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Robert Misesy is Chair for the firm's International Department. A former attorney with the IRS Chief Counsel (International), he is a member of the bar in California, Wisconsin and District of Columbia.



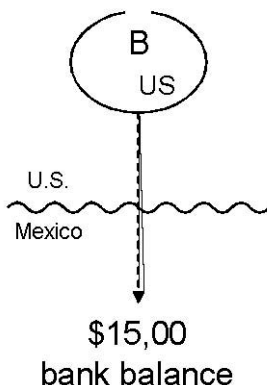
Individuals and businesses with foreign bank accounts should be concerned about the increased enforcement efforts of the IRS with respect to reports of Foreign Bank Account Records on Treasury Department Form 90-22.1 (FBAR). The Treasury Department has delegated its authority under the Bank Secrecy Act to the IRS for enforcement of FBAR filings.¹ In addition to all FBARs for 2008 being due on June 30, 2009, the IRS has stated that delinquent FBARs for prior years for which interest from the foreign bank accounts was reported, will not incur any penalties if the FBARs are filed by September 23, 2009.²

Potential FBAR Filers

Any U.S. person with a foreign bank account aggregating more than \$10,000 at any time during the year must report that account on an FBAR. A foreign bank account does not include an account with a U.S. branch of a foreign bank or a foreign branch of a U.S. bank.³

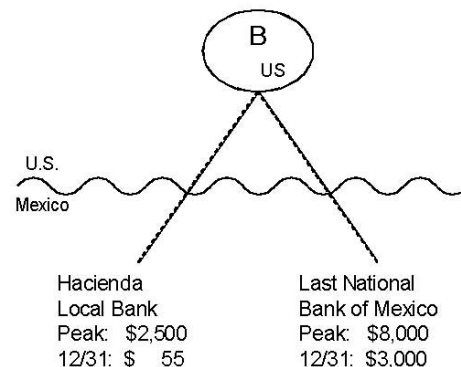
The definition of a U.S. person includes a U.S. citizen, U.S. resident, U.S. partnership, U.S. corporation, U.S. estate, U.S. trust and any U.S. business.⁴

Example 1: Bob, a U.S. citizen, is on special assignment during the winter at his condominium in Mexico. For his convenience, Bob opens an account at the Last National Bank of Mexico. At its peak, the account balance is \$15,000, but on December 31 the balance is only \$8,000. Because its highest balance is above \$10,000, Bob must file an FBAR.



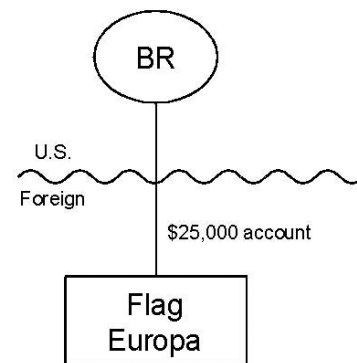
Multiple accounts are aggregated to determine whether they meet the \$10,000 threshold.

Example 2: Bob, a U.S. citizen, is on special assignment during the winter at his condominium in Mexico. Bob has two bank accounts in Mexico. The first, at the Hacienda Local Bank, has a peak balance of \$2,500 and a year-end balance of \$55. The second, at the Last National Bank of Mexico, has a peak balance of \$8,000 and a year-end balance of \$3,000. Because the aggregate of the peak balances exceed \$10,000 (\$2,500 plus \$8,000 is \$10,500), Bob must file an FBAR for the two accounts.



A U.S. person also has to file an FBAR if he or she owns more than 50% of a foreign corporation that has a foreign bank account in excess of \$10,000.⁵

Example 3: Betsy Ross wholly-owns a European subsidiary called Flag Europa. Flag Europa has a bank account with the Brinker Bank of the Netherlands whose dollar equivalence is \$25,000. Betsy Ross must file an FBAR with respect to Flag Europa's account with the Brinker Bank of the Netherlands.



¹ 31 C.F.R. § 103.56(g).

² IRS Frequently Asked Questions, May 6, 2009.

³ 31 C.F.R. § 103(o). C.F.R. § 103.24.

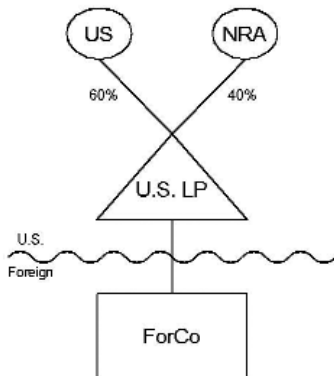
⁴ 31 C.F.R. § 103.11(z) and (n)(n).

