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Increased Penalties for Failure to File an FBAR to Report Foreign Financial Assets

INTERNAL REVENUE SERVICE, INTERNATIONAL, TAX
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The Financial Crimes Enforcement Network (FinCEN) recently announced inflation-adjusted penalties for failure by U.S. persons to file a Report of Foreign Bank and Financial Accounts (FBAR) reporting an interest in foreign financial accounts. The civil penalty for non-willful failure to report increased to \$12,921 (from \$12,663), and the penalty for willful failure to report increased to \$129,210 (from \$126,626) for penalties assessed in 2018. Note that criminal penalties can be significantly greater.

U.S. persons with a financial interest in, or signature authority over, foreign financial assets exceeding \$10,000 in the aggregate at any point during the year are required to file the FBAR. FinCEN Form 114 is the form used to report this compliance obligation. The FBAR report is not itself an income tax return; it is filed separately from an individual's income tax return, and must be filed electronically.

The due date for the FBAR now tracks the filing deadline for individual taxpayers filing their individual tax returns (this year, April 17, 2018). While Congress has directed the Internal Revenue Service (IRS) to provide extensions of time to file the FBAR, there are no current regulations providing for filing extensions at this time. Note, however, that in an informational release dated February 22, 2018, the IRS clarified that filers who fail to file their 2017 calendar year FBARs by April 17, 2018 have an automatic extension up to October 15, 2018 to file it.

A U.S. person is broadly defined to include individuals (children included), corporations, partnerships, LLCs, and trusts.

Financial assets include, but are not limited to, bank accounts, securities accounts, mutual funds, and insurance policies or annuities with a cash value.

Further, the IRS and courts may broadly interpret the definition of foreign financial assets. For example, query whether virtual currency accounts and online gambling accounts qualify as financial asset accounts subject to reporting.

A "foreign financial account" is a financial account located outside the U.S. An account maintained with a branch of a U.S. bank that is physically located outside of the U.S. is a foreign financial account. An account maintained with a branch of a foreign bank that is physically located in the U.S. is not a foreign financial account.

Please do not hesitate to contact us with questions about the foreign financial

asset reporting requirements and visit our [SD Global Services page](#) to learn more about the services that we offer our clients.

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