



### FAQs Regarding Report of Foreign Bank and Financial Accounts (FBAR) - Filing Requirements and Financial Reports

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The Tax Team at FreedMaxick is pleased to present this list of Frequently Asked Questions, culled directly from the IRS website, with additional links to more detailed IRS guidance. Should you have any questions about FBAR, or are currently facing an FBAR issue or challenge, please call us at 716.847.2651

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Source: <http://www.irs.gov/businesses/small/article/0,,id=210244,00.html>

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Source: <http://www.irs.gov/businesses/small/article/0,,id=210249,00.html>

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#### **Q1. What is an FBAR?**

A. An FBAR is a Report of Foreign Bank and Financial Accounts. The form number is [TD F 90-22.1](#) (PDF).

#### **Q2. Who must file an FBAR?**

A. Any United States person who has a financial interest in or signature authority or other authority over any financial account in a foreign country, if the aggregate value of these accounts exceeds \$10,000 at any time during the calendar year. See also [Notice 2010-23](#).

#### **Q3. What is a foreign country?**

A. A "foreign country" includes all geographical areas outside the United States, the commonwealth of Puerto Rico, the commonwealth of the Northern Mariana Islands, and the territories and possessions of the United States (including Guam, American Samoa, and the United States Virgin Islands).

#### **Q4. What is a United States person?**

A. "United States person" includes a citizen or resident of the United States, a domestic partnership, a domestic corporation, and a domestic estate or trust. See [Announcement 2010-16](#).

#### **Q5. Is a single-member LLC, which is a disregarded entity for U.S. tax purposes, a United States person for FBAR purposes?**

A. Yes, the tax rules concerning disregarded entities do not apply with respect to the FBAR reporting requirement. FBARs are required under Title 31, not under any provisions of the Internal Revenue Code.

#### **Q6. What constitutes signature or other authority over an account?**

A. A person has signature authority over an account if such person can control the disposition of money or other property in it by delivery of a document containing his or her signature (or his or her signature and that of one or more other persons) to the bank or other person with whom the account is maintained. Other authority exists in a person who can exercise power that is comparable to signature authority over an account by direct communication to the bank or other person with whom the account is maintained, either orally or by some other means.

#### **Q7. Is a U.S. resident with power of attorney on his elderly parents' accounts in Canada required to file an FBAR, even if the resident never exercised the power of attorney?**

A. Yes, if the power of attorney gives the U.S. resident signature authority, or other authority comparable to signature authority, over the financial accounts. Whether or not such authority is ever exercised is irrelevant to the FBAR filing requirement. See [Notice 2010-23](#) for information regarding an extended due date to report signature authority over a foreign financial account.

**Q8. How do filers report their accounts to the IRS?**

A. Filers report their foreign accounts by (1) completing boxes 7a and 7b on Form 1040 Schedule B, box 3 on the Form 1041 "Other Information" section, box 10 on Form 1065 Schedule B, or boxes 6a and 6b on Form 1120 Schedule N and (2) completing Form TD F 90-22.1 (PDF).

**Q9. When is the FBAR due?**

A. The FBAR is due by June 30 of the year following the year that the account holder meets the \$10,000 threshold. The granting, by IRS, of an extension to file Federal income tax returns does not extend the due date for filing an FBAR. Filers cannot request an extension of the FBAR due date. See also [Notice 2010-23](#). If a filer does not have all the available information to file the return by June 30, they should file as complete a return as they can and amend the document when the additional or new information becomes available.

**Q10. Where are FBAR forms available?**

A. FBAR forms are available:

- Online via IRS.gov in [PDF](#).
- Online via Department of the Treasury's Financial Crimes Enforcement Network Web site in PDF.
- By calling the IRS at 800-829-3676.

**Q11. Is there a help line for questions about completing the form?**

A. Help in completing [Form TD F 90-22.1](#) (PDF) is available Monday - 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.).

**Q12. Does the IRS have an email address to send questions regarding the FBAR?**

A. You can send questions concerning the FBAR to [FBARquestions@irs.gov](mailto:FBARquestions@irs.gov). The email system does not accept actual FBAR reports.

**Q13. Where do I file the FBAR?**

A. Send completed forms to:

U.S. Department of the Treasury

P.O. Box 32621

Detroit, MI 48232-0621

If an express delivery service is used, send completed forms to:

IRS Enterprise Computing Center

ATTN: CTR Operations Mailroom, 4<sup>th</sup> Floor

985 Michigan Avenue

Detroit, MI 48226

The contact phone number for the delivery messenger service is 313-234-1062. The number cannot be used to confirm that your FBAR was received.

The FBAR is not to be filed with the filer's Federal tax return.

