

## AdvisorOne

# Do Your Clients' International Assets Create Criminal Tax Exposure?

Follow these basic rules to protect your clients and their offshore assets from civil and criminal penalties

---

Advisor One | April 25, 2011 | By Robert Bloink, Esq., LL.M., William H. Byrnes, Esq.  
Share |

The U.S. government is cracking down on people who have foreign financial accounts (FFAs). Your clients with offshore exposure could be subject to both civil and criminal penalties if they don't follow some basic rules.

The Financial Crimes Enforcement Network (FinCEN), a bureau within the Treasury Department, recently revised [Form TD F 90-22.1](#), Report of Foreign Bank and Financial Accounts (FBAR). **The final FBAR regulations came into effect on March 28, 2011, and apply to all FBARs that must be filed for FFAs maintained during the 2010 calendar year**, as well as reports for all subsequent calendar years.

### Who Is Required to File an FBAR?

An FBAR must be filed if you meet the following characteristics:

1. You qualify as a "United States person" – this includes U.S. citizens, residents, business entities, trusts, and estates;
2. You have a financial interest in or signature authority over one or more FFAs; and
3. The aggregate value of all FFAs exceeds \$10,000 during any period of the calendar year reported.

### Who Is Exempted from the Reporting Requirement?

Exceptions to the reporting requirement include the following types of accounts and U.S. persons:

1. Certain accounts jointly owned by spouses;
2. Persons who file a consolidated FBAR;
3. Correspondent/nostro accounts;
4. Government entities;
5. International financial institutions;
6. IRA owners and beneficiaries;
7. Participants in and beneficiaries of tax-qualified retirement plans;
8. Under certain circumstances, individuals who have signature authority over, but no financial interest in, an FFA;
9. Trust beneficiaries; and
10. Accounts at a United States military banking facility.

### FBAR Information and Penalties

United States persons must file an FBAR even if their FFA produces no taxable income. It's important to note that FBARs and federal income tax returns must be filed separately. The IRS will not grant extensions to the FBAR filing deadline of June 30, 2011.

Failure to timely submit an FBAR could subject your clients to civil penalties of up to of \$10,000. Additionally, clients who willfully violate the reporting requirements could be subject to criminal penalties – including fines of up to \$500,000, five-to-ten years imprisonment, or both.

Advisors who have clients—or prospective clients—with offshore exposure should be fully informed of these basic rules. The U.S. Government is intent on identifying and tracing FFAs that are either being used for illegal purposes, or are not being properly reported. So, what you don't know about foreign financial accounting could actually hurt you – and failure to follow the new FBAR regulations could cost your clients more than just a pretty penny.

*For additional coverage of this issue and similar ones, we invite you to [sign up with AdvisorOne's partner, AdvisorFX, for a free trial.](#)*

See also *The Law Professor's blog* at [AdvisorFYI](#).

**AdvisorOne:** [Subscribe](#) [Advertise](#) [About Us](#) [Contact Us](#) [Privacy Policy](#) [Press Room](#)

© 2011 AdvisorOne, A [Summit Business Media](#) Product