

A wider net
Understanding your FBAR
reporting requirements



Individuals and entities who have a financial interest in or *signature or other authority* over a foreign financial account are required to file an annual Report of Foreign Bank and Financial Accounts – known as an FBAR – with the Treasury Department. Final reporting rules put in place earlier this year may require some individuals and organizations who had not previously filed an FBAR to now file one. Returns for calendar year 2010 must be received by June 30, 2011.

Specifically, the final rules clarify that there is no broad exception to the reporting requirements for U.S. persons holding signature authority over but no financial interest in foreign accounts. If subject to the new rules, these individuals, including officers and employees of multinationals, will need to disclose information about foreign accounts to the Treasury.

Once individuals and entities wade through the process of understanding the implications of the final rules, there is likely to be an onslaught of last-minute filings. Companies, employees, and individuals should take certain steps immediately to ensure that they meet the reporting deadline and avoid the risk of significant criminal and civil penalties for noncompliance.

Not just for the financial services sector . . .

Contrary to the belief that the FBAR filing requirements apply only to the financial services sector, the final rules require any U.S. person or entity that has a financial interest in or signature or other authority over a foreign financial account to file an FBAR if the aggregate value of all accounts exceeds \$10,000 at any time during the calendar year. With limited exceptions, the final rules, which became effective on March 28, 2011, apply to FBARs filed for calendar year 2010. The forms must be received (not just postmarked) at the Treasury Department's Detroit Center by June 30, 2011. Importantly, the government will not grant extensions to file the FBAR, and failure to file may result in significant criminal and civil penalties.

Signature authority filing requirements a source of concern

The final rules largely adopt the prior FBAR reporting rules and provide several clarifications. But new language regarding the meaning of "signature or other authority" for financial accounts has caused concern for some employees and officers. With limited exception, the final rules require U.S. persons who are employees and officers with signature authority over but no financial interest in foreign financial accounts to file an FBAR for all such accounts, even if the corporate account owner files an FBAR that includes such accounts. The final FBAR rules must be used to determine FBAR filing requirements for 2010 and subsequent years.

For 2009 and earlier FBAR filings, the IRS allowed a deferral of the FBAR filing for certain individuals, such as employees and officers, who held signature authority over but no financial interest in foreign financial accounts. Those employees and officers who took advantage of this deferral period for years prior to 2010 have FBAR filings that are required to be received by June 30, 2011. The final FBAR rules allow filers with properly deferred FBAR filing obligations to apply the provisions of the final rules in determining their FBAR filing obligations for years prior to 2010.

Notable exceptions

There are a few exceptions to the FBAR filing requirements that still apply for officers and employees of companies with signature or other authority for *an account owned directly by that company* and where the employee has no financial interest in the account. These exceptions include:

- An officer or employee of a publicly held company, whether foreign or domestic, with a class of equity securities, listed on any U.S. national securities exchange;
- An officer or employee of a U.S. subsidiary of a U.S. entity with a class of securities listed on a U.S. national securities exchange if the subsidiary is included in a consolidated report filed by the U.S. parent;
- An officer or employee of a bank that is examined by federal authorities;
- An officer or employee of a financial institution that is registered with and examined by the Securities and Exchange Commission or Commodity Futures Trading Commission; and
- An officer or employee of an authorized service provider where there is an account owned or maintained by an investment company that is registered with the Securities and Exchange Commission.

Illustrations

The following examples illustrate the application of the final rules in common situations in which an individual or entity has signature authority over foreign financial accounts either owned indirectly by the employer-entity or by a foreign subsidiary. Assume in each of the following four examples that a publicly traded U.S. corporation serving as a parent of a consolidated group (X), is engaged in the retail sale of consumer products. The parent wholly owns a U.S. subsidiary (Y), who wholly owns a French subsidiary (F). X also wholly owns a Chinese subsidiary (C). Assume in each of the examples the parent of the consolidated group, X, has filed an entity-level FBAR reporting ownership of all foreign bank accounts.

Signature authority over foreign financial accounts indirectly owned by the employer-entity

The final rules clarify that an employee of a U.S. parent is excepted only with regard to the parent's foreign financial accounts over which the employee has signature authority. The employee of the U.S. subsidiary is exempt only with regard to the subsidiary's foreign financial accounts over which the employee has signature authority despite the fact that the subsidiary's account was included in the parent's consolidated report.

Example 1: The foreign bank account is owned by X. John, who is a U.S. citizen and the CFO of X, has signature authority over the foreign bank account. Susan, an employee of Y, also has signature authority over the foreign bank account. Susan would be required to file the FBAR and John would meet one of the exceptions to the signature authority filing requirements.