**Q14. How do I verify that my FBAR was filed?**

A. Ninety days after the date of filing, the filer can request verification that the FBAR was received. An FBAR filing verification request may be made by calling 866-270-0733 and selecting option 1. Up to five documents may be verified over the phone. There is no fee for this verification.

Alternatively, an FBAR filing verification request may be made in writing and must include the filer's name, taxpayer identification number and the filing period. There is a \$5 fee for verifying five or fewer FBARs and a \$1 fee for each additional FBAR. A copy of the filed FBAR can be obtained at a cost of \$0.15 per page.

Check or money order should be made payable to the United States Treasury.

The request and payment should be mailed to:

IRS Enterprise Computing Center/Detroit

ATTN: Verification

P.O. Box 32063

Detroit, MI 48232

**Q15. How does an FBAR filer amend a previously filed FBAR?**

A. FBAR filers can amend a previously filed FBAR by:

- Checking the Amended box in the upper right-hand corner of the first page of the form;
- Making the needed additions or corrections;
- Stapling it to a copy of the original FBAR; and
- Attaching a statement explaining the additions or corrections.

**Q16. What happens if an account holder is required to file an FBAR and fails to do so?**

A. Failure to file an FBAR when required to do so may potentially result in civil penalties, criminal penalties or both. If you learn you were required to file FBARs for earlier years, you should file the delinquent FBAR reports and attach a statement explaining why the reports are filed late. No penalty will be asserted if the IRS determines that the late filings were due to reasonable cause. Keep copies of what you send for your records.

**Q17. Can cumulative FBAR penalties exceed the amount in a taxpayer's foreign accounts?**

A. Yes, under the penalty provisions found in 31 U.S.C. 5314(a)(5), it is possible to assert civil penalties for FBAR violations in amounts that exceed the balance in the foreign financial account.

**Q18. How long should account holders retain records of the foreign accounts?**

A. Records of accounts required to be reported on an FBAR must be retained for a period of five years. Failure to maintain required records may result in civil penalties, criminal penalties or both.

**Q19. For filing FBARs for prior years, should the current FBAR form be used or should the previous version of the form be used?**

A. The current FBAR form (revised in October 2008) may be used to report a financial interest in, or signature or other authority over, financial accounts that were maintained in years prior to 2008. However, since the changes to the current FBAR form reflect a change in the reporting requirements, the instructions for the prior version of the FBAR form (revised in July 2000) may be relied upon for the purpose of determining the filing requirements for properly reporting financial accounts maintained in calendar years prior to 2008.

**Q20. Does more than one form need to be filed for a husband and wife owning a joint account?**

A. No, provided that the names and Social Security numbers of the joint owners are fully disclosed on the filed FBAR. A spouse having a joint financial interest in an account with the filing spouse should be included as a joint account owner in Part III of the FBAR. The filer should write "(spouse)" on line 26 after the last name of the joint spousal owner. If the only reportable accounts of the filer's spouse are those reported as joint owners, the filer's spouse need not file a separate report. If the accounts are owned jointly by both spouses, the filer's spouse should also sign the report. It should be noted that if the filer's spouse has a financial interest in other accounts that are not jointly owned with the filer or has signature or other authority over other accounts, the filer's spouse should file a separate report for all accounts including those owned jointly with the other spouse.

**Q21. Are UBS account holders still eligible for the Voluntary Disclosure Practice? The income earned on my client's foreign account has not been reported on his Form 1040, nor have FBARs been filed.**

A. The Voluntary Disclosure Practice is a longstanding practice of IRS Criminal Investigation of taking timely, accurate, and complete voluntary disclosures into account in deciding whether to recommend to the Department of Justice that a taxpayer be criminally prosecuted. It enables noncompliant taxpayers to resolve their tax liabilities and minimize their chances of criminal prosecution. When a taxpayer truthfully, timely and completely complies with all provisions of the Voluntary Disclosure Practice, the IRS will not recommend criminal prosecution to the Department of Justice.

**Q22. What is a financial account?**

A. A "financial account" includes any bank, securities, securities derivatives or other financial instruments accounts. The term includes any savings, demand, checking, deposit or any other account maintained with a financial institution or other person engaged in the business of a financial institution. Financial account also generally includes any accounts in which the assets are held in a commingled fund, and the account owner holds an equity interest in the fund (including mutual funds). Individual bonds, notes, or stock certificates held by the filer are not a financial account nor is an unsecured loan to a foreign trade or business that is not a financial institution.

