



Insight Paper # 03:

Reporting Funds in Foreign Bank Accounts

The Internet and instant global communications have made international banking very easy. You can sit comfortably in your home and deal online with a bank anywhere in the world. Some unscrupulous promoters even advertised the "tax-free" benefits of using foreign banks. That is wrong and criminal. Recently, the IRS has been taking major steps to end abuses.

In March 2009, the IRS announced a major offshore compliance initiative to give taxpayers who have been using foreign bank accounts to hide assets a chance "to come clean." In return for revealing their undisclosed offshore accounts, the IRS has promised taxpayers that it will not seek criminal prosecution or impose the 75 percent civil fraud penalty against them.

To persuade taxpayers to act quickly, the IRS has set a mid-September 2009 deadline to come forward and participate in the initiative. This September deadline, however, should not be confused with the annual deadline of June 30 for reporting foreign accounts held the year before. That information is reported on Form TD F 90-22.1, Report of Foreign Bank and Financial Accounts (known as the "FBAR"). The IRS can and will assess penalties for each year that reporting had been ignored. For foreign accounts existing in 2008, the deadline is June 30, 2009 with some exceptions.

Some taxpayers are making so-called "quiet disclosures" by filing amended returns to avoid the initiative. The IRS is reviewing amended returns to discover these quiet disclosures. An amended return is the proper vehicle to correct an error on a filed return but it is not the same as voluntarily participating in the initiative, the IRS cautioned.

Recently, the IRS has met with success in negotiating agreements with many "bank secrecy" countries to disclose tax evasion. The IRS has warned that if it finds out about a taxpayer's offshore account through any of these agreements (or elsewhere) rather than through voluntary disclosure initiative, it intends to assess every penalty at its disposal under the law.

Reporting. Money in an overseas bank generally must be reported to the IRS. The Bank Secrecy Act requires you to report if you have:

1. A financial interest in, signature authority or other authority over one or more accounts in a foreign country, and
2. The value of the account exceeds \$10,000 at any time during the calendar year.



The Bank Secrecy Act does not prohibit you from owning a foreign bank account; it only requires reporting and disclosure. The rules apply to all citizens and residents of the U.S. as well as domestic corporations, estates, partnerships, and trusts. You also must report even if your foreign bank account produces no taxable income. If it does produce taxable income (interest), you must report the income on your federal income tax return. There are special, complex rules for converting the income into U.S. dollars. Sometimes, a tax treaty may also affect your taxable income. The U.S. has tax treaties with almost every other country.

Exceptions. Like all rules, there are some exceptions. One of the most important covers accounts in U.S. military banking facilities operated by U.S. financial institutions overseas. These accounts, which serve our military personnel, are not treated as foreign bank accounts for reporting purposes. However, if a serviceman or woman opens an account in a foreign bank while serving abroad, the reporting requirements would apply.

Special form. Taxpayers use the FBAR to report foreign bank accounts. Checking the appropriate block on Form 1040 Schedule B, and filing the FBAR satisfies the account holder's reporting obligation. The FBAR is due by June 30.

Some taxpayers may be eligible for an extension beyond June 30 for 2008 FBARs. Taxpayers who reported and paid tax on all of their 2008 taxable income but only learned shortly before the June 30, 2009 deadline of their responsibility to file a FBAR have until September 23, 2009 to file. If they do so, the IRS will not impose a penalty. If you are uncertain about whether you need to file a FBAR, please contact our office. The IRS also has a special FBAR hotline: (800) 800-2877.

There are also special FBAR filing rules related to the offshore compliance initiative for taxpayers with signature authority but no beneficial interest in an account. The taxpayer may cure the FBAR delinquency for the account the taxpayer does not own by filing the FBAR with an explanatory statement by September 23, 2009. The IRS is taking a very careful look at taxpayers who claim they have only signature authority but no beneficial interest in a foreign account. Please contact our office if you have any questions about signature authority.

QI program. Foreign banks participating in the IRS's qualified intermediary (QI) program must verify when accounts held by U.S. citizens have income from U.S. securities, withhold the correct amount of tax, and transmit the tax to the IRS. The IRS is reworking the program to improve compliance by requiring look-through by foreign banks to identify true owners. In the case of accounts held by entities, the bank would have to obtain the taxpayer identification number of the individuals controlling the entity.

If you have any questions about foreign bank accounts or the reporting requirements, please give us a call.

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