

Your Clients with Foreign Accounts

Introduction to Reporting Requirements



INCLUDES:

Done-For-You

- ✓ **Worksheets**
- ✓ **Templates**
- ✓ **Organizer**



Tax Smart Training

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Disclaimer

These materials are intended to be a guide in continuing professional education. Since the tax rules and regulations frequently change, and each client and case are different, you must do further research and cannot rely solely on these materials.

The information in these materials has been carefully compiled but its accuracy is not guaranteed. Tax laws and due dates can change, and you are responsible for keeping up-to-date.

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Introduction

In our global world, with so many people from foreign countries coming to live and work in the United States, and with U.S. people living and working overseas, there is more of a need than ever to know how to properly interview your client for the reporting of foreign financial accounts and assets.

Foreign financial assets can occur in such instances as when:

- A taxpayer was born outside of the United States, but is now a citizen, green card holder or resident alien;
- A taxpayer was born a U.S. citizen (some have never set foot in the U.S.; others left the U.S. as children);
- Client has family ties to a foreign country or countries;
- Employer headquartered overseas sets up a foreign account on behalf of the client; and
- People are interested in investing outside of the United States.

The IRS imposes enormous penalties for the failure to file certain forms, as well as the omission of foreign income. As a tax practitioner, you must know the reporting requirements and how they may apply to your client. Interview your client carefully!

Leaving off anything on the tax return is always a problem, but with foreign financial assets, the liability is especially heightened. Among the punishments threatened by tax authorities for noncompliance are considerable interest and penalties, and even jail time metered out to certain tax offenders. The IRS will make a determination of whether or not the omission was willful, and it's done on a case-by-case basis. Many financial institutions abroad comply with the U.S. government's reporting regulations as a result of Foreign Account Tax Compliance Act (FATCA) legislation. The client can neither run nor hide.

Should an unreported foreign financial account be discovered, and the taxpayer receives a \$10,000 penalty letter from the IRS, your client may say you didn't advise him or her of the regulations. You want to be able to prove that you did ask your client the necessary questions and have the responses documented.

This publication is a guide to get you started, and to help you properly interview your clients and document their responses. You are responsible for researching the filing requirements based on the information you obtain from them.

Many clients are unaware of the filing requirements; others have misconceptions, and some absolutely refuse to report their accounts for various reasons.

IRS rules and regulations in the area of international taxation can change, so be sure to read up on the latest information (a good place to start is [IRS.gov](https://www.irs.gov)). And because there are always exceptions, be sure to check the rules and regulations regarding visas (not covered in these materials) and check the applicable tax treaty.

Lastly, you need to be mindful of any state reporting requirements for overseas accounts. Some states also want to know if a taxpayer has an overseas account, and you want to be sure you respond correctly when preparing the tax return. This publication will generally focus on the federal requirements, but it's important to be aware that the states may request information as well.

I hope you find these materials informative and useful for your practice.

Abby Eisenkraft

Abby Eisenkraft, EA, ATA, ATP, CRPC
Tax Smart Network, LLC



Foreign Account Organizer



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CLIENT ORGANIZER FOR FOREIGN ACCOUNTS

CLIENT NAME: _____ TAX YEAR: _____

	Yes	No	
1.			Do you have interest in or a signature or other authority over a <u>bank account</u> in a foreign country? List Countries: _____
2.			Did your foreign financial account(s) exceed \$10,000 at any time in the tax year? Add up all accounts (using the highest amount in each account at any point during the tax year). If together they add up to over \$10,000, additional reporting is required.
3.			Do you have foreign assets in aggregate value over \$50,000?
4.			Do you have an interest in or a signature or other authority over a <u>brokerage</u> or <u>other financial account</u> in a foreign country? List Countries: _____
6.			Do you have a <u>foreign pension / retirement account</u> ? List Countries: _____ Types of accounts: _____
7.			Did you receive any foreign income or pay any foreign taxes? Please provide details and currency.

