

2011

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**Reporting
Cash Transactions
and
Foreign Financial Accounts
(Foreign Bank Account
Reports "FBAR")**

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Form 8300 - Reporting Cash Payments Over \$10,000 in a Trade or Business

Reportable transactions include, but are not limited to:

- Escrow arrangements
- Debt payments
- Expense reimbursements
- Sale of goods/services, real estate, tangibles and intangibles
- Rent receipts
- Exchange of cash for other cash



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Form 8300 - Reporting Cash Payments Over \$10,000

Report payments if all of the following criteria are met:

- Amount of cash exceeds \$10,000
- Received in the ordinary course of a trade or business
- Received in a single transaction or in related transactions as:
 - Lump sum exceeding \$10,000, or
 - Installment payments exceeding \$10,000 within 12 months of the initial payment



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Form 8300 - Reporting Cash Payments Over \$10,000

“Cash” includes:

- Coins and currency of the U.S. or a foreign country
- Cashiers checks, travelers checks, bank drafts and money orders if:

Customer is trying to avoid filing of Form 8300,
Involves retail sale of consumer durable for personal use expected to last more than one year and has a sales price exceeding \$10,000

Collectibles such as artwork, rug, stamp or coin, or
Travel or entertainment if total sales price of all items (airfare, hotel, etc.) exceeds \$10,000



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Form 8300 - Reporting Cash Payments Over \$10,000

“Cash” does not include:

- Personal checks drawn on the account of the writer
- Cashiers checks, travelers checks, bank drafts and money orders with a face value exceeding \$10,000

If the customer uses currency to purchase a monetary instrument the financial institution is required to report the transaction on FinCEN Form 104 – Currency Transaction Report



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Form 8300 - Reporting Cash Payments Over \$10,000

“Related transactions” –

- Occur within 24-hour period
- Or if business knows, or has reason to know, that each is a series of connected transactions

File Form 8300 within 15 days after payment received

- If the initial payment is less than \$10,000 the Form 8300 is due 15 days after receipt of later payment made within one year which causes all related payments to exceed \$10,000



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Form 8300 - Reporting Cash Payments Over \$10,000

Written statement required to be provided to the customer by January 31 of next calendar year indicating –

- Name, address and contact person for seller's business
- Amount of reportable cash received within 12-month period
- Seller is reporting the information to the IRS

Form 8300 and the written statement are required to be retained for 5 years

Potential civil penalties and criminal sanctions for noncompliance



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Report of Foreign Bank and Financial Accounts (FBAR – Form TD F 90-22.1)

U.S. citizens, residents or a person in and doing business in the U.S. must file an FFBAR with the government if they have a financial account in a foreign country with a value exceeding \$10,000 at any time during the calendar year

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FBAR in General

FBAR is not a tax return – it is an information report filed with the Treasury

Referenced on Form 1040, Schedule B, Part III

Deadline for filing FBAR is on or before June 30th the following year

– No extensions granted

FBAR is not attached to taxpayer's individual income tax return



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Who Must File the FBAR ?

A United States person must file an FBAR if that person has:

- A financial interest in;
 - Signature authority over;
 - Or any other authority over
- any financial account(s) in a foreign country if their aggregate value exceeds \$10,000 at any time during the calendar year



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United States Person

A United States Person includes:

- A citizen or resident of the United States
- A person living in and doing business in the United States
- Individuals and all forms of domestic business entities, trusts, and estates



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Financial Accounts

A financial account includes bank and savings accounts, time deposits, securities accounts, mutual funds, brokerage accounts

Assets held in a commingled fund

Any other account maintained in a foreign financial institution or with a person doing business as a financial institution

An insurance policy having a cash surrender value

NOT individual bonds, notes, or stock certifications held by the filer



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Financial Interest

“Financial interest” includes accounts for which the United States Person is the owner of record or has legal title, whether the account is maintained for his or her own benefit or for the benefit of others including non-United States persons

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Financial Interest

“Financial interest” includes accounts for which the United States Person is the owner of record or has legal title, whether the account is maintained for his or her own benefit or for the benefit of others including non-United States persons and:

