WHITEPAPER

Foreign Bank Account Reporting

How FBAR Filing Impacts Treasury

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Introduction

Foreign Bank Account Reporting (FBAR), the 2011 amendment to the US Bank Secrecy Act, is one of the broadest and most consequential regulations to emerge from the reaction to 9/11 terrorism and the 2008 financial crisis. Superficially it is demanding: companies, individuals and US persons are required to report any foreign financial accounts if their total balances were over $10,000 at any time during the reporting year. Beneath the surface it is even more onerous as the expansive definitions of eligible accounts, US persons, and other matters ensure added complexity.

This creates two challenges for organizations. The first is where within an organization should responsibility for FBAR be vested. The second is creating the business processes and acquiring the systems to make sure that the compliance process is efficient and comprehensive. Both are challenges that have not always been fully met by impacted companies in the years since FBAR became a requirement.

FBAR originated with the Financial Crimes Enforcement Network (FinCEN) within the US Treasury and is enforced by the Internal Revenue Service (IRS). Perhaps reflecting its FinCEN roots. there are significant consequences for failing to comply, whether through negligence or otherwise. If you willfully fail to report an eligible account, the penalty can be as high as the greater of $100,000 or 50% of the balance in the account at the time of the violation, along with prison time. Even negligent failure to report can result in substantial penalties.

This article examines FBAR in non-technical language with reference to the growing body of regulatory text where required. The focus is on the two challenges noted above; vesting responsibility for compliance and providing the processes and tools to do the job.

UNDERSTANDING FBAR: TABLE OF CONTENTS

NOTICE: This paper should not be considered tax or legal advice

Why Managing Corporate FBAR is Challenging

FBAR regulation requires that US persons with a financial interest or signature authority over financial accounts in a foreign country report this relationship to the US Treasury. The operative terms in the regulation are US persons, financial interest, and financial accounts.

- US persons includes citizens or residents of the US, entities such as corporations created or operating under US law as well as trust and estates operating under US law.
- Financial accounts include conventional bank accounts along with a wide range of financial assets including securities, insurance, futures, options and investment accounts.
- Financial interest includes control through signature authority as well as beneficial interest.

FBAR reporting is also complex. Reporting is required in any year in which the combined maximum balance in eligible financial accounts exceeds $10,000 at any time during the reporting year. Once that threshold is reached, all accounts must be reported no matter how small their value. Mercifully the exchange rate which must be applied to the amounts can be a single end-of-year rate. While the FBAR is filed annually it is not filed with an individual or company return. Instead it must be filed electronically with FinCEN using the BSA E-Filing System. Required information includes the type of account, account number, name and address of the financial institutions and the maximum balance during the reporting year. There's good news for those with more than 25 accounts, as less detailed information is required for each account, but the underlying information must be retained for five years.

Finally, the consequences for failing to properly comply with FBAR include significant civil and criminal penalties for individuals and companies. The IRS' enforcement of FBAR distinguishes between willful and non-willful violations. At the most benign end of the spectrum, a non-willful FBAR violation can yield a civil penalty of up to $12,459 for each violation, at the discretion of the IRS examiner. At the other end, willful failure combined with other violations can result in civil penalties of more than $500,000 and criminal penalties of up to $500,000 and ten years in prison for each violation.

The preceding covers highlights of the regulation for the purpose of this article. Full text of the regulation can be found at https://www.gpo.gov/fdsys/pkg/CFR-2016-title31-vol3/pdf/CFR-2016-title31-vol3-sec1010-350.pdf. In addition, the resources section of this article contains links to other primary sources that can help readers navigate the many nuances and exceptions to the regulation.

WHEN FILING FBAR IN 2018...

46%

OF TREASURERS LISTED FBAR AS A TOP 3 COMPLIANCE CONCERN AT THEIR COMPANY.

2018 Strategic Treasurer Compliance Survey

14%

OF TREASURER'S LISTED THEMSELVES AS EXPERTS OR HIGHLY KNOWLEDGEABLE ON FBAR FILING REQUIREMENTS.

2018 Strategic Treasurer Compliance Survey

Corporate Compliance

There are two key elements to corporate compliance with FBAR:

1. Organizational—where should responsibility for FBAR compliance be vested?
2. Systems—what system(s) should be deployed to ensure complete and accurate compliance?

From the organizational perspective, FBAR has been the law for several years so most US headquartered companies with global operations are aware of the regulation and are working to comply. However, their compliance efforts are not always efficient or robust, suggesting that a strategic approach to FBAR compliance could yield significant cost savings while also reducing risk.