CLIENT ORGANIZER FOR FOREIGN ACCOUNTS

CLIENT NAME: _____ TAX YEAR: _____

	Yes	No													
8.			Did you receive any interest or dividends from a financial institution outside of the U.S.?												
9.			Do you own stock in a foreign corporation? Spouse / family? <i>Check "No" if you hold it in a U.S. brokerage.</i> <table border="1" style="margin-left: auto; margin-right: auto; border-collapse: collapse;"> <thead> <tr> <th style="width: 60%;"></th> <th style="width: 10%; text-align: center;">Y</th> <th style="width: 10%; text-align: center;">N</th> </tr> </thead> <tbody> <tr> <td>Are you a Corporate Officer?</td> <td></td> <td></td> </tr> <tr> <td>Are you a Corporate Director?</td> <td></td> <td></td> </tr> <tr> <td>Are you a greater than 10% Shareholder?</td> <td></td> <td></td> </tr> </tbody> </table>		Y	N	Are you a Corporate Officer?			Are you a Corporate Director?			Are you a greater than 10% Shareholder?		
	Y	N													
Are you a Corporate Officer?															
Are you a Corporate Director?															
Are you a greater than 10% Shareholder?															
10.			Do you have an interest in a foreign partnership? Does your Spouse or family?												
11.			Do you have a company that you formed overseas (i.e., sole proprietorship, LLC, corporation)?												
12.			Did you receive a foreign gift or inheritance in the tax year? Amount: \$ _____												
13.			Did you receive a distribution from, or were you the grantor of, or transferor to, a foreign trust? This includes a foreign pension distribution. List Countries: _____												

CLIENT ORGANIZER FOR FOREIGN ACCOUNTS

CLIENT NAME: _____ TAX YEAR: _____

	Yes	No	
14.			Do you have a foreign-issued life insurance policy or annuity contract (with cash value)?
15.			Do you have any cryptocurrency accounts held outside the U.S.?
16.			Do you have any gambling/gaming accounts held outside the U.S.?
17.			Are you in the U.S. on a visa? Taxpayer Visa: _____ # of Days in the U.S. during the tax year: _____ Spouse Visa: _____ # of Days in the U.S. during the tax year: _____
18.			Is this your first year in the United States? Date of arrival: _____

ADDITIONAL NOTES:

Client Misconceptions



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Client Misconceptions

Here are 25 typical misconceptions that practitioners will come across. The misconception is followed by an explanation as to why it is a misconception, and a best practice tip to deal with it.



1. My account(s) didn't go over \$10,000, so I don't have to report anything.



You must inquire if the client had aggregate accounts in excess of \$10,000 at any time during the tax year (taking the highest amount in each account during the tax year, using the proper year-end conversion rate). For example, if the accounts were \$2,200 + \$4,000 + \$1,000 + \$8,499, no single account went over \$10,000, but in aggregate, they meet the FBAR filing requirement. Also, you need to confirm that the client did not estimate the balances or use the incorrect currency conversation rate. You must make reasonable inquires, and if necessary, request account statements.

2. My account never went over 10,000 Euros.



Many clients do not understand the FBAR rules. Thorough interviewing is a must! Remember – the threshold is \$10,000 USD.

3. My country already taxed the money.



The fact that the “home” country taxed the income doesn’t mean that the taxpayer escapes U.S. reporting. If it’s earned income, a foreign earned income exclusion, foreign tax credit or deduction may be available, but filing is still required. If it’s passive income, a foreign tax credit or deduction may be available to the client, but you still must report on Schedule B, the FBAR and other forms, depending on the type of account and the balances.

4. It’s not my account. I don’t have to report it.



The client may have signature authority on a family member’s account overseas. This is quite common. The original funds in the account may be 100% owned by the family member. However, this does not affect the need to report the account, since signature authority is one of the FBAR filing requirements.

5. I can’t access the pension money until I am over 65, so it’s really not my money.



While the account may not be immediately accessible, it still belongs to the client, so there is a reporting requirement. And depending on the country, tax treaty, and other rules, the income (interest, dividends, capital gains) in the account may be subject to annual reporting and tax.

6. The account only had \$100 in it. There's really nothing to report.



There is still a Schedule B Part III reporting requirement for any overseas account. And if this account, along with all of the other accounts in aggregate meets the FBAR filing threshold, ALL accounts must be reported. In addition, sometimes "small" accounts earn interest, which must be reported.

