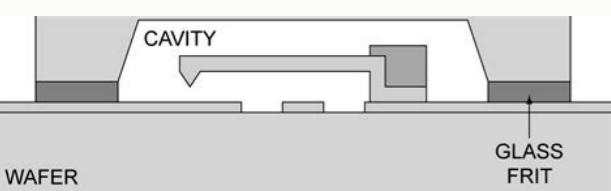
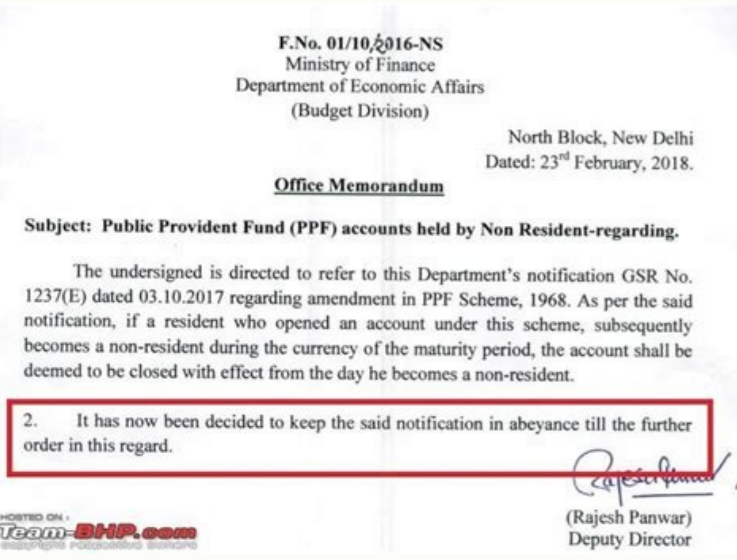


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Help for Common UK-US Tax Issues

IRS MEDICAL



Changes of FBAR Due Date The filing of FinCEN Form 114, Report of Foreign Bank and Financial Accounts (FBAR) (formerly TD F 90-22.1) is imposed by the Bank Secrecy Act (BSA), passed by Congress in 1970. FinCEN Form 114 is used to report a financial interest in or signature authority over a foreign financial account if you meet the reporting threshold. U.S. persons that are subject to the filing requirement include U.S. citizens, resident aliens, trusts, estates, and domestic entities. While there is no change in reporting requirements, the due date for Form 114 has changed from June 30 to April 15 for tax year starting January 1, 2016. Besides, the first time, an automatic six-month extension is allowed for FBAR filing. A civil penalty of \$10,000 is imposed for failure to file an FBAR. The penalty is \$100,000 or 50% of the balance in the account, whichever is greater, for each willful violation. Willful violations may also be subject to criminal penalties. New Rules for Form 8938 Filing Prior to 2016, only individual taxpayers are required to file Form 8938. For tax year starting January 1, 2016, certain domestic corporations, partnership, and trusts are also required to file Form 8938. Background The Foreign Account Tax Compliance Act (FATCA), which was passed as part of the HIRE Act of 2010, requires specified U.S. taxpayers to report financial assets held outside of the United States if the aggregate value exceeds reporting threshold. Reporting is done on Form 8938 which must be filed with the income tax return. A specified individual includes U.S. citizens, resident aliens, non-resident aliens who make an election to be treated as a resident alien for purposes of filing a joint income tax return, and non-resident aliens who are bona fide residents of American Samoa or Puerto Rico. Unmarried individuals (including married individuals filing a separate return from his/her spouse) are required to file Form 8938 if the total value of his/her specified foreign financial assets is more than \$50,000 on the last day of the year or more than \$75,000 at any time during the tax year. These amounts are increased to \$100,000 and \$150,000, respectively, for married taxpayers filing a joint return. To determine if you satisfy the reporting threshold, the value of all specified foreign financial assets are included, even if they are reported on another form (see forms listed under "Exceptions" below). New Reporting Requirement for Domestic Entities Starting for the tax year beginning on or after January 1, 2016, specified domestic entities are required to file Form 8938. These entities include 1. Closely held domestic corporation that has at least 50% of its gross income from passive income. 2. Closely held domestic corporation if at least 50% of its assets produce or are held for production of passive income. 3. Closely held domestic partnership that has at least 50% of its gross income from passive income. 4. Closely held domestic partnership if at least 50% of its assets produce or are held for the production of passive income. 5. Domestic trust that has one or more specified individual or specified domestic entity as a current beneficiary. Specified domestic entities are required to file Form 8938 if the total value of its specified foreign financial assets is more than \$50,000 on the last day of the year or more than \$75,000 at any time during the tax year. Unlike individuals, the value of any specified foreign financial assets reported on other form(s) listed under "Exceptions" below is excluded in order to determine if a specified domestic entity satisfies the applicable reporting threshold. Exceptions from Reporting If you do not have to file an income tax return for the tax year, you do not have to file Form 8938, even if the value of your specified foreign financial assets is more than the appropriate reporting threshold. If you report specified foreign financial assets on other forms, you do not have to report them again on Form 8938 for the same tax year. These forms include Form 3520, Form 5471, Form 8621 and Form 8865. The foreign financial assets that are reported on these forms are not reported again on Form 8938. Simply identify on Form 8938 which and how many of these forms(s) you file. Non-Compliance with Form 8938 Reporting Requirements A severe penalty is imposed for failure to comply with Form 8938 reporting. The penalty is \$10,000 per failure to file, an additional penalty of up to \$50,000 for continued failure to file after IRS notification, and a 40% penalty on an understatement of tax attributable to non-disclosed assets. The statute of limitations is extended to six years after you file your return if you omit from gross income more