A major challenge in complying with FBAR is that the broad scope of covered persons, account types and mandated information requires the crossing of many functional boundaries within the company. This complicates the decision as to which group should be accountable for the filing. Should it be the corporate secretary, treasury, tax or some other functional area? Evidence suggests that there are currently considerable differences in the vesting of reporting responsibility from organization to organization. And while the IRS doesn't require consolidated filing, multiple decentralized filings raise the danger that accounts or individuals may fall through the cracks, since once the reporting threshold applies to the consolidated entity all accounts must be reported.

For foreign companies, compliance may be handled by local staff or an outside law firm with senior management at company headquarters potentially left unaware of corporate exposure. In these cases, the fragmented nature of the information creates compliance risks that require action from the most senior levels of executive management.

Best practice suggests a cross-functional team led by the Treasurer or Corporate Secretary with participation from business operations, investment managers, tax, and accounting. Ideally, the team should report to a member of the corporate C-suite on a periodic basis.

From a systems perspective, the source material for FBAR filing is likely to come from multiple systems including the Treasury Management System (TMS), legal entity management software, ERP, and the usual assortment of spreadsheets that are used by virtually all companies. Treasury typically owns the TMS but the TMS may not contain all the financial accounts or all the information that is required by FBAR, such as investment and trust accounts. While a TMS may have FBAR filing capabilities and the financial information on account balances that is required, the lack of complete coverage may be an obstacle to using the TMS by itself for FBAR purposes.

Legal entity management software is likely to be comprehensive in terms of in-scope businesses but may lack required financial information such as account balances. ERPs often have detailed financial information but are not noted for their easy accessibility or reporting flexibility. Spreadsheet management solutions, often referred to as corporate performance management systems, have the flexibility, auditability and collaborative capabilities to make them possible options, but the nature of the FBAR challenge points to the need for a more formal system.

In this case, Bank Account Management (BAM) systems are the preferred choice because of their ability to manage all the elements of FBAR—serving all corporate functions and all corporate data sources. BAM systems generally have the advantage of reasonable cost in addition to the relative ease with which they can be integrated into other systems during implementation. A single source of truth created in a BAM system provides the most robust assurance of efficient and complete compliance.

FBAR Automation

Although ERP, TMS, and dedicated BAM solutions are available to help automate FBAR, many companies continue to rely on manual data gathering and reporting processes.

FBAR in Summary

It is best to understand FBAR as the consequence of two significant systemic shocks; the terrorism of 9/11 and beyond and the 2008 financial crisis. Both of these shocks generated significant regulatory responses from AML to Basel III—both of which are complex in their own right. What makes FBAR unique and therefore a significant corporate risk are the broad definitions of covered persons, financial accounts and financial interest.

One FBAR risk deserves special note—the personal liability of those with signature or beneficial interest over their company's foreign accounts. The regulation requires filings from both the company and selected individuals making FBAR compliance more than simply actions that will protect the company. FBAR is also relevant to individuals with significant personal consequences for filing errors.

Including FBAR as part of your overall corporate risk portfolio and deploying effective systems to assist with compliance are essential to mitigating the risks and challenges of FBAR compliance. The fact that FBAR has been in existence for several years does not mean current systems and workflows are effective. Far too many manual processes and instances of decentralized responsibility are in place at most companies for management to feel secure about current compliance. The manual and decentralized nature of FBAR compliance also creates a cost reduction opportunity for companies embarking upon a strategic reassessment of their FBAR strategy. To this end, the checklists and resource links provided in the following pages can be used to develop a set of business requirements for an FBAR compliance system or to diagnose potential problem areas with the current processes and systems.

SUMMARIZING FBAR FOR TREASURY

1. WHAT IS FOREIGN BANK ACCOUNT REPORTING?

Regulation from U.S. Government to combat financial crimes.

FBAR statutes require strict reporting of overseas and foreign bank accounts.

FBAR places severe penalties on U.S. citizens & organizations that fail to comply with / report FBAR.

2. TREASURY'S STAKE IN FBAR

Treasury typically manages their organization's global bank accounts.

Treasury has visibility and control over the accounts and all associated signers.

Treasury is given the responsibility to manage and file the annual FBAR duty.

3. FBAR TECHNOLOGY USAGE STATISTICS

39% Of treasurers were using fully manual processes to manage FBAR.

21% Used a bank account management (BAM) system to help automate the filing.

20% Used a TMS module to automate the reporting or data aggregation component of FBAR.

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Check Lists

Three check lists are provided below to assist with reviews of current FBAR compliance processes, divided into types of accounts, reporting and records.

