

“FBAR”

TD F 90-22.1

(Rev. October 2008)

Department of the Treasury

Do not use previous editions of
this form after
December 31, 2008

REPORT OF FOREIGN BANK AND FINANCIAL ACCOUNTS

Do NOT file with your Federal Tax Return

Who Must File this Report. Each United States person who has a financial interest in or signature or other authority over any foreign financial accounts, including bank, securities, or other types of financial accounts, in a foreign country, if the aggregate value of these financial accounts exceeds \$10,000 at any time during the calendar year, must report that relationship each calendar year by filing this report with the Department of the Treasury on or before June 30, of the succeeding year.

Due Diligence; OPR Warning

- “A practitioner must comply with FBAR rules as part of his or her due diligence obligation under Section 10.22 of Circular 230: ...”
- “Due diligence does not require that the practitioner ‘audit’ their client. However, it does require that a practitioner make reasonable inquiries when a client provides information that suggests possible participation in overseas transactions/accounts subject to FBAR requirements ...”

§10.22 Diligence as to accuracy

Each **attorney, certified public accountant, enrolled agent, or enrolled actuary** shall exercise due diligence:

- (a) In preparing or assisting in the preparation of, approving, and filing returns, documents, affidavits, and other papers relating to Internal Revenue Service matters;
- (b) In determining the correctness of oral or written representations made by him to the Department of the Treasury; and
- (c) ... any matter administered by the Internal Revenue Service

Financial Account

Financial Account. This term includes any bank, securities, securities derivatives or other financial instruments accounts. Such accounts generally also encompass any accounts in which the assets are held in a commingled fund, and the account owner holds an equity interest in the fund (including mutual funds). The term also means any savings, demand, checking, deposit, time deposit, or any other account (including debit card and prepaid credit card accounts) maintained with a financial institution or other person engaged in the business of a financial institution. Individual bonds, notes, or stock certificates held by the filer are not a financial account nor is an unsecured loan to a foreign trade or business that is not a financial institution.

Financial Interest

Financial Interest. A financial interest in a bank, securities, or other financial account in a foreign country means an interest described in one of the following three paragraphs:

1. A United States person has a financial interest in each account for which such 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.

Financial Interest

2. A United States person has a financial interest in each bank, securities, or other financial account in a foreign country for which the owner of record or holder of legal title is: (a) a person acting as an agent, nominee, attorney, or in some other capacity on behalf of the U.S. person; (b) a corporation in which the United States person owns directly or indirectly more than 50 percent of the total value of shares of stock or more than 50 percent of the voting power for all shares of stock; (c) a partnership in which the United States person owns an interest in more than 50 percent of the profits (distributive share of income, taking into account any special allocation agreement) or more than 50 percent of the capital of the partnership; or (d) a trust in which the United

Foreign Activity Voluntary Disclosures

Q&A 12 (IRS Web Q&As) analyzes a U.S. taxpayer with \$1,000,000 in a foreign financial account who omits \$50,000 of interest income, each year, between 2003 and 2008 (six years):

- **With voluntary disclosure by Oct. 15, 2009 the potential civil penalties (without interest) are \$386,000.**
- **Without voluntary disclosure by Oct. 15, 2009, some of the potential civil penalties are \$2,306,000. \$2,175,000 FBAR penalties (50% of the account balance in 06, 07, and 08).**