



SD GLOBAL TAX: SPECIAL REPORT
U.S. INFORMATIONAL FILINGS:
FOREIGN BANK ACCOUNTS AND
FOREIGN FINANCIAL ASSETS



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FORM 114 - FOREIGN BANK ACCOUNTS

UNDER THE BANK SECRECY ACT (“BSA”) REGULATIONS, each U.S. person having a financial interest in, or signature or other authority over, a bank, securities or other financial account located in a foreign country must report certain information.

Signature or other authority means the authority of an individual to control the disposition of money, funds or other assets by direct communication with whom the account is maintained, in writing or otherwise.

The foreign account information is reported on Form 114, Report of Foreign Bank and Financial Accounts (FBAR).

Who must file?

- ▶ U.S. citizens
- ▶ U.S. resident aliens
- ▶ Any entity formed under the laws of the U.S., any state, U.S. territories and U.S. possessions
- ▶ If the aggregate value of all foreign financial accounts exceeds \$10,000 at any time during a calendar year

What constitutes a foreign financial account?

- ▶ Bank account
- ▶ Securities account
- ▶ Other financial account, including:
 - ▶ Mutual funds or similar pooled fund
 - ▶ Insurance or annuity policy with a cash value
 - ▶ An account with an entity that is in the business of accepting deposits as a financial agency
 - ▶ Certain other accounts

Note that an account maintained at the U.S. branch of a foreign financial institution is NOT a foreign account under the FBAR rules.

Who has a financial interest?

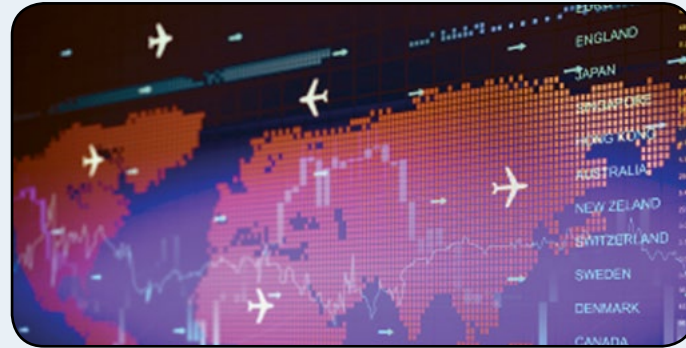
- ▶ Owner of record or legal title holder
- ▶ Other
 - ▶ Agent, nominee, similar role
 - ▶ Indirect ownership through more than 50%-owned corporation, partnership or trust

What are the penalties for failure to file?

- ▶ Civil penalties for noncompliance can range up to \$10,000 for nonwillful violations, up to 50% of the amount in the account for willful violation, and criminal penalties up to \$500,000, 5-10 years of imprisonment or both. The civil and criminal penalties may be imposed together.

When is the filing due?

- ▶ On or by June 30 for the previous year
- ▶ Filers must maintain records of the foreign accounts for a period of five years
- ▶ Mandatory e-file rules for current and delinquent returns beginning as of July 1, 2013



What if there is “Signatory Authority,” but no “Financial Interest” in account?

- ▶ Filing time has been extended for certain individuals who had signature authority over, but no financial interest in, foreign financial accounts to June 30, 2015; these special rules apply to certain financial institution and public company employees only.

The IRS announced a **Voluntary Disclosure Program** on January 9, 2012 for taxpayers who have previously failed to report interests in foreign financial accounts (i.e., banks, securities, etc.) or income generated from those accounts.

Streamlined Filing Compliance Procedures

On June 18, 2014, the IRS announced the expansion of these procedures to include certain taxpayers who certify that their failure to report foreign financial assets and pay all tax due in respect of those assets did not result from willful neglect (see IR-2014-73). For eligible U.S. resident taxpayers, the only penalty will be a miscellaneous offshore penalty equal to 5% of the foreign financial assets that gave rise to the tax compliance issue.

Delinquent FBAR Filing Procedures

Taxpayers who have not filed a required FBAR and are not under a civil examination or a criminal investigation by the IRS, and have not already been contacted by the IRS should file any delinquent FBARs according to the FBAR instructions and include a reasonable cause statement explaining why the return is late.

FORM 8938 - REPORTING FOR FOREIGN FINANCIAL ASSETS

FOR TAX YEARS BEGINNING AFTER MARCH 18, 2010, the Hiring Incentives to Restore Employment Act of 2010 (HIRE Act, P.L. 111-147) provides that individuals with an interest in a “specified foreign financial asset” during the tax year must attach a disclosure statement to their income tax return.

Who must file?

- ▶ U.S. Citizens and U.S. resident aliens
- ▶ The aggregate value of all such assets is greater than \$100,000 (\$200,000 for joint filers) at any time during the year, or
- ▶ The total value of specified foreign financial assets, on the last day of the tax year, is more than \$50,000 (\$100,000 for joint filers)
- ▶ The reporting threshold for taxpayers living abroad is higher; they must file if the value of their specified foreign financial assets is more than \$200,000 on the last day of the tax year, or more than \$400,000 at any time during the tax year (\$400,000 and \$600,000 for joint filers).
- ▶ Does not currently apply to entities.

What are “specified foreign financial assets”?

- ▶ Depository or custodial accounts at foreign financial institutions
- ▶ To the extent not held in an account at a financial institution:
 - ▶ Stocks or securities issued by foreign persons
 - ▶ Any other financial instrument or contract held for investment that is issued by or has a counterparty that is not a U.S. person
 - ▶ Any interest in a foreign entity.

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What are the penalties for failure to file?

- ▶ Initial penalty of \$10,000
- ▶ If failure continues for more than 90 days after the day on which the IRS mails a notice of failure to the individual, he or she will be penalized \$10,000 for each 30-day period during which the failure continues
- ▶ The penalty imposed for any failure can't exceed \$50,000.

When is the filing due?

- ▶ Form 8938 is to be filed annually with the taxpayer's income tax return.

Filing Form 8938 does not relieve a taxpayer of the requirement to file Form 114, Report of Foreign Bank and Financial Accounts (FBAR), if he or she is otherwise required to file Form 114. Both forms will be required to be filed for each year.

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