than \$5,000 that is attributable to a specified foreign financial asset, without regard to the reporting threshold or any reporting exceptions. If you fail to file or properly report an asset on Form 8938, the statute of limitations for the tax year is extended to three years following the time you provide the required information. FATCA versus FBAR Reporting Requirements FATCA requirement is in addition to FBAR filing requirements. Filing of Form 8938 does not relieve taxpayers from FBAR filing requirements. While certain foreign financial accounts are reported on both Form 8938 and Form 114, information required by the two forms is not identical. You may have to file both Form 8938 and Form 114 for any given year. IRS has published a chart comparing the filing requirements of the two forms. Comparison of Form 8938 and FBAR Requirements Rules on Foreign Assets reporting are complicated and the penalty is severe. You are advised to address these matters early with your tax advisors. Please contact us if we can be of assistance with this or other tax planning matters. Download: Changes in FATCA and FBAR Reporting About the Author So Sum Lee, CPA, Principal Tax, Real Estate, Technology, Hospitality So Sum Lee, CPA is a Tax Principal at KROST. So Sum has over 18 years of experience in public accounting and has a wide range of experience in Taxation, as well as servicing high-net-worth clients. So Sum's area of expertise includes industries such as wholesale, Real Estate investments, and Restaurants. » Full Bio You may have heard of FBAR filing, but you don't know what it is. FBAR stands for "Foreign Bank Account Report", and refers to FinCen Form 114, Report of Foreign Bank and Financial Accounts. US persons who have ownership or control (for example signature authority) of foreign accounts with an aggregate value of over \$10,000 in the calendar year: FBAR filing required. Bank, securities, financial instruments accounts. Accounts held in commingled funds (mutual funds) and the account holder holds an equity interest in the fund. Individually owned bonds, notes, stock certificates, and unsecured loans are not "accounts". Foreign life insurance or annuities with cash surrender value are "accounts". "Foreign" Online Gambling Accounts - IRS Says FBAR filing is Required. Many persons are under the mistaken belief that if one has several overseas accounts and a particular account is not over \$10,000 then that account does not have to be reported. This is incorrect. Remember, if the highest aggregate value of all of the foreign accounts on any day in the tax year is over \$10,000, then all accounts must be reported on the FBAR. Another common mistake arises when an account beneficially belongs to another person. In this case it is often erroneously believed that the nominee does not need to report that account on an FBAR. This is incorrect; the nominee must still file the FBAR if the dollar threshold is met by the nominee. Other mistakes involve an improper understanding about what must be disclosed on the FBAR. For example foreign mutual funds or foreign life insurance / foreign annuity with a cash surrender value must be reported. Another common mistake involves the incorrect notion about filing for an extension. If one is to file an extension for one's US income tax return it will also extend the due date for the FBAR filing. The FBAR is completely separate from one's income tax return and currently, it has a different due date. In addition, one cannot obtain an extension to file an FBAR. But this will change for FBARs covering the 2016 year, due in 2017. You can read more here. Overseas Americans who have dropped out of the tax filing system can be in a perilous situation. Most of them will have foreign (non-US) bank and/or financial accounts for which FBARs should have been filed. The IRS is now being far more harsh in assessing penalties for failure to file FBARs or for incorrect FBAR filings. Pressing upon such taxpayers is the FATCA Factor, the Foreign Account Tax Compliance Act. As of 2014, under certain provisions of FATCA, foreign financial institutions will be required to collect information. This information will be relayed either directly (or indirectly through their local government authority) to the IRS about assets held by US persons with that institution. The FATCA rules will make it very easy for the IRS to cross-reference the information provided by the foreign financial institution with the taxpayer's Form 1040. This in order to determine whether taxes and reporting on foreign financial assets have been properly undertaken. The first information reports are due to the IRS in 2015. If the IRS learns of a taxpayer's noncompliance from the financial institution (for example, the taxpayer's non-US bank), the taxpayer will not be eligible for entry into an IRS Voluntary Disclosure initiative. For those with potential criminal