

Issue Number: 2025-10. Tax Practice Obligations and the Report of Foreign Bank and Financial Accounts

Tax professionals who represents taxpayers or otherwise engage in practice before the IRS (i.e., “practitioners”) are subject to the standards of conduct and the disciplinary rules of [Circular 230](#), *Regulations Governing Practice before the Internal Revenue Service*, which are administered and enforced by the IRS Office of Professional Responsibility (OPR). (Circular 230’s regulations are codified in Title 31 of the Code of Fed’l Regulations (CFR) Subtitle A, Part 10.)

“Practitioners” are attorneys, certified public accountants (CPAs), enrolled agents, enrolled retirement plan agents, and enrolled actuaries. *See* Circular 230 sections 10.2(a)(5) (defining “practitioner”) and 10.3(a)-(e).¹

This article describes some of the basic information about the Report of Foreign Bank and Financial Accounts (FBAR) that practitioners should know and understand.² The article also discusses practitioners’ duties of professional responsibility in connection with the FBAR.

I. FBAR in General

The FBAR, FinCEN Report 114, is an information report required by the Bank Secrecy Act,³ 31 USC 5314, and related regulatory provisions in 31 CFR 1010.350.⁴ Although the FBAR is not a

¹ *See also* paragraphs (a)(1) and (2) of section 10.2, defining, respectively, “attorney” and “certified public accountant.” “Practice before the Internal Revenue Service” is broadly defined, in sec. 10.2(a)(4), as:

[A]ll matters connected with a presentation to the Internal Revenue Service or any of its officers or employees relating to a taxpayer’s rights, privileges, or liabilities under laws or regulations administered by the [IRS] . . . [and] include, but are not limited to, preparing documents; filing documents; corresponding and communicating with the [IRS] . . . ; rendering written advice with respect to any entity, transaction, plan or arrangement, or other plan or arrangement having a potential for tax avoidance or evasion; and representing a client at conferences, hearings, and meetings.

² PLEASE NOTE: This article is only intended to outline certain key aspects of the subject of foreign bank and other financial account reporting, using material drawn from multiple publicly available sources. The article should not be relied upon alone. We suggest practitioners review and consult the applicable legal authorities, forms and publications, and guidance from FinCEN and the IRS, as needed for each situation.

³ “The Currency and Foreign Transactions Reporting Act, its amendments, and the other statutes relating to the subject matter of that Act, have come to be referred to as the Bank Secrecy Act. These statutes are codified at 12 U.S.C. 1829b, 12 U.S.C. 1951–1959, 18 U.S.C. 1956, 18 U.S.C. 1957, 18 U.S.C. 1960, and 31 U.S.C. 5311–5314 and 5316–5332 and notes thereto.” 31 CFR 1010.100(e) (defining the “Bank Secrecy Act”).

⁴ “Each United States person having a financial interest in, or signature or other authority over, a bank, securities, or other financial account in a foreign country shall report such relationship to the Commissioner of Internal Revenue for each year in which such relationship exists and shall provide such information as shall be specified in a reporting form prescribed under 31 U.S.C. 5314 to be filed by such persons.” 31 CFR 1010.350(a).

“The FBAR is used by the U.S. government to identify persons who may be using foreign financial accounts to circumvent U.S. law. FBAR information can help identify or trace funds used for illicit purposes or identify unreported income maintained or generated abroad.” Publication 5569, Report of Foreign Bank & Financial Accounts (FBAR) Reference Guide (Rev. 03-2022), p.1.

tax return, it is referenced in U.S. tax returns, such as Form 1040 Schedule B, Interest and Ordinary Dividends, which includes checkboxes to answer questions about foreign financial accounts. Similar questions and boxes are incorporated into Forms 1041 (U.S. Income Tax Return for Estates and Trust), Form 1065 (U.S. Return of Partnership Income), and Form 1120 (U.S. Corporation Income Tax Return) (Schedule N). Reporting of foreign bank or financial accounts is required of:

- United States persons who have a financial interest in, or signature or other authority over, a financial account in a foreign country; and
- The aggregate value of the account or accounts exceeds \$10,000 at any time during the calendar year.

These individuals and entities must report their foreign accounts by (1) completing the applicable sections of U.S. tax or information returns, and (2) filing [FinCEN Report 114](#).⁵ They are also subject to certain associate recordkeeping requirements.⁶

When a person required to file an FBAR does not file the report, the person is potentially subject to civil and criminal penalties for non-filing. Civil penalties apply to both willful and non-willful violations.