⁵ FBAR Questions and Answers issued by the IRS on October 22, 2007.

Regarding Foreign Bank Account Records

In addition to being U.S. persons that must file FBARs, flow-through⁶ entities, such as U.S. partnerships and U.S. S corporations, may result in a U.S. individual having to file an FBAR. More specifically, the U.S. individual would be responsible for filing an FBAR when indirectly owning more than 50% of a foreign corporation.

Example 4: Uncle Sam, a U.S. citizen, is the only U.S. person owning a share (60%) of a U.S. limited partnership. The U.S. limited partnership owns 90% of a foreign corporation (ForCo). Because Uncle Sam's indirect ownership (his interest in the U.S. limited partnership times the U.S. limited partnership's interest in ForCo) is 54%, Uncle Sam's ownership exceeds 50%. Both Uncle Sam and the U.S. limited partnership must file an FBAR for any foreign bank accounts of ForCo in excess of \$10,000.



A financial account is more than just a bank account. More specifically, the definition includes securities, securities derivatives, mutual funds, deficit cards and prepaid credit accounts.⁶

Procedures and Penalties

The FBAR is due June 30th for accounts held the prior taxable year and may not be extended. Also unlike a federal tax return, the FBAR is sent to the IRS Computing Center in Detroit, not the IRS Service Center with which the U.S. person files a return. The various due dates for filing and the different

locations may cause confusion for some taxpayers.

Example 5: Johnny, a U.S. citizen, has \$20,000 in a bank account with the First Bank of Italy. Each year, Johnny files his Form 1040 and his FBAR by April 15. This year, due to some late information from various partnerships in which Johnny owns an interest, Johnny extends his tax return and files both his Form 1040 and his FBAR by October 15. Although Johnny's income tax return is timely filed, the FBAR, which had to have been filed by June 30 and for which extension is not allowed, is late.

Failure to file FBARs may result in either civil or criminal penalties. As aforementioned, if the account's interest from previous years was reported and the FBARs for the old years are filed by September 23, 2009, the penalties will not be imposed.

Civil penalties depend on whether the failure to file was non-willful or willful. A non-willful failure to file results in a penalty that may not exceed \$10,000 and may be excused due to reasonable cause.⁷ A willful failure to file can result in a penalty of the greater of \$100,000 or half of the balance in the account on June 30 when the FBAR should have been filed.⁸

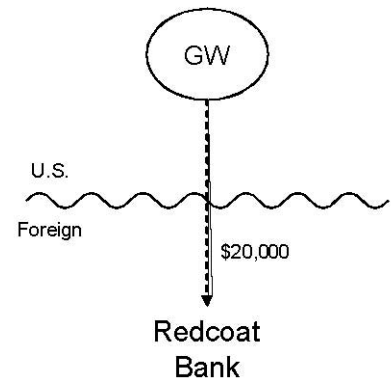
The normal three-year statute of limitations for income tax cases do not apply to FBAR matters. Instead, the statute of limitations on assessment of civil penalties is six years from the June 30 date that the FBAR was due.⁹

The IRS may also pursue a criminal penalty for willful failure to file an FBAR. Those criminal penalties can result in a fine of up to \$250,000 and five years of imprisonment.¹⁰

FBAR filing is clearly a trap for the unwary. Taxpayers should ensure that their FBARs for 2008 are filed by June 30, 2009. In addition, considering the limited time in which taxpayers have to file FBARs for previous years without a penalty (September 23, 2009), the time to act is now.

Sample Treasury Department Form 90-22.1

George Washington, a U.S. citizen, has a \$20,000 bank account (the U.S. equivalent of British Pounds) in Redcoat Bank of England during 2008. George Washington must file a TD F 90-22.1 with the Treasury Department in Detroit by June 30, 2009.



⁶ IRS News Release 2007-15.

⁷ 31 U.S.C. section 5321(a)(5)(B). Reasonable cause may be difficult to obtain if the taxpayer files a Form 1040 that inquires about foreign bank accounts and directs the taxpayer to an instruction describing the FBAR.

⁸ 31 U.S.C. section 5321(a)(5)(C).

⁹ 31 U.S.C. section 5321(b)(1).