1. The following types of foreign financial accounts are within the scope of FBAR:

- ✔ Bank accounts such as current accounts, time deposits and savings accounts held at foreign financial institutions
- ✔ Securities accounts such as brokerage accounts and securities derivatives or other financial instruments accounts held at foreign financial institutions
- ✔ All of the above held at foreign branches of a US financial institution
- ✔ Commodity futures or options accounts, mutual funds accounts with a stated value and regular redemptions and foreign life insurance or annuity contracts with a cash value
- ✔ Foreign stock or securities accounts held at a foreign financial institution
- ✔ Foreign accounts and investment assets held by a foreign or domestic trust
- **Pro Tip:** All accounts must be reported, even zero-dollar accounts, if the aggregate balance is ever over $10,000.
- **Pro Tip:** Physical foreign currency, precious metals and personal property are exempt from FBAR reporting.

2. The determination of the need to report and reporting requirements includes the following:

- ✔ Check to see if the aggregate balance of foreign financial accounts exceeds $10,000 at any time during the calendar year
- ✔ If eligible for reporting, ensure that the capability to file FBAR Form 114 electronically is possible
- ✔ If there are more than 25 accounts to be reported detailed information on each account is not required—although record keeping for the details is a requirement
- ✔ FBAR must be filed for all persons—corporate or individual—that have ownership, control, beneficial interest or signing authority over foreign financial accounts
- ✔ There are certain cases in which individuals who only have signing authority may be exempt from filing if the accounts are held by a publicly traded US company and the company files an FBAR
- ✔ FBARs may be filed by attorneys or corporate agents but all individuals must complete a Form 114a, record of authorization to electronically file FBARs
- ✔ Information to be filed includes the type of account, account number of other identifications, financial institutions name and address and the maximum balance during the year
- **Pro Tip:** If there is any doubt it is advisable to file an FBAR given the severe penalties for failing to file.
- **Pro Tip:** If you have unfiled FBARs for prior years and have not been contacted by the IRS, file them as soon as possible along with an explanation of why you originally failed to file.

3. Records associated with FBAR filing must be kept by year for a period of five years from filing. These include:

- ✔ Name and address of the US owner of the financial account
- ✔ Date of birth and taxpayer identification number (TIN) of the US owner
- ✔ Type of financial account such as current account, investment account or trust account
- ✔ Name and address of the financial institution holding the account
- ✔ Bank account number or other identifying number
- ✔ Highest balance in the account during the calendar year
- ✔ Names and addresses of all other account holders with more than 50% ownership, beneficial interest or control of the account
- ✔ Names, addresses and corporate employment (the business entity) of all account signers
- ✔ Copy of statement indicating the high balance in the account.
- ✔ Copy of relevant FBAR
- ✔ Copies of all authorizations to electronically file FBARs
- ✔ Filing date of FBAR

Pro Tip: A robust bank account management system (BAM) can help track all required information and generate the required reports.

Resources

IRS:
https://www.irs.gov/pub/irs-utl/irsfbarreferenceguide.pdf
https://www.irs.gov/businesses/small-businesses-self-employed/report-of-foreign-bank-and-financial-accounts-fbar

FinCEN:
https://www.fincen.gov/report-foreign-bank-and-financial-accounts

BSA E-Filing site:
https://bsaefiling.fincen.treas.gov/main.html

Third Party Authorization Form:
https://www.fincen.gov/sites/default/files/shared/FBARE-FileAuth114aRecordSP.pdf

Bank Secrecy Act:
https://www.fincen.gov/resources/statutes-regulations/fincens-mandate-congress

USA Patriot Act:
https://www.fincen.gov/resources/statutes-regulations/usa-patriot-act

2021 FBAR Update:
https://www.irs.gov/newsroom/irs-reminds-foreign-bank-and-financial-account-holders-the-fbar-deadline-remains-april-15

About Treasury Alliance Group LLC

Treasury Alliance Group consults with clients globally in the areas of treasury operations, banking, payments, technology and risk. With decades of experience our consultants deliver practical, realistic solutions that meet each client's unique requirements. We welcome the opportunity to discuss how our consulting can help meet your challenges. Contact us by email at contact@treasuryalliance.com or call +1 630.717.9728.

About TIS

TIS is reimagining the world of enterprise payments through a cloud-based platform uniquely designed to help global organizations optimize outbound payments. Corporations, banks and business vendors leverage TIS to transform how they connect global accounts, collaborate on payment processes, execute outbound payments, analyze cash flow and compliance data, and improve critical outbound payment functions. The TIS corporate payments technology platform helps businesses improve operational efficiency, lower risk, manage liquidity, gain strategic advantage – and ultimately achieve enterprise payment optimization.

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TIS

United States (+1 617 955 3223) | Germany (+49 6227 69824-0)
info@tis.biz