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### Beware More FBAR And FATCA Reporting Changes

Some offshore account reporting is changing, although potential civil and criminal penalties are still frighteningly high. American citizens and residents with non-U.S. bank or financial accounts—or any non-U.S. assets for that matter—have been grappling with myriad changes the last handful of years. It can sometimes feel like the IRS does not want you have *anything anywhere* that is not 100% American. You are free to have it, of course. But you had better *report* it. Much of the myopia about offshore assets started with the IRS going after Swiss banking.

UBS AG got into trouble with the IRS and Justice Department, launched [thousands of voluntary disclosures to the IRS](#), and changed bank secrecy forever. Eventually, the Swiss Parliament passed a measure enabling banks to hand over client identities to American authorities (what bank secrecy?) without violating Swiss bank-secrecy laws. After getting bruised in court battles with the IRS, in 2009, UBS [paid \\$780 million](#) to settle charges that it helped wealthy Americans evade taxes. Other Swiss banks followed suit.



Then, in 2010, the U.S. passed [FATCA](#), the Foreign Account Tax Compliance Act. But first there were [FBARs](#)—also now called FinCEN Form 114, *Report of Foreign Bank and Financial Accounts*. They are not filed with the IRS, but with FinCEN, the Financial Crimes Enforcement Network, part of the Treasury Department. That itself is a little scary. FinCEN's existing regulations say you must file if you have a financial interest in, or signature authority over, foreign financial accounts with a total value exceeding \$10,000 during the previous calendar year.

The due date is June 30 of each year, but next year it changes to April 15, like tax returns. And starting next year, like tax returns, you can extend it. FinCEN has made a number of proposals ([RIN 1506-AB26](#)) to revise its regulations. The proposed regulations would conform the FBAR filing deadlines to the new April 15 date, update the filing exemption for officers and employees with signature authority but no financial interest, and require filers with 25 or more accounts to begin reporting detailed information on each account on their annual FBAR filing.

Helpfully, the [American Institute of CPAs](#) (AICPA) has submitted [comments](#) to the government regarding these proposed changes. The AICPA recommended in an October 18 [letter](#) that:

- Any taxpayer who submits a timely extension request for their calendar year federal income tax return should automatically receive a corresponding extension to October 15 to file their FBAR;
- FinCen make available on its website a simple-to-complete electronic extension request for use by taxpayers who do not request a filing extension of their federal income tax return;
- FinCEN coordinate with tax preparation software vendors to ensure that both tax professionals and individual taxpayers have ready access for electronic filing of FBAR extensions through their products;
- FinCEN's final regulations include a provision to grant an automatic extension until June 15 to FBAR filers located overseas or who maintain their books and records overseas;
- FinCEN permit taxpayers with signature authority but no financial interest in accounts whose filing requirements have been deferred since 2011 to not be required to file the deferred FBARs provided they would have qualified for the expanded filing exemption proposed by FinCEN;

- FinCEN allow filers with 25 or more accounts to provide the information as an attachment to their FBAR return; and
- FinCEN continue to provide an exemption from filing an FBAR to officers and employees of certain federally-regulated entities for accounts over which they have signature authority but no financial interest.

Stay tuned for whether the AICPA's good ideas come to pass. In the meantime, don't forget about [FATCA](#). It now spans the globe with a network of reporting that is unparalleled in the world. America is requiring foreign banks and governments to hand over secret bank data about depositors. Non-U.S. banks and financial institutions around the world must reveal American account details or risk big penalties. Offshore banks that do not hand over Americans are withholding at 30% on most transactions.

Non-compliant institutions are frozen out of U.S. markets, so there is little choice but to comply. FATCA cuts off companies from access to critical U.S. financial markets if they fail to pass along American data. More than 100 nations have agreed to the law. Countries must agree to the law or face dire repercussions. FATCA also helped fuel efforts by the OECD to adopt Common Reporting Standards for nations around the world.

The [IRS has warned offshore account holders to disclose before it's too late](#). Under FATCA, banks everywhere want to know [if you are compliant with the IRS](#). The cost of compliance for many people is growing. The IRS has a [list of foreign banks](#) where accounts trigger a 50% (rather than 27.5%) penalty in the IRS's long-running Offshore Voluntary Disclosure Program ([OVDP](#)). It remains the safest program, with amnesty even for willful acts. But for those with the right facts, the IRS [Streamlined program](#) is simpler and less costly. Be careful out there.

*For alerts to future tax articles, email me at [Wood@WoodLLP.com](mailto:Wood@WoodLLP.com). This discussion is not legal advice.*