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

OMB No. 1545-2038

1 This Report is for Calendar
Year Ended 12/31

Amended

Part I Filer Information

2 Type of Filer			
a <input checked="" type="checkbox"/> Individual b <input type="checkbox"/> Partnership c <input type="checkbox"/> Corporation d <input type="checkbox"/> Consolidated e <input type="checkbox"/> Fiduciary or Other—Enter type _____			
3 U.S. Taxpayer Identification Number 177-61-7766		4 Foreign identification (Complete only if item 3 is not applicable.)	
If filer has no U.S. Identification Number complete Item 4.		a Type: <input type="checkbox"/> Passport <input type="checkbox"/> Other _____	
		b Number _____ c Country of Issue _____	
5 Individual's Date of Birth MM/DD/YYYY 02/22/1732			
6 Last Name or Organization Name Washington		7 First Name George	8 Middle Initial
9 Address (Number, Street, and Apt. or Suite No.) 3200 Mount Vernon Memorial Highway			
10 City Mt. Vernon	11 State VA	12 Zip/Postal Code 22309	13 Country USA
14 Does the filer have a financial interest in 25 or more financial accounts? <input type="checkbox"/> Yes If "Yes" enter total number of accounts _____ (If "Yes" is checked, do not complete Part II or Part III, but retain records of this information) <input checked="" type="checkbox"/> No			

Part II Information on Financial Account(s) Owned Separately

15 Maximum value of account during calendar year reported \$20,000		16 Type of account a <input checked="" type="checkbox"/> Bank b <input type="checkbox"/> Securities c <input type="checkbox"/> Other—Enter type below	
17 Name of Financial Institution in which account is held Redcoat Bank of England			
18 Account number or other designation 1776		19 Mailing Address (Number, Street, Suite Number) of financial institution in which account is held 20 Fleet Street	
20 City London	21 State, if known	22 Zip/Postal Code, if known	23 Country United Kingdom
Signature			
44 Filer Signature		45 Filer Title, if not reporting a personal account	46 Date (MM/DD/YYYY)

File this form with: U.S. Department of the Treasury, P.O. Box 32621, Detroit, MI 48232-0621

This form should be used to report a financial interest in, signature authority, or other authority over one or more financial accounts in foreign countries, as required by the Department of the Treasury Regulations (31 CFR 103). No report is required if the aggregate value of the accounts did not exceed \$10,000. See Instructions For Definitions.

PRIVACY ACT AND PAPERWORK REDUCTION ACT NOTICE

Pursuant to the requirements of Public Law 93-579 (Privacy Act of 1974), notice is hereby given that the authority to collect information on TD F 90-22.1 in accordance with 5 USC 552a (e) is Public Law 91-508; 31 USC 5314; 5 USC 301; 31 CFR 103.

The principal purpose for collecting the information is to assure maintenance of reports where such reports or records have a high degree of usefulness in criminal, tax, or regulatory investigations or proceedings. The information collected may be provided to those officers and employees of any constituent unit of the Department of the Treasury who have a need for the records in the performance of their duties. The records may be referred to any other department or agency of the United States upon the request of the head of such department or agency for use in a criminal, tax, or regulatory investigation or proceeding. The information collected may also be provided to appropriate state, local, and foreign law enforcement and regulatory personnel in the performance of their official duties. Disclosure of this information is mandatory. Civil and criminal penalties, including in certain circumstances a fine of not more than \$500,000 and imprisonment of not more than five years, are provided for failure to file a report, supply information, and for filing a false or fraudulent report. Disclosure of the Social Security number is mandatory. The authority to collect is 31 CFR 103. The Social Security number will be used as a means to identify the individual who files the report.

The estimated average burden associated with this collection of information is 20 minutes per respondent or record keeper, depending on individual circumstances. Comments regarding the accuracy of this burden estimate, and suggestions for reducing the burden should be directed to the Internal Revenue Service, Bank Secrecy Act Policy, 5000 Ellin Road C-3-242, Lanham MD 20706.

Cat. No. 12996D

Form **TD F 90-22.1** (Rev. 10-2008)

Part II *Continued*—Information on Financial Account(s) Owned Separately

Form TD F 90-22.1

Complete a Separate Block for Each Account Owned Separately

Page Number

This side can be copied as many times as necessary in order to provide information on all accounts.