- Accounts where the owner of record or holder of legal title is a person acting as an agent, nominee, or in some other capacity on behalf of a U.S. Person
- A corporation in which a U.S. Person directly or indirectly owns more than 50% of the total value of the shares of stock
- An account where the owner of record or holder of legal title is a partnership in which the U.S. person owns interest in more than 50% of the profits or a trust in which the U.S. person either has a present beneficial interest in more than 50% of the current income

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Signature or Other Authority

A U.S. person has account signature authority if that person can control the disposition of money or other property in the account by delivery of a document containing his signature to the bank or other person with whom the account is maintained

A person with other authority over an account is one who can exercise power that is comparable to signature authority over an account by direct communication, either orally or by some other means, to the bank or other person with whom the account is maintained

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Account Value

The FBAR is required for each calendar year during which the aggregate amount(s) in the account(s) exceeded \$10,000 valued in U.S. dollars at any time during the calendar year

If the periodic account statement is not issued, the maximum is the largest amount of currency and/or monetary instruments in the account at any time during the year

Convert foreign currency by using the official exchange rate in effect at the end of the year in question for converting foreign currency into U.S. dollars



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Penalties for Non-Compliance

Potential civil penalties of:

- \$10,000 per year for non-willful violations
- Up to 50% of the aggregate account value, per year, for willful violations

Criminal sanctions



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Focus on Undeclared Foreign Financial Accounts

“If you are a US individual holding overseas assets, you must report and pay your taxes or we will be increasingly focused on finding you”

Douglas H. Shulman, IRS Commissioner
Washington, DC October 26, 2009

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2011 Offshore Voluntary Disclosure Initiative (OVDI)

OVDI identified in IR-2011-14
(February 8, 2011)

IRS Criminal Investigation pre-clearance and optional voluntary disclosures letter initiation process

By August 31, 2011, must file amended/delinquent returns, FBARs (2003-2010) and Voluntary Disclosure Package documents identified in the OVDI FAQs available at irs.gov

OVDI EXPIRES AUGUST 31, 2011

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2011 Offshore Voluntary Disclosure Initiative (OVDI)

Income taxes, interest and accuracy-related/delinquency penalties and an offshore-related penalty of 25% of the highest aggregate balance in each foreign account (and, in certain situations, foreign asset valuations), except:

- A 12.5% offshore penalty if the highest aggregate balance in all foreign accounts is less than \$75,000 in relevant each year
- A 5% FBAR-related penalty if –
 - Taxpayers are foreign residents and were unaware they were U.S. citizens, or
 - Taxpayer did not open the account, had infrequent contact, minimal withdrawals and funds on deposit were previously taxed



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Relevant OVDI Documents and Information to be Reviewed, Available at IRS.GOV

Announcement IR-2011-14 (02-08-2011)

2011 OVDI Frequently Asked Questions (02-08-2011, as modified)

2011 OVDI Documents and Forms

2011 OVDI Submission Requirements

Foreign Financial Institution Statement

Foreign Account or Asset Statement

Offshore Voluntary Disclosure Letter

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Relevant OVDI Documents and Information to be Reviewed, Available at IRS.GOV

Form Consent to Extend the Time to Assess Civil Penalties re FBAR Violations and Instructions

Form 872 - Consent to Extend Time to Assess Tax

Form 2848 - 2011 OVDI Power of Attorney FBAR (October 2008)

Revised Voluntary Disclosure Practice – IRM 9.5.11.9 (06-26-2009)

Voluntary Disclosure Contacts in IRS CI

IRS Notice 2010-23 and Announcement 2010-16

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OVDI Voluntary Disclosure Package due by August 31, 2011

See IR-2011-14 and Frequently Asked Questions (FAQ) re the 2011 OVDI online at irs.gov for complete list of information to be provided by August 31, 2011 which generally includes:

Copies of originally filed tax returns for all years

Amended returns with applicable schedules of the amount and type of previously unreported income from the account or entity (e.g., Schedule B for interest and dividends, Schedule D for capital gains and losses, Schedule E for income from partnerships, S corporations, estates or trusts)

FBARs for foreign accounts maintained during calendar years covered by the voluntary disclosure and/or copies of previously filed FBARs

Copy of signed Offshore Voluntary Disclosure Letter

Payment of the tax, interest [IRC 6404(g) N/A], accuracy-related penalty, and, if applicable, the failure to file and failure to pay penalties (plus Forms 433-A and 433-B if unable to pay in full)

