



## Unreported Foreign Bank Accounts; Foreign Bank Letters; Amnesty Programs

***In the United States, your worldwide income is subject to U.S. income tax. If you are a U.S. person (which includes citizens, green card holders and resident visa holders) and have an unreported foreign bank account, the time to act is now, especially if you have received a letter from your foreign bank. Amnesty programs are available, but may end at any time.***

Unlike most countries, the United States requires that its taxpayers report their **worldwide** income—not just their U.S. income. Although a foreign tax credit often offsets some or all U.S. taxes, you are required to report all income earned, no matter the origin – including compensation, capital gains, interest and dividends.

There is more.

## Regarding Foreign Bank Accounts Valued Over U.S. \$10,000

U.S. persons with foreign bank accounts **valued over U.S. \$10,000 in aggregate at any time during the year** are required to file what is commonly known as the **Foreign Bank Account Report** or **FBAR** with the U.S. Department of the Treasury. The 2016 deadline has been changed to April 15, 2016, with the option of a six month extension.

**Please note: The FBAR is NOT filed with one's federal income tax return. It is a completely separate filing.**

Even though the FBAR has been required (for those who meet the criteria) since the passage of the **Bank Secrecy Act** in 1970, compliance has historically been extremely low. As late as 2001, it was estimated to be around 20%.<sup>1</sup>

<sup>1</sup> US Treasury Department, Report to Congress in Accordance Act Sec. 361(b) of P.L. 107-56 of the USA PATRIOT Act (April 26, 2002) ("Treasury Report"), at 6.

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Thus, over the past few years, Congress and the IRS have made it a priority to increase FBAR compliance and uncover foreign bank accounts. The IRS and the Department of Justice have investigated and convicted a number of U.S. persons who used the Swiss Bank, UBS, to hide U.S. income.

## The Foreign Account Taxpayer Compliance Act (FATCA)

Continuing with the trend of heightening FBAR compliance measures, in 2010, Congress passed the **Foreign Account Taxpayer Compliance Act**. FATCA allows the IRS to enter into bilateral treaties with countries that require their banks to disclose information regarding U.S. taxpayers with foreign accounts.

At this time, more than 100 countries have entered into information-sharing agreements with the IRS. The list of countries may be found here:

<http://www.treasury.gov/resource-center/tax-policy/treaties/Pages/FATCA-Archive.aspx>

## Foreign Bank Letters

If the above situation applies to you, at some point, you will receive a letter from your foreign bank, asking you to confirm that you are a U.S. person. **The letter may, or may not, inform you of the FBAR requirement. Whatever information you provide to your foreign banker will eventually go to the IRS.**

Thus, if you were required to file an FBAR (or other international reporting form, such as Form 3520 or Form 8938, etc.) and you did not file it, **the time to act is now.**

What are your options?

The first option is to do nothing — and face the penalties. However, we strongly advise you to consider the several amnesty programs that are available, rather than wait for the IRS to contact you with potentially severe repercussions.

## Amnesty Programs Available

In determining your course of action, consider the following:

1. On a U.S. tax return, did you report and pay U.S. tax on any foreign income generated from, or associated with, the foreign account (i.e., interest, rent from a foreign apartment, foreign salary payments or capital gains)?

**If you reported and paid U.S. tax on all foreign income, you qualify for the most lenient of procedures, the Delinquent International Information Return Submission Procedures.**





2. Was your failure to file the FBAR due to WILLFUL or NON-WILLFUL conduct?

If you did NOT report foreign income on your U.S. tax return, the question to be answered is why you failed to file the FBAR. **Was your conduct non-willful**, due to negligence, inadvertence, mistake or conduct that is the result of a good faith misunderstanding of the requirements of the law?

**If you failed to file because of a good faith misunderstanding of the law, you should strongly consider the Streamlined Filing Compliance Procedures.**

A significant number of U.S. persons have failed to file an FBAR for non-willful reasons. Often, the accounts were opened before the holders moved to the United States.

Though the FBAR has been a requirement for 45 years, only recently has it come into the spotlight; thus, we have worked with many clients who simply did not know they had to report their foreign accounts.

However, for those who have already received letters from their foreign bankers, **it is possible that such correspondence included explicit notification of the FBAR requirement.**

Finally, **if you believe that your conduct was willful**, we highly recommend entering into the **Offshore Voluntary Disclosure Program**, which provides amnesty for willful conduct.

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**GRAY REED**

GRAY REED & MCGRAW, P.C.

# UPDATE ON UNREPORTED FOREIGN BANK ACCOUNTS

By Austin Carlson, Gray Reed & McGraw, P.C.

## Am I Required to File a FBAR?

- **Are you a U.S. person?**

United States person includes: U.S. citizens; U.S. residents (green card holders); resident aliens (visa holders who meet the substantial presence test for staying in the U.S.); entities, including but not limited to, corporations, partnerships, or limited liability companies, created or organized in the United States; and trusts or estates formed under the laws of the United States.



- **Do you have a financial interest and/or signatory authority in a foreign account?**

This includes an account held by a foreign corporation or partnership in which you are majority owner.

This also includes an account for which you have signatory power and/or power of attorney as a corporate officer or for a relative.

- **Does the aggregate value of the account(s) exceed U.S. \$10,000?**

This includes the highest account balance of each account, considered in aggregate (total) at any time during the calendar year reported.

If you have further questions or need counsel, please feel free to contact Gray Reed. We are here to help you.

### The following are links to more information:

<http://www.irs.gov/Businesses/Small-Businesses-&Self-Employed/Report-of-Foreign-Bank-and-Financial-Accounts-FBAR>

<http://www.irs.gov/uac/Newsroom/Information-for-U.S.-Citizens-or-Dual-Citizens-Residing-Outside-the-U.S.>

<http://www.irs.gov/Businesses/Corporations/Foreign-Account-Tax-Compliance-Act-FATCA>

<http://www.irs.gov/Individuals/International-Taxpayers/Streamlined-Filing-Compliance-Procedures>

<http://www.irs.gov/Individuals/International-Taxpayers/Delinquent-International-Information-Return-Submission-Procedures>

<http://www.irs.gov/Individuals/International-Taxpayers/Offshore-Voluntary-Disclosure-Program-Frequently-Asked-Questions-and-Answers>



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*If you have questions about International Tax matters, please call your attorney or the Tax Law Section of Gray Reed & McGraw, P.C. at 713.986.7213. It is always our pleasure to be of service to you.*

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