
DIFFERENCE BETWEEN FOREIGN BANK ACCOUNT REPORTING FORM AND FOREIGN ACCOUNT TAX COMPLIANT ACT

United States individuals living outside of the U.S. commonly find themselves faced with both the Foreign Bank Account Reporting Form (“FBAR”) and Foreign Account Tax Compliant Act (“FATCA”) compliance issues. Commonly these reporting requirements are falsely considered interchangeable. They both assist the U.S. government in collecting data with respect to offshore accounts for U.S. persons; both submissions are disclosure only in nature and do not impose a tax. While they may appear to be similar, they are two separate filings and there are some very important differences to understand. This publication is designed to provide you with general information and assist you with understanding these differences for an individual:

- 1) How to know if you have a filing requirement?
- 2) What Forms to file and how to submit?
- 3) What needs to be reported in each submission?
- 4) What is the deadline?
- 5) Common Questions

How to know if you have a filing requirement?

FBAR

A “United States person” that has a “financial interest” in or “signature authority” over foreign financial accounts must file an FBAR if the aggregate value of the foreign financial accounts exceeds \$10,000 at *any time during the calendar year*.

United States person means United States citizens (including minor children); United States residents which includes green card holders and individuals meeting substantial presence test per Internal Revenue Code 7701(b).

Financial interest generally means that you are the owner of record of the financial account or the owner of record on the financial account is an entity that is directly or indirectly more than 50% of the value or voting power owned by you.

The owner of record includes an agent, nominee, attorney, or a person acting in some other capacity on behalf of the United States person with respect to the account.

To simplify things, if at any point in the year a U.S. person had non-US bank accounts in either their name or in which they could sign for and the total balance exceeded \$10,000 at any one point in the year they are required to file the FBAR.

FATCA

You are required to comply with the FATCA reporting requirements if you are a “Specified Person” that has an interest in “Specified Foreign Financial Assets” and the value of those assets is more than the applicable reporting threshold. The reporting thresholds are as follows:

- If you live outside of the United States and you file Married Filing Joint:
 - Total value of your specified foreign financial assets is more than \$400,000 on the last day of the tax year or more than \$600,000 at any time during the tax year.
- If you live outside of the United States and your filing status is not Married Filing Joint:
 - Total value of your specified foreign financial assets is more than \$200,000 on the last day of the tax year or more than \$300,000 at any time during the tax year.
- If you do not live outside of the United States and you file Married Filing Joint:
 - Total value of your specified foreign financial assets is more than \$100,000 on the last day of the tax year or more than \$150,000 at any time during the tax year.
- If you do not live outside of the United States and your filing status is not Married Filing Joint:
 - Total value of your specified foreign financial assets is more than \$50,000 on the last day of the tax year or more than \$75,000 at any time during the tax year.

Specified Person means the following:

- U.S. Citizen
- Green Card Holder
 - Unless an election is filed to be treated as a non-resident for the entire year
- Resident per the substantial presence test as described in IRC 7701(b)

Specified Foreign Financial Assets includes the following assets.

- Financial accounts maintained by a foreign financial institution.
- The following foreign financial assets if they are held for investment and not held in an account maintained by a financial institution:
 - Stock or securities issued by someone that is not a U.S. person (including stock or securities issued by a person organized under the laws of a U.S. possession),
 - Any interest in a foreign entity including (but not limited to):
 - Non-US Corporation
 - Non-US Partnership (except for a partnership used in the conduct of a trade or business)
 - Non-US Trust

In summation, if a Specified Person has Specified Foreign Financial Assets greater than their respective Reporting Threshold then they are required to comply with the FATCA reporting requirements.

What Forms to file and how to submit?

FBAR

The FBAR is administered through the Financial Enforcement and Crimes Network (FinCen) and individuals must file Form 114 electronically. If Woods Huston prepares your FBAR then we will request that you review the declaration and return to our office a signed copy of Form 114a which grants us permission to electronically submit the declaration on your behalf. Otherwise you will be required to submit yourself directly through the FinCen website.

The FBAR is not filed jointly and if any members of your family meet the filing requirements then they must submit the FBAR declaration themselves.

The only exception to this is if one spouse has only jointly held accounts that are reported on the other spouse's FBAR then they have satisfied their filing requirement if the accounts are declared jointly on the other spouse's FBAR.

FATCA

The FATCA reporting is done on Form 8938 and is attached to your U.S. individual income tax return. If you file jointly with your spouse, then you only file one Form 8938.

What needs to be reported in each submission?

