

[U.S. Edition Home](#)[CFO Journal](#)[Today's Paper](#)[Video](#)[Blogs](#)[Journal Community](#)[NEW CFO Journal](#) Try for **FREE** until August 1st »

**THE WALL STREET JOURNAL.**  
PROFESSIONAL EDITION WITH FACTIVA

DELOITTE'S INSIGHTS FOR CFOS

from Factiva April 30, 2011

## FBAR Final Rules Not What Filers Hoped For

Final rules regarding the requirements for reporting foreign bank and financial accounts, widely known as FBAR, have taken many people by surprise.

The surprising element in the final rules for Form TD F 90-22.1, Report of Foreign Bank and Financial Accounts, is the language regarding the meaning of 'signature or other authority' for financial accounts, according to John Rieger, U.S. Managing Partner – Financial Services Industry, Deloitte Tax LLP. "It was widely expected that persons with signing authority, but no beneficial interest, would be excepted from filing, but that is not the case," he notes.

Given the significant civil and criminal penalties for failure to file a required FBAR, companies—both outbound and inbound—and their officers and employees will want to take a careful look at the final rules and guidance to see how FBAR now applies to them. It is incumbent on companies to help their employees and officers understand the final rules for the same reason and to assist them with compliance.

A separate filing requirement from income tax returns, FBARs apply to all U.S. entities and persons with a financial interest in, or signature or other authority over, foreign financial accounts if the aggregate value of all accounts exceeds \$10,000 at any time during the calendar year. FBARs must be received by the Treasury Department—not merely postmarked—by June 30, 2011, making the need to understand and comply with the final rules all the more urgent.

The final reporting rules issued in February—and the new FBAR form, TD F 90-22.1—apply to anyone filing a form after March 28, 2011, the date upon which the final version of the FBAR regulations went into effect. These rules are effective for the calendar year 2010 FBAR filing requirements.

Contrary to hopes that the Treasury Department might relax some of the reporting requirements and add to the exceptions for reporting, the final guidance is more specific than in prior years, says Kathy Petronchak, director in the Tax Controversy Services practice at Deloitte Tax LLP.

"Many people with signature or other authority were deferring their FBAR filing in the hope the new FBAR rules might except them from filing," she says. In fact, the final regulations will require FBAR filing from many people who did not file in previous years. Moreover, those who have deferred filing for many years will now have to go back and file FBARs not just for 2010, but for the previous years where the reporting requirements applied to them.

### 'Signature or Other Authority'

The test for determining whether a U.S. citizen or resident has signature or other authority over a foreign account is whether the foreign financial institution will act upon a direct communication from the individual with respect to the disposition of assets in the account.

There is no limit to how many people with signing authority for a foreign account are required to file an FBAR for that

account, according to Ellen MacNeil, U.S. Managing Partner Consumer & Industrial Products, Deloitte Tax LLP. “If twenty U.S. persons have signing authority for a foreign account, then twenty-one FBARs may have to be filed—twenty individual FBARs, plus one from the company itself,” she points out.

The rules can affect non-U.S. employees as well. For example, an employee of a Mexican subsidiary of a U.S. parent, who is living in the United States as a resident must file an FBAR for any of the Mexican subsidiary’s non-U.S. accounts for which he has signing authority.

#### Exceptions

Notable exceptions still apply for officers and employees of companies with signing authority for an account owned directly by that company and where the employee has no financial interest in the account. They are:

- \* An officer or employee of a publicly held company, whether foreign or domestic, with a class of equity securities, listed on any U.S. national securities exchange.
- \* An officer or employee of a U.S. subsidiary of a United States entity with a class of securities listed on U.S. national securities exchange if the subsidiary is included in a consolidated report filed by the U.S. parent.
- \* An officer or employee of a bank that is examined by federal authorities.
- \* An officer or employee of a financial institution that is registered with and examined by the Securities and Exchange Commission or Commodity Futures Trading Commission.
- \* An officer or employee of an Authorized Service Provider where there is an account owned or maintained by an investment company that is registered with the Securities and Exchange Commission.

“You have to read the exceptions carefully, especially those regarding in-bound companies,” Ms. Petronchak warns. “There could be confusion about what the exceptions are.”

The new FBAR rules are unlikely to change how companies do business, observes Ms. Petronchak. “Nevertheless, they are a huge concern because of the potential risk to a company’s reputation, not just the potential for high penalties,” she notes. “No one wants to be found as not disclosing.”

#### [Read Full Report](#)

Copyright 2011 Deloitte Development LLC. All Rights Reserved. This publication contains general information only and Deloitte LLP and its subsidiaries (“Deloitte”) are not, by means of this publication, rendering business, financial, investment, or other professional advice or services. This publication is not a substitute for such professional advice or services, nor should it be used as a basis for any decision or action that may affect your business. Before making any decision or taking any action that may affect your business, you should consult a qualified professional advisor. Deloitte shall not be responsible for any loss sustained by any person who relies on this publication.