Example 2: The foreign bank account is owned by Y. Susan, with signature authority over the foreign bank account and an employee of Y, would not be required to file an FBAR. John, however, would be required to file it, as he is an employee of X.

Signature authority over foreign financial accounts owned by a foreign subsidiary

The final rules clarify that foreign financial accounts of foreign subsidiaries of a publicly traded company will no longer be eligible for the signature authority exception. Consequently, a U.S. person employed by a foreign subsidiary whose foreign financial accounts are included in the consolidated report of the U.S. parent must file an FBAR for foreign accounts of the foreign subsidiary over which the employee has signature authority.

Example 3: The foreign bank account is owned by F. Richard, a U.S. citizen and an employee of F, has signature authority over the account. John, CFO, U.S. citizen, and employee of X, also has signature authority over the account. Richard and John would both be required to file an FBAR.

Example 4: Tom, a procurement manager and U.S. citizen employed by X, transferred to and became an employee of C to oversee foreign product procurement. Tom was given signing authority over C's non-U.S. bank accounts. In addition, John, CFO of X and a U.S. employee, and Sharon, a Chinese national and employee of C, also have signature authority over C's foreign accounts. Both Tom and John are required to file an FBAR. Sharon, who is not considered a U.S. person, is not required to file an FBAR.

Finally, it should be noted that there are **no exceptions** for employees and officers of private U.S. companies, U.S. and foreign partnerships, foreign subsidiaries, private foreign corporations, and subsidiaries of private foreign corporations who are U.S. citizens or residents and have signature or other authority over a foreign financial account of such an entity.

What taxpayers should be doing now

For many taxpayers the final rules will create greater administrative and compliance burdens. With the filing deadline quickly approaching, taxpayers should gather, analyze, and document foreign account information to determine that they meet the requirements of the final regulations.

The following specific actions will help individuals and entities address compliance with the final FBAR rules:

- Gather foreign account information as required – name of account owner, taxpayer EIN, account holder's mailing address, type of foreign account, name and mailing address of the financial institution holding the foreign account, account number, maximum value of the account during calendar year, designation of whether a U.S. person, taxpayer identification number of signatory, and names of signatories;
- Identify officers and employees that are U.S. persons having signatory or other authority over foreign accounts;
- Determine those foreign accounts for which officers and employees are required to file an FBAR;
- Communicate filing responsibilities with those officers and employees required to file; and
- Manage the compliance process for those individuals by preparing required FBARs, delivering FBARs to subject individuals, and ensuring the FBARs are timely signed and received by **June 30, 2011**.

Some companies and individuals may have filed 2010 federal income tax and information returns before the March 28, 2011, effective date of the final rules without the now-required FBAR information. In these instances, the final rules provide taxpayers with the choice of using (1) then-existing FBAR regulations that applied before the final rules, or (2) the final rules and revised form instructions. However, for income tax returns filed on or after March 28, 2011, the final FBAR rules apply.

This publication does not constitute tax, legal, or other advice from Deloitte Tax LLP, which assumes no responsibility with respect to assessing or advising the reader as to tax, legal, or other consequences arising from the reader's particular situation.

About Deloitte

Deloitte refers to one or more of Deloitte Touche Tohmatsu Limited, a UK private company limited by guarantee, and its network of member firms, each of which is a legally separate and independent entity. Please see www.deloitte.com/about for a detailed description of the legal structure of Deloitte Touche Tohmatsu Limited and its member firms. Please see www.deloitte.com/us/about for a detailed description of the legal structure of Deloitte LLP and its subsidiaries.

Copyright © 2011 Deloitte Development LLC. All rights reserved.
Member of Deloitte Touche Tohmatsu Limited

Contacts

Ellen MacNeil

U.S. Managing Partner, Consumer & Industrial Products
Deloitte Tax LLP
+1 202-378-5220
ellenmacneil@deloitte.com

Tom Cryan

Director, Tax Controversy Services
Deloitte Tax LLP
+1 202-378-5238
tcryan@deloitte.com

Kathy Petronchak

Director, Tax Controversy Services
Deloitte Tax LLP
+1 202-758-1480
kpelsonchak@deloitte.com

Terence Coppinger

Director, Northeast Information Reporting
Deloitte Tax LLP
+1 212-436-6412
tcoppinger@deloitte.com

Samuel Lowenthal

Partner, Financial Services Industry: Securities
Deloitte Tax LLP
+1 212-436-4286
slowenthal@deloitte.com