7. It's empty, but I didn't close it.



Report all accounts if you reach the FBAR threshold, even if there's \$1 in it, or even if it's empty. It's still an open account in your name. Better safe than sorry.

8. I closed the account earlier in the year. I don't have a reporting requirement.



A foreign account in existence at any point during the tax year, even for a day, requires reporting. For FBAR purposes, you are taking the highest balance at ANY point during the tax year, regardless of whether or not it is still open on 12/31 of the tax year. And Schedule B Part III must be checked, since the account was in existence during the tax year.

9. I am a nonresident alien. I don't need to report my overseas accounts even if they are over \$10,000.



The client may not be a citizen or green card holder, but if you are in the U.S. enough days (substantial presence test and visa type must be considered here), the client may be a resident alien for tax purposes. If so, there is a FBAR reporting requirement.

10. My country has a tax treaty with the United States.



That may be true, but there still may be an FBAR filing requirement, gifts from nonresident aliens to report, etc. And residents, green card holders and citizens are taxed on worldwide income unless there is something specifically in the tax code that would exempt it.

11. My account(s) didn't go over \$10,000 – I used today's conversion rate.



You must use the conversion rates published for 12/31 of the tax year. See [irs.gov](https://www.irs.gov) for the rates (published annually). Using the proper rate can make a difference in whether or not reporting is required. And if it's very close, make sure you document it carefully in your notes. Or you may want to report it just to be on the safe side.

12. My other "tax guy" never asked these questions.



Unfortunately, many tax preparers are unaware of the rules themselves. You do not want to perpetuate errors, and the client will certainly blame you when they get caught by the IRS.

13. Based on my research...my friend told me...



Clients often do not understand the tax code, and some bend the rules out of ignorance, resentment, etc. You are the expert, not the client. Conduct your interview thoroughly, and if the client refuses to report when there is a requirement to do so, you need to fire the client. It is not worth the preparer penalties.

14. I got my green card at the end of the year, so I don't have to report my accounts in this tax year.



The green card is legal permanent resident status. Even if the client received the green card in December, all foreign accounts must be reported on the FBAR, if they meet the filing threshold for the tax year.

15. The tax software I used last year didn't prompt me to report, so I don't have to file the FBAR, FATCA, etc.



As the saying goes, garbage in, garbage out. In addition, consumer-level software is not capable of dealing with all aspects of required foreign reporting. As noted in Misconception #13, clients often do not understand the tax code, and bend the rules out of ignorance and/or resentment. They may not understand what they are reading, and as the tax professional, you must guide them. You were not privy to the inputs they used when preparing their own return, and it's anyone's guess as to what was actually entered into the software.

16. I filed a joint FBAR with my spouse.



You cannot commingle accounts on one FBAR unless certain conditions are met. The spouse that shares accounts with the FBAR filing spouse must have only accounts that are jointly owned with the filing spouse. If there are any accounts which are held separately or with others, separate FBARs must be filed.

17. My children don't earn any money. Why would they have any filing requirement?



Children who are U.S. citizens, Green card holders, or U.S. residents have an FBAR filing requirement if they meet the filing threshold. It is the responsibility of the parent or guardian to file. Depending on how much income is earned in the account(s), there may be an FBAR filing requirement, and a Form 1040 filing requirement as well. Also, large foreign gifts from nonresident aliens must be considered for Form 3520 reporting purposes.

18. I don't live in the United States. In fact, I haven't been in the U.S. since I was a child.



If the client is a U.S. citizen, regardless of where they live, they will have an FBAR filing requirement if the filing threshold is met. There may also be a need for a Form 1040 if the tax filing threshold is met. For U.S. citizens, worldwide income is reported regardless of residency. Green card holders must observe these rules as well, unless there are special circumstances.

19. My company provided me with tax services last year when I was transferred overseas, and no one asked me these questions. Why do I have to report this now?



Many companies may use a large accounting firm to provide tax services to employees as a company benefit, but there are instances when a junior staffer is assigned to the client's preparation, and is not up to speed on all of the filing requirements.

20. I received a gift, and gifts are not taxable, so there's nothing to report.



In most cases, gifts are generally not taxable. However, when a client receives a gift from a nonresident alien during the tax year and it adds up to over \$100,000, an information return (Form 3520) is required. There are also rules regarding gifts from related nonresident aliens. There is a lower threshold if the gift(s) received came from a foreign corporation or partnership. Gifts from foreign trusts are considered trust distributions, reportable on Form 3520, as well.