▪ **TERMS**

| U. S. Person |

A “United States Person” is:

- ☐ A U.S. citizen.
- ☐ A U.S. resident.
- ☐ An entity, including a corporation, partnership, trust, or limited liability company created, organized, or formed under federal or state law or the laws of the District of Columbia, U.S. territories and possession, or the Indian Tribes.

⁵ See 31 CFR 1050.350(a) (“form prescribed”). The form has to be filed electronically. [Report of Foreign Bank and Financial Accounts \(FBAR\)](#) (“How to file”).

⁶ A person that has a financial interest in or signature or other authority over a reportable account must keep records that contain the name in which each account is maintained, the account number or other designation, the name and address of the foreign bank “or other person with whom such account is maintained,” the type of account, and the maximum value of the account during the reporting period. 31 CFR 1010.420. The records must be retained for five years and made available for inspection. *Id.*

31 CFR 1010.350(b). For individuals (citizens and resident aliens), a “United States Person” includes a child. [Filing for Child | FinCEN.gov](#). The reporting requirement also applies to employee benefit plans and to an estate formed under U.S. law.

| Reportable Accounts |

A “foreign financial account” is one that is located outside of the U.S., the latter meaning the fifty states, the District of Columbia, U.S. territories and possessions, and certain Indian lands. 31 CFR 1010.350(d); 31 CFR 1010.100(h). Reportable accounts include bank accounts (checking, savings, demand deposit, etc.); securities accounts; annuities or insurance policies with a cash value; and mutual funds. 31 CFR 1010.350(c).

| Financial Interest |

A person has a financial interest in a foreign bank, securities or other financial account if they are the owner of record of the account or the holder of legal title to the account. (For the full definition, see 31 CFR 1010.350(e).)

| Signature or Other Authority |

This element applies, in general, to an individual who has the authority “(alone or in conjunction with another) to control the disposition of money, funds or other assets held in a financial account by direct communication (whether in writing or otherwise) to the person [financial institution] with whom the financial account is maintained.” 31 CFR 1010.350(f)(1).

▪ DUE DATE

The due date for filing an FBAR is April 15 of the year after the year covered by the report. [Report of Foreign Bank and Financial Accounts \(FBAR\)](#) (“When to file”).

▪ PENALTIES

Civil penalties

Violations for non-willful failure to file are subject to a penalty up to \$10,000 (adjusted for inflation), unless reasonable cause is shown and the account balance at the time of the transaction or the transaction amount was properly reported on a late-filed FBAR. 31 USC 5321(a)(5)(B); 31 CFR 1010.821.⁷ A willful failure is subject to a penalty not exceeding the greater of \$100,000 (inflation-adjusted) or 50 percent of “the balance in the account at the

⁷ The \$10,000 penalty corresponds to the unfiled report (a failure to file a required report = one violation = one penalty), and the penalty is not applied to each financial account that was required to be included on the unfiled report (three accounts ≠ three violations, and thus does not result in a \$30,000 penalty). *Bittner v. United States*, 598 U.S. 85, 103–04 (2023) (holding that the Bank Secrecy Act treats the failure to file a legally compliant report as one violation that carries a maximum penalty of \$10,000, not multiple penalties calculated on a “per-account basis”).

time of” a violation, “in the case of a violation involving a failure to report the existence of an account or any identifying information required to be provided with respect to an account.” 31 USC 5321(a)(5)(C), (D); 31 CFR 1010.821; Publication 5569, at 8.

Criminal penalty

The penalty for filing a knowingly and willfully false FBAR is a fine up to \$10,000- or 5-years imprisonment or both. 18 USC 1001; 31 CFR 1010.840(d); Publication 5569, at 9. While a penalty of up to \$250,000- or five-years imprisonment, or both, may be imposed for a criminal violation of failure to file an FBAR or retain required records. 31 USC 5322(a); 31 CFR 1010.840(b); *cf. United States v. Lieber*, 626 F. Supp. 3d 310, 318 (D. Mass. 2022) (rejecting defendant’s claim, in criminal prosecution, of insufficient evidence that he willfully failed to file an FBAR for 2014, where “the trial evidence included the engagement letters sent by the tax accountant to Defendant and his wife with a written explanation of the FBAR reporting requirement, [the accountant’s] testimony . . . confirming that the letters were sent, Defendant’s signature on the engagement letter for calendar year 2015, and Defendant’s 2013 and 2014 tax returns that represented he did not have a financial interest in any foreign account”).

Further, a person can be penalized with both a civil and criminal penalty for the same violation. 31 USC 5321(d).

