

# Foreign Banks and Financial Accounts

**NEW APR 15  
DUE DATE**

Until recently, the IRS was lax in enforcing the foreign bank account reporting (FBAR) requirement. However, in recent years the IRS has increased its publicity and enforcement of these rules while gradually increasing filing and reporting requirements.

Currently all tax filers must indicate on their tax returns if they have a foreign bank or financial account, no matter how small it is. If you own or have an interest in or signatory authority over foreign financial accounts, then you should be aware of the FBAR [Foreign Bank Account Report] requirements.

**FinCEN 114 replaces Form TD F 90-22.1** must be filed by U.S. Persons (citizens, residents and certain other persons) if the person has an interest in, or signatory authority over a foreign financial account, and the aggregate value of these accounts exceeds \$10,000, at any time, during the calendar year. **NEW - THIS REPORT MUST BE E-FILED BY APRIL 15TH EACH YEAR OR AN EXTENSION FILED EXTENDING DEADLINE TO OCTOBER 15TH.**

**NEW FORM 8938 REQUIREMENTS – STATEMENT OF SPECIFIED FOREIGN FINANCIAL ASSETS** In addition to the FBAR filing requirement there are new filing requirements with your income tax return, which partially duplicate the FBAR filing requirements. The new rules below determine if you must include form 8938 with your tax return.

<b>Single Individual or Married filing Separately and living in the US</b>	<b>with foreign accounts</b> of more than \$50,000 on the last day of the year or more than \$75,000 at anytime during the year.
<b>Married filing Jointly and living in the US</b>	<b>with foreign accounts</b> of more than \$100,000 on the last day of the year or more than \$150,000 at anytime during the year.
<b>Single Individual or Married filing Separately and living Abroad</b>	<b>with foreign accounts</b> of more than \$200,000 on the last day of the year or more than \$300,000 at anytime during the year.
<b>Married filing Jointly and living Abroad</b>	<b>with foreign accounts</b> of more than \$400,000 on the last day of the year or more than \$600,000 at anytime during the year.

**PENALTIES** for not e-filing form **FinCEN 114** are severe and draconian. The instructions state that a person may be subject to civil penalty not to exceed \$10,000 per violation. It then goes on to state that if there is a reasonable cause for the failure to file, no penalty will be imposed. However, if the IRS deems the cause not reasonable then the penalties are much harsher.

**WHAT TO DO? IF YOU REPORTED ALL YOUR FOREIGN ACCOUNTS INCOME**, but have not filed the FBAR reports, then you should take steps to file six years of prior FBAR reports with a note of explanation, requesting a waiver of penalties due to reasonable cause.

**IF YOU DID NOT REPORT ALL YOUR FOREIGN ACCOUNTS INCOME AND DID NOT FILE THE FBAR REPORTS**, then you should follow the IRS guidelines called Offshore Voluntary Disclosure Initiative (OVDI). This initiative offers reduced penalties for taxpayers who failed to report their foreign accounts and assets and failed to report the income from those accounts. Taxpayers will need to file amended tax returns for the last eight years with a note of explanation. The process is long and comprehensive.

#### **THE CIVIL PENALTY SCHEME UNDER THE OVDI IS AS FOLLOWS:**

- 1)** a one-time 27.5 percent penalty on the highest aggregate annual balance in the unreported accounts during the look-back period (an increase from the 20 percent penalty under the 2009 program and 25 percent penalty under the 2011 program) and
- 2)** a 20 percent accuracy-related penalty or delinquency (late filing and late payment) penalties on the amount of U.S. income tax that should have been paid during the last eight years.