___ of ___

1 Filing for calendar year ____	3-4 Check appropriate Identification Number <input type="checkbox"/> Taxpayer Identification Number <input type="checkbox"/> Foreign Identification Number Enter identification number here:	6 Last Name or Organization Name	
15 Maximum value of account during calendar year reported	16 Type of account a <input type="checkbox"/> Bank b <input type="checkbox"/> Securities c <input type="checkbox"/> Other—Enter type below		
17 Name of Financial Institution in which account is held			
18 Account number or other designation	19 Mailing Address (Number, Street, Suite Number) of financial institution in which account is held		
20 City	21 State, if known	22 Zip/Postal Code, if known	23 Country
15 Maximum value of account during calendar year reported	16 Type of account a <input type="checkbox"/> Bank b <input type="checkbox"/> Securities c <input type="checkbox"/> Other—Enter type below		
17 Name of Financial Institution in which account is held			
18 Account number or other designation	19 Mailing Address (Number, Street, Suite Number) of financial institution in which account is held		
20 City	21 State, if known	22 Zip/Postal Code, if known	23 Country
15 Maximum value of account during calendar year reported	16 Type of account a <input type="checkbox"/> Bank b <input type="checkbox"/> Securities c <input type="checkbox"/> Other—Enter type below		
17 Name of Financial Institution in which account is held			
18 Account number or other designation	19 Mailing Address (Number, Street, Suite Number) of financial institution in which account is held		
20 City	21 State, if known	22 Zip/Postal Code, if known	23 Country
15 Maximum value of account during calendar year reported	16 Type of account a <input type="checkbox"/> Bank b <input type="checkbox"/> Securities c <input type="checkbox"/> Other—Enter type below		
17 Name of Financial Institution in which account is held			
18 Account number or other designation	19 Mailing Address (Number, Street, Suite Number) of financial institution in which account is held		
20 City	21 State, if known	22 Zip/Postal Code, if known	23 Country
15 Maximum value of account during calendar year reported	16 Type of account a <input type="checkbox"/> Bank b <input type="checkbox"/> Securities c <input type="checkbox"/> Other—Enter type below		
17 Name of Financial Institution in which account is held			
18 Account number or other designation	19 Mailing Address (Number, Street, Suite Number) of financial institution in which account is held		
20 City	21 State, if known	22 Zip/Postal Code, if known	23 Country
15 Maximum value of account during calendar year reported	16 Type of account a <input type="checkbox"/> Bank b <input type="checkbox"/> Securities c <input type="checkbox"/> Other—Enter type below		
17 Name of Financial Institution in which account is held			
18 Account number or other designation	19 Mailing Address (Number, Street, Suite Number) of financial institution in which account is held		
20 City	21 State, if known	22 Zip/Postal Code, if known	23 Country
15 Maximum value of account during calendar year reported	16 Type of account a <input type="checkbox"/> Bank b <input type="checkbox"/> Securities c <input type="checkbox"/> Other—Enter type below		
17 Name of Financial Institution in which account is held			
18 Account number or other designation	19 Mailing Address (Number, Street, Suite Number) of financial institution in which account is held		
20 City	21 State, if known	22 Zip/Postal Code, if known	23 Country
15 Maximum value of account during calendar year reported	16 Type of account a <input type="checkbox"/> Bank b <input type="checkbox"/> Securities c <input type="checkbox"/> Other—Enter type below		
17 Name of Financial Institution in which account is held			

Form TD F 90-22.1 (Rev. 10-2008)

Part III Information on Financial Account(s) Owned Jointly

Form TD F 90-22.1

Complete a Separate Block for Each Account Owned Jointly

Page Number
___ of ___

This side can be copied as many times as necessary in order to provide information on all accounts.