FBAR

In addition to your personal information (i.e. name, address, social security number), you are required to report for each non-US financial account:

- The financial institution name and address
- Account Number
- Highest balance in the year

The reporting is split out into 3 main categories

- Financial accounts held separately
 - These are accounts in which you hold a financial interest in that are in your name only
- Financial accounts held jointly
 - These are accounts in which you hold a financial interest in that have one or more other owners

- You are also required to report the name of the other owners and their Tax Identification Number (U.S. or foreign)
- Financial accounts where holder has a signature authority and no financial interest
 - These are accounts in which you do not hold a financial interest in, but you have authority to control the disposition of the asset
 - You are required to indicate the name and Tax Identification Number (U.S. or foreign) of the account owner

FATCA

The FATCA reporting is complied with by completing Form 8938 and attaching to your U.S. individual income tax return. In brief on Form 8938 you are required to separate out assets by non-U.S. Deposit or Custodial assets and other non-U.S. assets.

Any assets that are reported on the following forms are exempt from being reported on Form 8938 even if they meet the definition described previously of Specified Foreign Financial Assets:

- Form 3520
- Form 3520-A
- Form 5471
- Form 8621
- Form 8865

You are required to provide a summary of the income that is reported on your tax return from each of these assets and other information as follows:

- Type of Account
- Account Number
- Ownership and income reporting of the account.
- Maximum Balance of the Account
- Foreign Exchange Rate Used
- Financial Institution Name and Address

What is the deadline?

FBAR

The deadline for the FBAR used to be June 30th of the following year. However, per the Surface Transportation and Veterans Health Care Choice Improvement Act of 2015 (“Act”) the deadline was changed to coincide with the U.S. tax filing deadline and therefore is due April 15th of the following year. The Act permits an automatic six-month extension to file and no extension form needs to be submitted to qualify for this extension. If the

deadline falls on a weekend or holiday, then the deadline is also automatically extended to the next business day.

FATCA

The deadline for complying with the FATCA requirements is the deadline of your tax return since the form is submitted with the tax return.

Common Questions

If I don't have to file a tax return am I required to file the FBAR and comply with the FATCA reporting?

If you meet the filing requirements for the FBAR as described in section 1 then you will have to submit this declaration each year by the deadline. Per the IRS instructions for Form 8938 (FATCA reporting) if you do not have tax filing requirement then you do not have to submit Form 8938 separately.

My French bank now submits on an annual basis the highest balance on my accounts to the IRS do I have to file my FBAR and submit the FATCA reporting?

Yes, if you meet the filing requirements as described in section 1 then you are required to comply with the respective reporting requirements regardless of the information your non-US bank provided the U.S. government.

What exchange rate should I use when reporting my highest balance in the year?

You should use the year end U.S. Treasury Rate for the applicable year.

Do you require copies of each bank statement confirming the amounts if Woods Huston is preparing the respective declaration?

We have uploaded a template to the Technology Toolbox section of our website which can assist clients in providing us the data. If you complete this spreadsheet and submit to us, then this is enough for our records. However, we request that you retain copies of the underlying statements in case the Department of Treasury or the Internal Revenue Service requests back up evidence of the figures disclosed on the declarations.

I have more than 50% control of my non-US company do I include my bank account in the FBAR and/or FACTA filing?

For the FBAR filing yes you are required to include these accounts. They are reported in the Financial Interest section of the FBAR reporting. For FATCA you do not separately include these accounts on the declaration.

I have a green card but file as a non-resident. Am I still required to complete the FBAR and FATCA if I meet the filing requirements as described in point 1?

The FBAR is still required to be filed in this case whereas you would be exempt from the FATCA reporting.

My minor dependant who is a U.S. citizen has non-US accounts greater than \$10,000. Are they required to file the FBAR?

There is no age restriction on filing the FBAR for U.S. citizens so if your minor dependant meets the filing requirements then they are required to file an FBAR regardless of their age. As their parent you are able to sign the declaration on their behalf.

Is my French Assurance-Vie contract required to be reported on the FBAR and related FATCA reporting?

Yes, this is technically a financial account and should be reported in the financial interest section of the FBAR if in your name and should be reported in the Foreign Deposit and Custodial Accounts Summary section of the FATCA.

I received a bonus of €50,000 that was deposited into my compte courant, I then transferred this amount to my compte d'epargne. This was the maximum amount in my two accounts. What do I report as my highest balance?

Even though it is the same €50,000 you would use this amount for each the compte courant and the compte d'epargne.

In summary the reporting requirements under the FBAR and FATCA are nuanced and can be complicated. It is important to ensure that these declarations are properly and timely completed.

The information provided is generic in nature and does not constitute specific tax advice. If you wish us to review your specific situation, please contact us directly.

We hope you have found the information above useful and should you have any questions please do not hesitate to contact us.

Kind regards,

Paul Woods, CA CPA