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FBARs Must Be Filed And Received By June 30

Taxpayers with foreign accounts aggregating \$10,000 at any time during 2012 must file Treasury Form [TDF 90-22.1](#), also known as an [FBAR](#). Separate from tax returns, the annual filing for 2012 is due June 30, 2013. Note that FBARs are not governed by the usual “mailing is filing” rule applicable to tax returns. Make sure your FBAR is **received** by June 30. See [E-Filing And Other FBAR Quirks](#).



What if it really isn't your money? You must file even if you're just a signatory and you have no beneficial or ownership interest. See [Primer For First Time FBAR Filers](#). Even if you only have signature authority, these forms matter. See [Should You File FBAR For The First Time?](#) The rules are important for employees and officers of companies too. Here are some basics:

What's an Account? Foreign bank and brokerage accounts are generally included. So are offshore mutual funds and pooled investments. However, hedge and private equity funds generally don't count. An account with a U.S. institution that holds foreign assets doesn't require a filing as long as you can't directly access foreign assets maintained in a foreign institution. But foreign branches of U.S. institutions are treated as foreign. See [Primer For First Time FBAR Filers](#).

Civil Penalties. The civil [penalty](#) for failing to file an FBAR is \$10,000 for each non-willful violation. But note that the government can apply this penalty per account and per year. That means your penalty exposure goes up the more accounts you have and the more years you fail to comply.

If your violation is considered willful, the potential penalties get even more Draconian. If a violation is willful, the penalty is the greater of \$100,000 or 50% of the amount in the account for each violation. Again, each year you didn't file is a separate violation. See [Despite FATCA, FBAR Penalties Still Under Fire](#).

Criminal Penalties. Tax evasion can carry a prison term of up to five years and a fine of up to \$250,000. Filing a false return can mean up to three years in prison and a fine of up to \$250,000. Failing to file a tax return can mean a one year prison term and a fine of up to \$100,000. Failing to file FBARs can be criminal too with monetary penalties up to \$500,000 and prison for up to ten years. See [IRS May Find "Innocent" FBAR Violation Willful](#).

E-Filing. On June 29, 2011, FinCEN announced that all FinCEN forms must be filed electronically with certain exceptions. The FBAR was granted a general exemption from mandatory electronic filing through June 30, 2013. Effective July 1, 2013, filers must electronically file FBARs through the [BSA E-File System](#). If unable to e-file, filers may contact the FinCEN Regulatory Helpline at (800) 949-2732 to request an exemption.

Help in completing the FBAR is available Monday through Friday, 8 a.m. to 4:30 p.m. Eastern Time at (866) 270-0733 (toll-free inside the U.S.) or (313) 234-6146 (not toll-free, for callers outside the U.S.). Questions regarding the FBAR can be sent to FBARquestions@irs.gov. Filers residing abroad may also contact U.S. embassies and consulates for assistance. For E-Filing system questions, call the FinCEN E-Filing Help Desk at (866) 346-9478, option 1 (Monday through Friday, 8 a.m. to 6:00 p.m. Eastern Time).

FBARs are important to the IRS enforcement efforts regarding foreign accounts and income tax compliance. They will probably become more so. Get used to the rules. They aren't going away.

You can reach me at Wood@WoodLLP.com. This discussion is not intended as legal advice, and cannot be relied upon for any purpose without the services of a qualified professional.