

Penalty Regime for Foreign Bank Account Filing (FBAR)

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Each U.S. person who has a financial interest in, or signature or other authority over, one or more foreign financial accounts (valued over \$10,000, at any time during a calendar year) is required to report the account on Schedule B/Form 1040, and TD F 90-22.1 (Report of Foreign Bank and Financial Accounts (FBAR)), due by June 30 of the succeeding year (I.R.M. 5.21.6.1. (2/17/09)). The IRS has six years to assess a civil penalty against a taxpayer who violates the FBAR reporting rules.

Failure to file the required report or maintain adequate records (for 5 years) is a violation of Title 31, with civil and criminal penalties (or both). For each violation a separate penalty may be asserted.

(I) Non Willful Violation: Civil Penalty - Up to \$10,000 for each violation.

(II) Negligent Violation: Civil Penalty - Up to the greater of \$100,000, or 35 percent of the greatest amount in the account.

(III) Intentional Violations -

(1) Willful Failure to File FBAR or retain records of account: (a) Civil Penalty - Up to the greater of \$100,000, or 50 percent of the greatest amount in the account; (b) Criminal Penalty - Up to \$250,000 or 5 years or both.

(2) Knowingly and Willfully Filing False FBAR: (a) Civil Penalty - Up to the greater of \$100,000, or 50 percent of the greatest amount in the account; (b) Criminal Penalty - \$10,000 or 5 years or both.

(3) Willful Failure to File FBAR or retain records of account while violating certain other laws: (a) Civil Penalty - Up to the greater of

\$100,000, or 50 percent of the greatest amount in the account; (b) Criminal Penalty - Up to \$500,000 or 10 years or both.

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