**Q23. What is meant by the term "commingled funds?"**

A. The reference to "commingled fund" appears in the definition of the term "financial account" in the FBAR instructions. The instructions state that the term "financial account" generally encompasses accounts in which the assets are held in a commingled fund and the account owner holds an equity interest in the fund. Persons with a financial interest in, or signature authority over, a foreign commingled fund that is a mutual fund are required to file an FBAR unless another filing exception, as provided in the FBAR instructions or

other relevant guidance, applies. The IRS will not interpret the term “commingled fund” as applying to funds other than mutual funds with respect to FBARs for calendar year 2009 and prior years. Thus, the IRS will not apply its enforcement authority adversely in the case of persons with a financial interest in, or signature authority over, any other foreign commingled fund with respect to that account for calendar year 2009 and earlier calendar years, including hedge funds and private equity funds. [Notice 2010-23](#).

**Q24. Is an FBAR required for accounts maintained with financial institutions located in a foreign country if the accounts hold noncash assets, such as gold?**

- A. Yes. An account with a financial institution that is located in a foreign country is a financial account for FBAR purposes whether the account holds cash or non-monetary assets.

**Q25. What does “maximum value of account” mean (for Box 15 on the FBAR)?**

A. The maximum value of account is the largest amount (not the average amount) of currency and nonmonetary assets that appear on any quarterly or more frequent account statements issued for the applicable year. If periodic account statements are not issued, the maximum account value is the largest amount of currency or nonmonetary assets in the account at any time during the year. Convert foreign currency by using the official exchange rate at the end of the year.

Though the FBAR instructions direct filers to use the official exchange rate, the Internal Revenue Service has no official exchange rate and generally accepts any posted exchange rate that is used consistently. For exchange rates, check the [U.S. Treasury Web site](#) or other commercial sites.

**Q26. A person owns foreign financial accounts X, Y and Z with maximum account balances of \$100, \$12,000 and \$3,000, respectively. Does the person have to file an FBAR and if so, which accounts must be listed on the FBAR?**

- A. The FBAR instructions require the filing of the FBAR form “... if the aggregate value of these financial accounts exceeds \$10,000 at any time during the calendar year ...” In this scenario, the person has an FBAR filing obligation because the aggregate value of foreign financial accounts X, Y and Z is \$15,100. The person must report foreign financial accounts X, Y and Z on the FBAR even though accounts X and Z have maximum account values below \$10,000.

**Q27. A person owns foreign financial accounts A, B and C with account balances of \$3,000, \$1,000 and \$8,000, respectively. Does the person have to file an FBAR and if so, which accounts must be listed on the FBAR?**

- A. Even though no single account is over \$10,000, because the aggregate value of accounts A, B and C is over \$10,000, the person has to file an FBAR and must report foreign financial accounts A, B and C on the FBAR.

**Q28. Is an FBAR required if the account generates neither interest nor dividend income?**

- A. Yes, an FBAR must be filed whether or not the foreign account generates any income.

**Q29. Does the term “other authority over a financial account” mean that a person, who has the power to direct how an account is invested but who cannot make disbursements to the accounts, has to file an FBAR?**

- A. No, an FBAR is not required because the person has no power of disposition of money or other property in the account.

**Q30. Must a U.S. person file an FBAR to report a eurodollar account in the Cayman Islands?**

- A. Yes, the Cayman Islands account is a foreign account.

**Q31. A New York corporation owns a foreign company that has foreign accounts. The corporation will file an FBAR for the foreign company’s accounts. Do the primary owners of the U.S. company also have to file?**

- A. Yes, if any owner directly or indirectly owns more than 50 percent of the total value of the shares of stock, that owner will have to file an FBAR.

**Q32. A company has more than 25 foreign accounts. What should they enter in Part II of the FBAR?**

- A. If the filer holds a financial interest in more than 25 accounts, check the yes box in item 14 and indicate the number of accounts in the space provided. Do not complete any further items in Part II or Part III of the report. Sign the form in item 44/45 and enter the date signed in item 46. Any person who lists more than 25 accounts in item 14 must provide all the information called for in Part II and Part III when requested by the Department of the Treasury.

**Q33. What are the exceptions to the FBAR filing requirement?**

A. Accounts in U.S. military banking facilities, operated by a United States financial institution to serve U.S. government installations abroad, are not considered as accounts in a foreign country. For this reason, these accounts do not have to be reported on an FBAR.

An officer or employee of a bank that is subject to the supervision of the Comptroller of the Currency, the Board of Governors of the Federal Reserve System, the Office of Thrift Supervision, or the Federal Deposit Insurance Corporation need not report that he has signature or other authority over a foreign bank, securities or other financial account maintained by the bank, if the officer or employee has NO personal financial interest in the account.

An officer or employee of a domestic corporation whose equity securities are listed on a national securities exchange or which has assets exceeding \$10 million and 500 or more shareholders of record, need not file a report concerning signature authority over a foreign financial account of the corporation, if he has NO personal financial interest in the account and he has been advised, in writing, by the chief financial officer of the corporation that the corporation has filed a current report, which includes that account.