tax exposure, this can mean the difference between serving prison time and staying out of jail. Need more information on FBAR filing? Do not hesitate to contact us. Contact us for more information Per the Bank Secrecy Act, every year you must report certain foreign financial accounts, such as bank accounts, brokerage accounts and mutual funds, to the Treasury Department and keep certain records of these accounts. You report the accounts by filing a Report of Foreign Bank and Financial Accounts (FBAR) on Financial Crimes Enforcement Network (FinCEN) Form 114. Who Must File A U.S. person, including a citizen, resident, corporation, partnership, limited liability company, trust and estate, must file an FBAR to report: a financial interest in or signature or other authority over at least one financial account located outside the United States if the aggregate value of those foreign financial accounts exceeded \$10,000 at any time during the calendar year reported. Generally, an account at a financial institution located outside the United States is a foreign financial account. Whether the account produced taxable income has no effect on whether the account is a foreign financial account for FBAR purposes. But, you don't need to report foreign financial accounts that are: Correspondent/Nostro accounts, Owned by a governmental entity, Owned by an international financial institution, Maintained on a U.S. military banking facility, Held in an individual retirement account (IRA) of which you're an owner or beneficiary, Held in a retirement plan of which you're a participant or beneficiary, or Part of a trust of which you're a beneficiary, if a U.S. person (trust, trustee of the trust or agent of the trust) files an FBAR reporting these accounts. You don't need to file an FBAR for the calendar year if: All your foreign financial accounts are reported on a consolidated FBAR, or You jointly own all your foreign financial accounts with your spouse and: You completed and signed FinCEN Form 114a authorizing your spouse to file on your behalf, and your spouse reports the jointly owned accounts on a timely-filed signed FBAR. Note: Income tax filing status, such as married-filing-jointly and married-filing-separately, has no effect on your qualification for this exception. The FBAR resources below provide more detailed information. When to File The FBAR is an annual report, due April 15 following the calendar year reported. You're allowed an automatic extension to October 15 if you fail to meet the FBAR annual due date of April 15. You don't need to request an extension to file the FBAR. See FinCEN's websitePDF for further information. If you're affected by a natural disaster, the government may further extend your FBAR due date. It's important that you review relevant FBAR relief notices for complete information. The government continues to extend the FBAR filing deadline for taxpayers who have not filed their returns. For more information on the extension, see our article. You should file late FBARs as soon as possible to keep potential penalties to a minimum. Follow these instructions to explain your reason for filing late. If you're using a compliance option, such as the Streamlined Filing Compliance Procedures, follow the instructions for the specific compliance option. Representation for FBAR Issues You can file Form 2848, Power of Attorney and Declaration of Representative, if the IRS begins an FBAR examination as a result of an examination under the Internal Revenue Code, such as an income tax exam. Complete Line 3, Acts Authorized, as follows: Under Description of Matter - Matters relating to Report of Foreign Bank and Financial Accounts or "FBAR Examination" Under Tax Form Number - FinCEN Form 114 Under Year(s) or Period(s) - applicable calendar year(s) (Note: Disregard previous guidance to complete Line 5a, additional acts authorized.) Don't use Form 2848 if a related examination under the Internal Revenue Code doesn't apply. You may use a general power of attorney form executed under applicable state law. FBAR Resources Note: Civil penalty maximums in these materials may not be current, as the amounts are adjusted annually for inflation. Contact Us Can't find the answer to your question in online information? Contact us. Resource Contact Business Hours Help Offered IRS FBAR Hotline 866-270-0733; or by calling from outside the United States, 313-234-6146 Monday - Friday, 8 a.m. to 4:30 p.m. EST General questions: FBAR filing requirements Filing methods FinCEN's BSA E-Filing Help Desk See FinCEN's website for contact information Monday - Friday, 8 a.m. to 6 p.m. EST Technical questions about BSA's E-Filing System FinCEN's Resource Center See FinCEN's website for contact information Leave a message for a return call E-filing exemptions to allow FBAR paper-filing Questions about BSA regulations

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