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Beware Foreign Trust Reporting to IRS

The [Foreign Account Tax Compliance Act](#)—the unfortunate acronym is FATCA—adds another filing requirement for foreign accounts and assets. You already know about disclosing a foreign account on your tax return, reporting the income, and separately filing a Treasury Form [TD F 90-22.1](#), Report of Foreign Bank and Financial Accounts—referred to as an FBAR—annually. Distinct from tax returns, FBARs are due each June 30 for the preceding year. See [Ten Things To Know About Offshore Bank Accounts](#).

But the newest disclosure for foreign trusts will be a different kettle of fish entirely. Unlike the FBAR form, this one is to be attached to your [Form 1040](#) tax return. This new rule **does not** obviate the FBAR. In fact, one could be **required** to make a FATCA disclosure, but **not** have an FBAR filing obligation. That could occur, for example, if you have an investment in a foreign hedge fund or private equity fund which would be subject to FATCA but should not require an FBAR.

Whether you know it or not, this amped up disclosure was passed a year ago—on March 18, 2010—as part of the [Hiring Incentives to Restore Employment Act](#) (also known as the HIRE Act). This new reporting rule kicks in for tax years beginning after March 18, 2010, so for most of us, it applies to calendar year 2011 and thereafter. That means your due date will be April 15, 2012.

Internal Revenue Code Section 6038D requires U.S. taxpayers with foreign accounts and assets having an aggregate value exceeding [\\$50,000](#)

to report them on an information return. Although the law is already in effect, the form hasn't yet been released and the first filers for calendar year 2011 won't be due until next April.

The basic rule is that you must report "specified foreign financial assets" with an aggregate value exceeding \$50,000. A "specified foreign financial asset" includes ownership of:

- Any financial account maintained by a foreign financial institution;
- Any stock or security issued by a non-U.S. person;
- Any financial interest or contract held for investment that has a non-U.S. issuer or counterparty; and
- Any interest in a foreign entity. That means taxpayers who purchase foreign real estate through an entity are covered.

The IRS produced initial [FATCA guidance](#) last year. The American Bar Association Tax Section recently weighed in with a variety of concerns and suggestions. See [Letter to IRS Commissioner Shulman Regarding FATCA](#).

Much remains unclear. There's no form yet to review, so watch this space between now and April 2012. Whatever happens, if you have foreign accounts or assets, expect a new set of disclosure and compliance headaches.

For more, see:

[The Foreign Account Tax Compliance Act](#)

[New Legislation Could Affect Filers of the FBAR](#)

[Preparing Your Company for FATCA](#)

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