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a closer look

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FBAR Penalties Rise Again

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As with many numbers in the US tax code (for example, the foreign earned income exclusion maximum amount), FBAR penalties increase periodically due to inflation.

Recently, the IRS announced[1] that FBAR penalties for noncompliance would be increased for penalties assessed after January 15, 2017. A brief summary of the FBAR requirement and the new penalty amounts are the subjects of this article.

The FBAR Requirement – A Quick Background

The Bank Secrecy Act (BSA) gives the Department of Treasury the authority to collect information from United States persons, including expats, who have financial interests in or signature authority over financial accounts maintained with financial institutions located outside the United States.

The BSA requires that a FinCEN Report 114, Report of Foreign Bank and Financial Accounts (FBAR), be filed if the maximum values of the foreign financial accounts exceed USD10,000 in the aggregate at any time during the calendar year. The FBAR form (FinCEN Form 114)[2] must be filed electronically using the BSA E-Filing System maintained by the US Department of the Treasury's Financial Crimes Enforcement Network ("FinCEN").

The FBAR due date is April 15 (April 17 this year due to a weekend and holiday), with a maximum extension of six months.

Basic FBAR Penalties

A "non-willful"' failure to report foreign bank accounts can result in a penalty of up to USD10,000 per account per year, not taking into account inflation. The IRS has recently stated that these penalties represent maximum amounts, and lower penalties may be appropriate depending on the circumstances.

A "willful" failure to file may be subject to civil penalties equal to the greater of USD100,000 or 50 percent of the balance in each unreported account, also not taking into account inflation. In addition, criminal penalties of up to USD250,000 or five years in jail (or both) may apply in the case of willful conduct.

Several court cases decided as recently as last year wrestled with issues surrounding the distinction between willful and non-willful, which shows how factually sensitive these matters can be.

Inflation-Adjusted FBAR Penalties

As adjusted for inflation, the above amounts of USD10,000 (non-willful) and USD100,000 (willful) assessed after August 1, 2016 but before January 16, 2017, were USD12,663 and USD126,626, respectively.

According to the IRS announcement, for penalties assessed after January 15, 2017, the FBAR penalty for a non-willful failure increases from USD12,663 to USD12,921, and the penalty for a willful failure increases from USD126,626 to USD129,210.

Failing To File Is A Serious Matter

Not filing your FBAR is a misstep that can quickly get out of hand if not dealt with properly. For FBAR delinquent taxpayers, programs are provided by the IRS to prevent potentially disastrous outcomes that could otherwise result from nondisclosure. However, depending on the facts and circumstances, a taxpayer may fail one or more of the program's eligibility requirements and have to look at other potential solutions.

Endnotes

1 https://www.gpo.gov/fdsys/pkg/FR-2018-03-19/pdf/2018-05550.pdf

2 https://www.expattaxprofessionals.com/Form-FinCEN-114-FBAR-Report