21. I inherited a house overseas, which is just sitting there, and I may use it personally. It's not a rental property. Why do I need to report this?



Information returns are due for inheritances and gifts if the amount reaches the reporting threshold. It's not just cash gifts or inheritances that are part of the filing requirement; it can be property, securities, etc.

22. I have a rental property, but it is overseas, so I don't need to report it.



U.S. citizens, Green card holders, and resident aliens for tax purposes must report all worldwide income. Overseas rental property is reported on Schedule E, just as you would report a U.S. rental property. The main difference in reporting foreign rental property would be depreciation and currency conversions. Foreign residential rental property must be depreciated using a period of 30 years. Yearly average currency rates may be used for rental income and expenses.

23. I can't get my paperwork, so let's just skip this.



Taxpayers need to make efforts to acquire all of the necessary paperwork and document their attempts. Worst-case scenario, you will need to estimate to file the FBAR and tax return timely, and then file an amended FBAR and/or tax return when the complete records become available. Clients who are flippant and don't make much of an effort to obtain the necessary paperwork will have a hard time defending themselves before the IRS; it would appear that their failure to properly report was willful behavior. You are advised to document all efforts that were made to acquire the necessary paperwork, and keep this in your files.

24. My statements are in a foreign language and you won't be able to understand them. Neither can the IRS. So let's not bother reporting them.



All accounts must be reported. If you are unable to read the foreign language, the client may be able translate the document or you can have it professionally translated. Your client may not understand what information is relevant, so ask questions carefully. Google Translate is helpful for certain terminology, but you may need a higher level of assistance.

25. I earned foreign income while working overseas and it's below the annual threshold, so I don't need to file.



In order to receive the Foreign Earned Income Exclusion, you must file Form 2555 or Form 2555-EZ. It is not automatic, and the IRS can deny the request if not made timely.

Want one more?



BONUS

26. I am not in the U.S. legally. Do I still need to report my overseas accounts?



Yes! Illegal immigration status has no bearing on whether or not the client needs to file. If the client is in the U.S. all year, s/he is a resident for tax purposes. And the usual filing requirements will pertain to the client.



It's important to bear in mind...

There are always **exceptions** depending on the client's visa, the tax treaty the U.S. has with a particular country, etc.

Do your research as part of your due diligence, to protect yourself and the client.

Substantial Presence Test



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HOW TO CALCULATE SUBSTANTIAL PRESENCE

A taxpayer is considered to be substantially present in the U.S. if he or she is living in the U.S. for a minimum of 31 days during the current calendar year and a total of 183 days during the current calendar year and two preceding years. For purposes of counting 183 days, count all the days of physical presence in the current year, but only one-third of the number of days of presence in the preceding year, and only one-sixth of the number of days in the second preceding year.

Here is the calculation:

Current Year: _____ Days

Prior Year: _____ Days x 1/3

Preceding Year: _____ Days x 1/6

In the following examples, we will be examining whether the taxpayer has substantial presence for tax year 2021:

Example 1:

Taxpayer was in the U.S. 150 days during 2021, 100 days in 2020, and 85 days in 2019.

<u>TAX YEAR</u>	<u># OF DAYS</u>	<u># OF COUNTED DAYS</u>
2021:	150 Days	150 Days - Total for the Year
2020:	100 Days x 1/3	33.33 Days - Total for the Year
2019:	85 Days x 1/6	14.16 Days - Total for the Year
		GRAND TOTAL: 197.49 Days

Does the taxpayer have substantial presence in Example #1?

Yes! But check the visa type and the tax treaty, as there can be exceptions.

Example 2:

Taxpayer comes to the U.S. every year for 125 days.

<u>TAX YEAR</u>	<u># OF DAYS</u>	<u># OF COUNTED DAYS</u>
2021:	125 Days	125 Days - Total for the Year
2020:	125 Days x 1/3	41.66 Days - Total for the Year
2019:	125 Days x 1/3	20.83 Days - Total for the Year
		GRAND TOTAL: 187.49 Days

Does the taxpayer have substantial presence?