II. Tax Professionals’ Role in FBAR Compliance

To fulfill their obligations to clients and to tax administration, practitioners, as well as tax return preparers in the IRS’s voluntary [Annual Filing Season Program](#) (AFSP),⁸ must adhere to the requirements, limitations, and prohibitions in Circular 230, and, in particular, in the FBAR context, those described below.

- Competence

Circular 230 section 10.35 (as amended in 2014) requires a practitioner to “possess the necessary competence to engage in practice before the Internal Revenue Service.” To assist a taxpayer who may own, or have signature authority over, one or more reportable foreign financial accounts, a practitioner should have a baseline knowledge of the reporting requirements and supplement it as necessary. See paragraph (a) of section 10.35, stating, “Competent practice requires the appropriate level of knowledge, skill, thoroughness, and preparation necessary for the matter for which the practitioner is engaged.”

⁸ Under [Revenue Procedure 2014-42](#), AFSP participants consent to be subject to Circular 230’s Subpart B, Duties and Restrictions Relating to Practice Before the Internal Revenue Service, and section 10.51 (of Subpart C), Incompetence and disreputable conduct. Rev. Proc. 2014-42, section 4.05(4). (Subpart B includes sections 10.21, 10.22, 10.34, and 10.35.)

- Diligence

Closely related and often linked to competence is diligence. Practitioners who prepare Forms 1040 or other income tax returns or information returns, as applicable, for their clients have a duty of diligence under Circular 230 to inquire of their clients with sufficient detail to ascertain the information necessary to enter correct responses to the foreign-account questions on the clients' returns. The level of diligence required is set out in section 10.22(a) of Circular 230, which requires that a practitioner exercise due diligence in preparing and filing tax returns or other documents on a client's behalf with the IRS. The section also requires practitioners to exercise diligence to ensure that the practitioner's written or oral statements to clients and to the IRS are accurate.

- Knowledge

For purposes of due diligence, section 10.34(d) allows a practitioner to generally rely, in good faith and without verification, on information from a client. A practitioner may accept a client's responses at face value if it's reasonable to do so, but the practitioner cannot ignore the implications of information the practitioner knows or has received from the client. If the information from the client appears to be incorrect, incomplete, or inconsistent with other facts the practitioner knows, then the practitioner must make further inquiry of the client for an explanation. Good faith reliance and its limits contemplate that a practitioner will make all appropriate inquiries of a client who provides information that indicates possible overseas holdings subject to FBAR reporting.

Additionally, if a practitioner learns that a current client did not comply with requirements for reporting foreign accounts for past tax years, the practitioner must, under section 10.21, promptly inform the client of the "noncompliance, error, or omission" and any penalty or penalties that may apply.

- Standards for tax returns and other documents

When a practitioner assists or advises a client in reporting income or other items on a tax return or as to positions taken on a return, the standards in section 10.34 apply to the practitioner's activities. Section 10.34(c) requires a practitioner to advise a client of any potential penalties likely to apply to a position taken on a tax return that the practitioner prepares for the client or when the practitioner has advised the client about the position taken. A practitioner must also inform the client of any opportunity to avoid any penalties through adequate disclosure.

In the area of FBAR, a practitioner acting as a preparer or advisor to a client may determine that one or more foreign accounts exist that must be reported in designated places on the client's tax return. If so, the practitioner should prepare the return or advise the client accordingly. The practitioner is not obligated to prepare the FBAR form itself for the client unless the practitioner feels competent and is willing to do so and the client has agreed to this additional service. Nevertheless, the practitioner does have an

affirmative obligation to advise the client of the need to file an FBAR and the consequences of failing to file one.

III. Additional Information and Resources on FBAR

The IRS maintains a webpage specific to the FBAR at [Report of Foreign Bank and Financial Accounts \(FBAR\)](#). Among other things, the page contains contact information,⁹ including telephone numbers for the IRS FBAR Hotline. Readers may also find helpful:

[Publication 4261](#), Do You Have a Foreign Financial Account? (Rev. 07-2021)

[Publication 5569](#), Report of Foreign Bank & Financial Accounts (FBAR) Reference Guide (Rev. 03-2022)

Internal Revenue Manual (IRM) Section [4.26.16](#) (06-24-2021), Report of Foreign Bank and Financial Accounts (FBAR); [Interim Guidance on FBAR Examination Case Procedures Due to Supreme Court Decision \(Bittner v. US\)](#) (06-06-2023)

If you have questions about this article, please contact our office by phone at 202-317-6897 or eFax at 855-814-1722.

⁹ “Can’t find the answer to your question in online information? Contact us.”