

FBAR Alert

New filing deadlines

New FBAR filing deadlines affects filings beginning after December 2015

Affects: C corporations, Partnerships, Estates, Trusts, Employee Benefit Plans, Tax-Exempt Entities, and individual filers of FBARs

Situation presented:

On July 31, 2015, the President signed H.R. 3236, the Surface Transportation and Veterans Health Care Choice Improvement Act of 2015 ("the Act"), which contains important changes to the due dates for the FinCEN Report 114 (relating to Report of Foreign Bank and Financial Accounts or "FBAR"), as well as other income tax returns. The Act also makes changes to the extension periods allowed for such filings. Generally, the effective date of the changes will affect filings beginning after December 31, 2015.

Suggested action:

Tax professionals, taxpayers, and companies with employees who have signature authority over company accounts should note the new FBAR filing deadlines and take appropriate steps to plan FBAR compliance activities accordingly and consult with FBAR specialist for guidance.

Issue:

US Persons with a financial interest or signature authority over a foreign financial accounts with an aggregate balance that exceeds \$10,000 or more at any time during a calendar year are required to file a FinCEN Report 114 or "FBAR". Per the Act, the FBAR will now be due on April 15th to coincide with the return due date for individual Form 1040 tax returns. As with the Form 1040, the Act also provides for a six month extension to the FBAR filing deadline. This change should be taken into account when planning FBAR and tax filing compliance activities for the 2015 year, including some of the following considerations.

- Previously FBARs were required to be received by FinCEN by June 30th of the year immediately following the calendar year being reported
- The coordinated FBAR and Form 1040 filing deadlines (April 15th) will likely make it easier for filers to coordinate FBAR on foreign financial accounts reporting with existing obligations to report signature authority and financial interests over foreign accounts on Schedule B, Part III of the Form 1040. FBARs for corporations, partnerships, or other filers will also be due on April 15th.
- While FBAR filing deadlines will be coordinated with the Form 1040 due dates, there is no guidance in the Act suggesting that the filings themselves will be consolidated. The FBAR and tax return filings are separate filings and require separate transmissions. The FBAR is required to be filed electronically with FinCEN, while a tax return is filed with the IRS
- Look for future guidance on how to request an extension to file an FBAR. There will need to be additional guidance from the Internal Revenue Service or the Financial Crimes Enforcement Network ("FinCEN") about the process to obtain the six-month FBAR filing extension

- Practically, the deadline change may compress timelines for executing FBAR compliance unless the extension is utilized:
 - Filers will now have two and half months less time to gather data required to be reported on an FBAR for reportable accounts they have a financial interest in or signature authority over
 - Companies who assist their employees with their employee's FBAR reporting obligations on account of their signature authority over company accounts will need to make sure they have reportable financial account information available to support compliance activities by the new deadline
- FBAR planning activities should take into account the option to extend the filing due date by 6 months
 - Filers should consider under which circumstances they will take advantage of the deadline
 - Companies assisting employees should also consider how to manage expectations of their employees about the employees' options to extend the FBAR filing deadline as it relates to assistance provided by the company to the employees in filing their FBARs
 - Practitioners who file FBARs and other tax forms with April 15th due dates will need to plan and allocate resources appropriately to insure adequate resources are available to support both obligations and consider circumstances when they would advise clients to take advantage of the FBAR filing extensions

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