
FBAR Deadline is June 29, 2012; IRS Form 8938 May Also Be Required

2012-06-06

FBAR

The June 29, 2012 filing deadline for the 2011 Report of Foreign Bank and Financial Accounts (FBAR) is fast approaching, except for those covered by the limited exception described below.

An FBAR for 2011 must be filed by each US person who had a financial interest in or signature authority over any foreign financial accounts (including bank, securities, or other types of financial accounts) if the aggregate value of these accounts exceeded \$10,000 at any time during calendar year 2011.

The extension of time to file FBARs, which was previously granted to certain officers and employees of certain entities by [Notice 2011-1](#) and [Notice 2011-2](#), has been further extended. Pursuant to [Notice 2012-1](#), the Financial Crimes Enforcement Network (FinCEN) extended the deadline from June 30, 2012 to June 30, 2013. As discussed in our [June 2, 2011](#) and [June 17, 2011](#) alerts, the extension applies only to the following individuals who have signature authority over, but no financial interest in, any reportable account: (1) officers or employees of a "Covered Entity" (as defined in our June 2, 2011 alert) who have signature or other authority over a foreign financial account of a controlled person of the Covered Entity; (2) officers or employees of a controlled person of a Covered Entity who have signature or other authority over a foreign financial account of the Covered Entity, the controlled person or another controlled person of the Covered Entity; and (3) officers and employees of investment advisors registered with the SEC with signature or other authority over the foreign financial accounts of entities that are not registered investment companies (officers and employees with signature or other authority over the foreign financial accounts of registered investment companies are generally exempt from filing the FBAR). For purposes of the extension, a "controlled person" is a United States or foreign entity that is more than 50% owned (directly or indirectly) by the Covered Entity.

The extension described above does not change the FBAR filing obligations of any other individuals. Unlike federal income tax returns, extensions of time to file the FBAR are generally not available and the FBAR is considered filed only when it is received by the US Department of the Treasury (and not when it is sent). Individuals may (but are not required to) file the FBAR electronically ([see link here](#)).

Electronic filing is expected to be mandatory beginning July 1, 2013.

IRS Form 8938

In November 2011, the IRS released Form 8938, Statement of *Specified Foreign Financial Assets*. Part of the Foreign Account Tax Compliance Act, or FATCA, Form 8938 requires certain individuals to report the ownership of specified foreign financial assets if the total value of those assets exceeds a particular threshold amount. Form 8938 is required to be filed for taxable years beginning after March 18, 2010, which for calendar year taxpayers means taxable years beginning with 2011. Unlike the FBAR, the form must be filed with an individual's federal income tax return (which means that if an individual has already filed his or her federal income tax return for 2011 but failed to attach a required Form 8938, he or she must file an amended return). Form 8938 and its instructions can be found [here](#) and [here](#).

Although some of the information required to be reported on the FBAR and Form 8938 is the same, filing either one does not relieve an individual of the obligation, where applicable, to file the other. The IRS has published a helpful chart comparing the forms, which is available [here](#).

Given the heightened attention the IRS and FinCEN are paying to foreign financial assets and accounts, and the significant penalties that may result from failure to comply with these reporting requirements, individuals should consult their tax advisors to ensure that they make the appropriate filings in a timely manner.

IRS CIRCULAR 230 DISCLOSURE:

To ensure compliance with requirements imposed by the IRS, we inform you that any U.S. tax advice contained in this communication (including any attachments) is not intended or written to be used, and cannot be used, for the purpose of (i) avoiding penalties under the Internal Revenue Code or (ii) promoting, marketing or recommending to another party any transaction or matter addressed herein.

Links to our prior Client Alerts on the FBAR are provided below.

[Treasury Issues Final Regulations on FBAR Filing Requirements](#) (March 2, 2011)

[Treasury Releases Revised FBAR Form](#) (March 29, 2011)

[IRS and FinCEN Extend FBAR Filing Deadline for Certain Officers and Employees with Signature Authority Only](#) (June 2, 2011)

[Extension of FBAR Deadline for Certain Filers Until November 1, 2011](#) (June 16, 2011)

[Extension of FBAR Deadline for Employees of Registered Investment Advisors Until June 30, 2012](#) (June 17, 2011)

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