

# Foreign Account Disclosure: FATCA Meets FBAR

For many years, U.S. persons have been required to report certain foreign financial account information on Form 90-22.1—the Treasury Department’s Foreign Bank Account Report (FBAR), which is due June 30 each year. The Foreign Account Tax Compliance Act (FATCA), enacted in 2010, provides rules (somewhat overlapping with FBAR rules) for reporting foreign account and other information on Form 8938 that is to be attached to income tax returns, beginning for 2011. FBAR reporting was originally instituted as a defense against money laundering, drug running, terrorism, and the like and has only recently been used to address tax evasion. The primary purpose of FATCA is to ensure complete and accurate reporting of income from foreign investments.

Because FATCA reporting dates potentially are coming up soon: in April for some, we strongly encourage you to act promptly to determine your filing requirements, if any. Let us know if we may assist you.

	FBAR/Form 90-22.1	FATCA/Form 8938
Who is required to file?	<p>A US person with a financial interest in or signature authority over foreign financial accounts.</p> <ul style="list-style-type: none"> <li>US person means citizens, residents, business entities organized in the US and trusts or estates formed under US law.</li> <li>A financial interest includes direct ownership, ownership as agent or nominee, ownership through a business or fiduciary entity in which a US person owns, directly or indirectly, more than 50%.</li> <li>Signature authority is the ability of an individual, alone or with another, to control disposition of the assets in a foreign financial account.</li> </ul>	<p>A specified person with an interest in specified foreign assets.</p> <ul style="list-style-type: none"> <li>Currently this means US citizen and resident individuals.</li> <li>Certain domestic entities may be required to file in the future.</li> <li>You have an interest in a specified foreign financial asset if any income, gains, losses, deductions, credits, gross proceeds, or distributions from holding or disposing of the asset are or would be required to be reported, included, or otherwise reflected on your income tax return.</li> </ul>
What foreign assets are included?	<p>Financial accounts, including securities, brokerage, savings, demand, checking, deposit, time deposit or other account maintained with a financial institution, an insurance or annuity policy with cash value, and shares in mutual funds located outside of the US.</p>	<p>Foreign bank and other investment or financial accounts; interests in foreign business entities held for investment and not held in an account; interests in foreign trusts and estates; interests in foreign pension or deferred compensation plans; notes issued by foreign persons held for investment.</p>
What are the filing thresholds?	<p>If the aggregate value of the foreign financial accounts exceeds \$10,000 at any time during the year.</p>	<p>If the aggregate value exceeds the following amounts.</p> <p>Individuals living in the US:</p> <ul style="list-style-type: none"> <li>Single: foreign financial assets of more than \$50,000 on the last day of the tax year or of more than \$75,000 at any time during the tax year.</li> <li>Married filing jointly: foreign financial assets of more than \$100,000 on the last day of the tax year or of more than \$150,000 at any time during the tax year.</li> </ul> <p>Individuals living abroad:</p> <ul style="list-style-type: none"> <li>Filing other than a joint return: foreign assets of more than \$200,000 on the last day of the tax year or more than \$300,000 at any time during the year.</li> <li>Filing jointly: foreign assets of more than \$400,000 on the last day of the tax year or more than \$600,000 at any time during the year.</li> </ul>
When to file?	<p>June 30 – no extensions.</p>	<p>Due date, including extensions, of your annual return – e.g., 1040, 1040-NR</p>
Information to be included?	<ul style="list-style-type: none"> <li>Information regarding foreign accounts with maximum value during the year.</li> </ul>	<ul style="list-style-type: none"> <li>Information regarding foreign accounts with maximum value during the year.</li> <li>Description of other foreign assets with maximum value range during the year.</li> <li>Summary of tax items attributable to foreign financial assets.</li> <li>Information separately reported on certain foreign entity forms such as Forms 3520, 5471, 8621, or 8865 do not have to be separately reported on Form 8938, but reference to the assets must be included on Form 8938 and those amounts are to be included in determining whether or not the filer meets the filing threshold.</li> </ul>
Penalty for failure to file?	<p>\$10,000 per violation. Willful failure to report an account may be subject to a penalty of the greater of \$100,000 or 50% of the balance at the time of the violation and possible criminal penalties.</p>	<p>\$10,000 (\$50,000 for continued failure to file after notice from IRS) and 40% underpayment penalty on tax attributable to income from nondisclosed accounts.</p>