. The form was formerly known as Form TD F 90-22.1 and is now known as FinCEN Report 114. As explained below, FBAR compliance is significantly different this year than for prior years and will likely be more complicated so filers should start preparing their filings well in advance of the June 30th filing deadline.

IN GENERAL

U.S. persons (U.S. citizens and residents, including those that reside abroad) and domestic legal entities (i) with “foreign financial accounts that in the aggregate exceeded \$10,000 at any time during the prior calendar year, or (ii) that have signatory authority or other authority over such foreign accounts, are required to file an FBAR. FBARs must be filed on or before June 30th of the year immediately following the calendar year being reported (i.e., June 30, 2014, with respect to calendar year 2013). This form is not part of the U.S. person’s (or entity’s) tax returns and no extension is available for additional time to file the form.

“Foreign financial accounts” includes, but is not limited to, foreign bank accounts, securities accounts, and mutual funds. “Foreign financial accounts” does not include investments in foreign hedge funds.

Although FBAR filing is not part of a tax return filed with the IRS, Schedule B of Form 1040 does require an individual taxpayer to indicate if he or she has ownership of or signature authority over foreign financial accounts and if so whether FBAR reporting is required. Form 8938, Statement of Foreign Financial Assets, may also be required to be filed with the 1040. Also, New York State 2013 forms generally now have a question asking whether the taxpayer has an interest in a foreign account.

Significant penalties may be imposed for failure to file FBAR reports.

CHANGE IN FORM NAME; MUST BE ELECTRONICALLY FILED

The Financial Crimes Enforcement Network (“FinCEN”) has mandated that FBARs filed on or after July 1, 2013, must be electronically filed through the Bank Secrecy Act (“BSA”) E-Filing



System. Paper filing of Form TD F 90-22.1, Report of Foreign Bank and Financial Accounts, is no longer accepted. It has been replaced by FinCEN Report 114, Report of Foreign Bank and Financial Accounts, which must be filed electronically. This form is available only online through the BSA website (<http://bsaefiling.fincen.treas.gov>). This new electronic filing requirement also applies to late filers with respect to foreign accounts for prior years and participants in the offshore voluntary disclosure program (the “OVDP program”).

Third-party preparers (such as attorneys and CPAs) can assist clients in the preparation and filing of the electronic FBAR. In order to electronically file FBARs, a third-party preparer must have Form 114(a), Record of Authorization to Electronically File FBARs, signed by the client authorizing the preparer to file the FBAR on the client’s behalf. Third-party preparers and institutions must enroll with BSA in order to electronically file FBARs. There is no fee to enroll. Because this is a new reporting method, it is preferable not to wait until close to the June 30th deadline.

FBARs have continued to receive significant attention from the U.S. government due to the number of previously unreported foreign accounts which have been recently disclosed to the IRS by foreign banks or through the OVDP Program. Click [HERE](#) for our prior newsletter on the OVDP program.

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