1 Filing for calendar year ____	3-4 Check appropriate Identification Number <input type="checkbox"/> Taxpayer Identification Number <input type="checkbox"/> Foreign Identification Number Enter identification number here:	6 Last Name or Organization Name	
15 Maximum value of account during calendar year reported	16 Type of account a <input type="checkbox"/> Bank b <input type="checkbox"/> Securities c <input type="checkbox"/> Other—Enter type below		
17 Name of Financial Institution in which account is held			
18 Account number or other designation	19 Mailing Address (Number, Street, Suite Number) of financial institution in which account is held		
20 City	21 State, if known	22 Zip/Postal Code, if known	23 Country
24 Number of joint owners for this account	25 Taxpayer Identification Number of principal joint owner, if known. See instructions		
26 Last Name or Organization Name of principal joint owner	27 First Name of principal joint owner, if known	28 Middle initial, if known	
29 Address (Number, Street, Suite or Apartment) of principal joint owner, if known			
30 City, if known	31 State, if known	32 Zip/Postal Code, if known	33 Country, if known
15 Maximum value of account during calendar year reported	16 Type of account a <input type="checkbox"/> Bank b <input type="checkbox"/> Securities c <input type="checkbox"/> Other—Enter type below		
17 Name of Financial Institution in which account is held			
18 Account number or other designation	19 Mailing Address (Number, Street, Suite Number) of financial institution in which account is held		
20 City	21 State, if known	22 Zip/Postal Code, if known	23 Country
24 Number of joint owners for this account	25 Taxpayer Identification Number of principal joint owner, if known. See instructions		
26 Last Name or Organization Name of principal joint owner	27 First Name of principal joint owner, if known	28 Middle initial, if known	
29 Address (Number, Street, Suite or Apartment) of principal joint owner, if known			
30 City, if known	31 State, if known	32 Zip/Postal Code, if known	33 Country, if known
15 Maximum value of account during calendar year reported	16 Type of account a <input type="checkbox"/> Bank b <input type="checkbox"/> Securities c <input type="checkbox"/> Other—Enter type below		
17 Name of Financial Institution in which account is held			
18 Account number or other designation	19 Mailing Address (Number, Street, Suite Number) of financial institution in which account is held		
20 City	21 State, if known	22 Zip/Postal Code, if known	23 Country
24 Number of joint owners for this account	25 Taxpayer Identification Number of principal joint owner, if known. See instructions		
26 Last Name or Organization Name of principal joint owner	27 First Name of principal joint owner, if known	28 Middle initial, if known	
29 Address (Number, Street, Suite or Apartment) of principal joint owner, if known			
30 City, if known	31 State, if known	32 Zip/Postal Code, if known	33 Country, if known

Form TD F 90-22.1 (Rev. 10-2008)

Part IV Information on Financial Account(s) Where Filer has Signature or Other Authority but No Financial Interest in the Account(s)

Form TD F 90-22.1

Page Number

___ of ___

Complete a Separate Block for Each Account

This side can be copied as many times as necessary in order to provide information on all accounts.

1 Filing for calendar year ____ - ____ - ____	3-4 Check appropriate Identification Number <input type="checkbox"/> Taxpayer Identification Number <input type="checkbox"/> Foreign Identification Number Enter identification number here:	6 Last Name or Organization Name
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15 Maximum value of account during calendar year reported	16 Type of account a <input type="checkbox"/> Bank b <input type="checkbox"/> Securities c <input type="checkbox"/> Other—Enter type below
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17 Name of Financial Institution in which account is held			
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18 Account number or other designation	19 Mailing Address (Number, Street, Suite Number) of financial institution in which account is held		
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20 City	21 State, if known	22 Zip/Postal Code, if known	23 Country
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34 Last Name or Organization Name of Account Owner			35 Taxpayer Identification Number of Account Owner
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36 First Name	37 Middle initial	38 Address (Number, Street, and Apt. or Suite No.)	
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39 City	40 State	41 Zip/Postal Code	42 Country
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43 Filer's Title with this Owner			
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15 Maximum value of account during calendar year reported	16 Type of account a <input type="checkbox"/> Bank b <input type="checkbox"/> Securities c <input type="checkbox"/> Other—Enter type below
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17 Name of Financial Institution in which account is held			
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18 Account number or other designation	19 Mailing Address (Number, Street, Suite Number) of financial institution in which account is held		
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20 City	21 State, if known	22 Zip/Postal Code, if known	23 Country
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34 Last Name or Organization Name of Account Owner			35 Taxpayer Identification Number of Account Owner
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36 First Name	37 Middle initial	38 Address (Number, Street, and Apt. or Suite No.)	
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39 City	40 State	41 Zip/Postal Code	42 Country
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43 Filer's Title with this Owner			
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15 Maximum value of account during calendar year reported	16 Type of account a <input type="checkbox"/> Bank b <input type="checkbox"/> Securities c <input type="checkbox"/> Other—Enter type below
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17 Name of Financial Institution in which account is held			
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18 Account number or other designation	19 Mailing Address (Number, Street, Suite Number) of financial institution in which account is held		
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20 City	21 State, if known	22 Zip/Postal Code, if known	23 Country
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34 Last Name or Organization Name of Account Owner			35 Taxpayer Identification Number of Account Owner
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36 First Name	37 Middle initial	38 Address (Number, Street, and Apt. or Suite No.)	
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39 City	40 State	41 Zip/Postal Code	42 Country
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43 Filer's Title with this Owner			
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Form TD F 90-22.1 (Rev. 10-2008)

