

1970 ENACTMENT OF “BANK SECRECY ACT”



FOREIGN BANK ACCOUNTS REPORT

In 1970, Pres. Richard Nixon and Sec. of the Treasury, William Simon, were trying to find ways to stop drug trafficking between South and Central America, South and Central Asia, and Europe with the United States. The war in Vietnam and the countercultural hippie movement of the late 60s created a drug culture for young American adults that was unprecedented. One of the tools suggested by William Simon was the "Bank Secrecy Act", which is anything but a secrecy act. It should have been called the "Foreign Bank Non-Secrecy Act" because that is what they intended the act to do. They felt that if they could get people to disclose where their foreign money accounts were being held, they can stop drug money cash flows and laundering. The law imposed extraordinary fines and penalties and criminal sanctions if the reports were not filed. Only one problem, the criminals refused to report, so the law became essentially worthless.

THE NEW F-WORD

“FBAR”

1970 -2001

UNITED STATES DEPARTMENT OF TREASURY

“THE ENFORCER”

For 30 years, the law remained on the books but was virtually ignored by United States prosecutors and the criminal investigation unit of the Department of Treasury. Nobody sought to have the law amended or repealed, because there was no reason.



SEPTEMBER 11TH, 2001

***“AN INCIDENT IN NEW
YORK, NEW YORK”***



WHERE DID THEY GET THE MONEY TO DO THIS?

On September 11, 2001, there was a significant incident that happened in New York City you may have heard of. Because of these terrorist acts, the Bush administration had to find new tools for ferreting out terrorists, drug dealers, arms dealers and other bad guys around the world who could be a threat the United States. The administration established the Homeland Security Act, they completely revamped and reformed the Immigration and Natural Naturalization Service, and a whole bunch of other things, but they also found that they had this potentially invaluable tool in the Bank Secrecy Act that they could use to try to find out how the terrorists could fund such a war inside the United States

2003

Treasury Department



Internal Revenue Service



"It's All Yours"

However, they realized that the Department of the Treasury, even though it has the largest police force in the world, the Secret Service, was ill-equipped to use this tool. So in 2003, while all these other protection laws are being passed, the Department of Treasury looks to turn this tool over to the meanest junkyard dog it can find in its kennel. So they turn the investigation, criminal prosecution, and enforcement over to the Internal Revenue Service, which we know as the IRS. Unfortunately, they still had plenty of difficulty finding accounts or joint accounts with names like S Hussein & Sons or U. Bin Laden & Wives and was largely unsuccessful.

2008



Recession-Government Revenues



"We need money! Who wants to go to the FBAR with me?"

In 2008, Barack Obama is elected president and he walks into a huge recession mess. Tax revenues are down, stimulus money is needed and he has a hostile Congress that is not much interested in raising revenues through new taxes. So this administration sees the Bank Secrecy Act, with its extraordinary fines, penalties etc. as a source of revenue. This is particularly appealing to Obama because he doesn't think that rich people pay their fair share of taxes and believes it is primarily the rich people who have foreign bank accounts being used to hide their wealth and money to avoid paying taxes. So a shift is made from using this law to find drug dealers and terrorists, and instead to find wealthy American citizens who are trying to avoid paying their taxes.

2009

“OFFSHORE VOLUNTARY DISCLOSURE INITIATIVE I “OVDI I”

In 2009 the IRS institutes the "Offshore Voluntary Disclosure Initiative" where they basically say that if you come clean and pay your taxes and penalties, we promise not to press criminal charges available under the Bank Secrecy Act. But we will impose a 20% penalty on you for the highest account balance you have had in your foreign bank for the last six years. Very few people hear about this except for a few decent and responsible foreign account holders, and the government pulls in about \$2 billion in revenues. This is a handsome profit for simply enacting a voluntary disclosure program. It also tells the IRS that this is the tippity top of the iceberg and that there are tens of billions of additional dollars out there. But they still don't know how to get this information from all of the US taxpayers who are either ignorant foreign account holders (those who did not know about the law) or the ignoring foreign account holders (those who know and just don't care).



- **No Criminal Charges**
- **Pay Taxes and Penalties**
- **20% FBAR Penalty on Highest Account Balance**
- **6 Years**
- **\$2 Billion Revenues**

2009-2010

“Alphabet Soup”

BINGO



IRS FBAR UBS HSBC NRI OVDI

United Bank of Switzerland pays \$780 million fine and discloses thousands of US taxpayers with offshore accounts.

HSBC India is sued in federal District Court in San Francisco to disclose US customers.

Also in 2009, the IRS goes after UBS under FBAR while OVDI I is pending and they hit BINGO with a settlement agreement where UBS pays a \$780 million fine and discloses thousands of US taxpayers holding foreign bank accounts. This only makes the junkyard dog a little hungrier so it is now going after HSBC India seeking NRI's (non-resident Indians) who have been avoiding paying taxes. This appears to be part of a more global strategy to include all of Asia and Europe. Because of the humongous UBS victory, they go to Congress for more tools to cultivate this international income stream.



2010

CONGRESS ENACTS: “FOREIGN ACCOUNT TAX COMPLIANCE ACT”

“FATCA”

So in 2010 Congress enacts the Foreign Account Tax Compliance Act. Under this new law, now all foreign banks that wish to do business in the United States , and US banks that wish to do business in foreign soils, must report to the IRS all accounts held by American residents or citizens in their foreign bank offices. They must do this whether or not it violates their own internal secrecy policies or their country’s secrecy policies and laws. If they refuse or fail to do this, the IRS will withhold up to 30% of the bank's income which is basically making them pay the penalty that their foreign account holders would have to pay. Now we have some real big players who are caught in quite a dilemma. Banks like HSBC, UBS, Credit Suisse, Deutsche Bank, Citibank either have to rat out their best customers, or cease doing business in the United States or offering foreign bank accounts to US residents. This is what we commonly call in legal terms the law of TS - Tough Situation.

**ALL FOREIGN BANKS MUST REPORT ON AMERICAN
CLIENT ACCOUNTS**

**Failure = Withholding 30% of US Income from
Non-Compliant Banks**

2011 (Expired Sept. 7)

"OFFSHORE VOLUNTARY DISCLOSURE INITIATIVE II"

"OVDI II"



- **Probably No Criminal Charges**
 - **Pay Taxes and Penalties**
- **25% FBAR Penalty on Highest Account Balance**
 - **6 Years**
- **12,000 Volunteer Reports**
 - **\$\$\$\$ Revenues?**

Earlier this year, with the foreign banks facing this dilemma, and without the courts around the US having time to review the constitutionality of all this, the IRS institutes a second Offshore Voluntary Disclosure Initiative which was set to expire on August 31, but because of Hurricane Irene, it was pushed back a week to September 7. This initiative has to be a little stricter than the original initiative, so now they don't guarantee that the volunteers will face no criminal charges, but they probably won't, and they raise the FBAR penalty to 25%. This results in 12,000 new volunteered foreign account reports and it will take some time to find out how much money they will make. So far, they have recovered \$500 million in the first couple of weeks which comes out to about \$42,000 per account. And there is plenty more to be assessed and counted over this initiative. And we are also still just scratching the tip of the iceberg.

If you have or have had a foreign bank account with over \$10,000 in the last eight years, what do you have to do to comply? For most people, what you do is fill out this Form TD 90-22.1, which simply asks "who are you" and "what is the maximum amount of money you held in a foreign bank account during the last 8 years." Then duck, because the penalties are severe.

TD F 90-22.1

(Rev. March 2011)
Department of the Treasury

Do not use previous editions of this form

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
 Individual Partnership Corporation Consolidated Fiduciary or Other—Enter type _____

3 U.S. Taxpayer Identification Number _____
 4 Foreign Identification (Complete only if item 3 is not applicable)
 a Type: Passport Other _____

If filer has no U.S. Identification Number complete item 4.
 b Number _____ c Country of Issue _____

5 Individual's Date of Birth MM/DD/YYYY _____

6 Last Name or Organization Name _____
 7 First Name _____
 8 Middle Initial _____

9 Address (Number, Street, and Apt. or Suite No.) _____

10 City _____ 11 State _____ 12 Zip/Postal Code _____ 13 Country _____

14 Does the filer have a financial interest in 25 or more financial accounts?
 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)
 No

Part II Information on Financial Account(s) Owned Separately

15 Maximum value of account during calendar year reported _____
 16 Type of account a Bank b Securities c 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 _____

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 1010.350 (formerly 31 CFR 103.24). 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 (a) is Public Law 91-508; 31 USC 5314; 5 USC 301; 31 CFR 1010.350 (formerly 31 CFR 103.24).

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 1010.350 (formerly 31 CFR 103.24). 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 Elin Road C-3-242, Lanham MD 20706.

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

Form TD F 90-22.1

Page Number

_____ of _____

Complete a Separate Block for Each Account Owned Separately

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 _____
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 _____	
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Form TD F 90-22.1 (Rev. 3-2011)

COMPLIANCE

Non-Filing Penalty

Form TD F 90-22.1-Standard FBAR	\$10,000 non-willful \$100,000 <50% willful
Form 3520-Foreign Trusts and Gifts	25-35% or >5%/mo.
Form 5471-Certain Foreign Corporations	\$10,000-\$50,000
Form 926-Transfer of Property to Foreign Corp.	10%<\$100,000
Form 8865-Certain Foreign Partnerships	10%<\$100,000
IRC §6651-Standard Income Tax Return	5%<25%

Generally, the simple penalty for willfully failing to file a report can be as high as the greater of \$100,000 or 50% of the total balance of the foreign account per violation. Non--willful violations that the IRS determines were not due to reasonable cause, in other words ignorance is not reasonable and you have the burden of proving that you did not intend to violate the law, are subject to a \$10,000 penalty per violation. There are series of additional or other penalties depending on the particular circumstances of the taxpayer dealing with foreign trust accounts, foreign gifts, foreign property transfers, foreign corporations, foreign partnerships etc. There are also the standard penalties for failing to file a tax return. Understand that these are not penalties based upon the amount of tax that is owed, these are based solely on failures to file forms and returns. It doesn't matter if you owe any tax, or if the money is 100% clean, or you were simply unaware of the legal duty to file the form because you forgot about a law that was passed over 40 years ago, probably when most of you were either little kids or not born yet and didn't live in the United States to begin with, and basically had never been enforced until a couple of years ago.

2011-20??

What are Foreign Account Holders Doing?

Limited options:

- 1. Do Nothing-viability depends on enforcement of FACTA**
- 2. File FBAR Forms-Leniency? Criminal fines and penalties?**
- 3. Prepackaged Deal-high-cost, conclusive certainty**
- 4. Renounce US Citizenship-Exit taxes, IRS targets, "there's no place like home/there's no going back"**