Yes! In this example, the taxpayer was in the U.S. less than half a year during each calendar year, yet still has a substantial presence. S/he will be considered a resident alien. (But again, check the visa type and the tax treaty, as there can be exceptions.)

Example 3:

Taxpayer was in the U.S. 5 days during 2021, 150 days in 2020, and 150 days in 2019.

<u>TAX YEAR</u>	<u># OF DAYS</u>	<u># OF COUNTED DAYS</u>
2021:	5 Days	5 Days - Total for the Year
2020:	150 Days x 1/3	50 Days - Total for the Year
2019:	150 Days x 1/6	25 Days - Total for the Year
		GRAND TOTAL: 80 Days

Does the taxpayer have substantial presence?

No! The taxpayer will be considered a nonresident alien.

Important Reminders:

- ✓ If the taxpayer has substantial presence, s/he will be treated as a resident alien. If the taxpayer was NOT in the U.S. on January 1st of the tax year, the taxpayer will be considered a dual status taxpayer, requiring the filing of two tax returns (Form 1040NR + Form 1040), as the taxpayer was not a resident on January 1st but became a resident during the tax year. Dual status generally occurs with a taxpayer's first and last year in the United States.
- ✓ Partial days are not rounded up, but added into the 3 year total.
- ✓ Even if the taxpayer enters the U.S. for vacation, to see family, or comes to the U.S. to get medical treatment (as opposed to having to remain in the U.S. for an ailment that originated within the U.S. while on the trip), the taxpayer can have substantial presence and must file a U.S. tax return to report worldwide income, and file an FBAR where applicable.
- ✓ Certain visas exclude days of presence. See IRS Publication 519.

SUBSTANTIAL PRESENCE WORKSHEET

CLIENT NAME: _____ TAX YEAR: _____

Current Year: _____ Days _____ Days - Total for the Year

Prior Year: _____ Days x 1/3 _____ Days - Total for the Year

Preceding Year: _____ Days x 1/6 _____ Days - Total for the Year

GRAND TOTAL: _____ Days

Was the taxpayer in the U.S. on January 1st? *Circle one:* Yes or No

If no, what was the date of arrival in the U.S.? _____

NOTES:

FOREIGN ACCOUNT TEMPLATES

2020 / 2021 / 2022



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Financial Accounts outside of the United States

*** Use local currency – the tax professional will convert using IRS Treasury Rates ***

Account Information:

Name(s) of Account Owner(s) – if a joint account with a non-spouse, provide name(s) and address on separate sheet

Account Number

Account Currency

Name of Financial Institution

Street address of Financial Institution

City

State/Province

Postal Code

Country

Account opened in 2020

Account closed in 2020

How is this account owned? **Must check one**

Owned Solely

Owned Jointly with Spouse: SSN, EIN, Foreign ID#: _____

Owned Jointly: 2nd Owner's Name: _____

SSN, EIN or Foreign ID#: _____

Signature Authority only (no financial interest):

Account Owner's Name: _____

Owned as part of a company with financial interest (Officer, Director, etc.)

Must Report by U.S. calendar year:

2020 Highest balance:

_____ (local currency) USD _____

Balance on Dec. 31, 2020:

_____ (local currency) USD _____

TYPE OF ACCOUNT	
<input checked="" type="checkbox"/>	Bank account
<input type="checkbox"/>	Securities (no mutual funds)
<input type="checkbox"/>	Mutual funds # of shares _____
<input type="checkbox"/>	Retirement/Pension
<input type="checkbox"/>	Trust (Grantor or Non-Grantor)
<input type="checkbox"/>	Life Insurance/Annuity
<input type="checkbox"/>	Cryptocurrency

EARNINGS 1/1/20 – 12/31/20	LOCAL CURRENCY	OFFICE USE ONLY
Interest		
Dividends		
Capital Gains		

FOREIGN TAXES PAID ON EARNINGS IN 2020:		
	Local Currency	Office Use Only
Taxes Paid		

COPY PAGE FOR ADDITIONAL ACCOUNTS

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Financial Accounts outside of the United States

*** Use local currency – the tax professional will convert using IRS Treasury Rates ***

Account Information:

Name(s) of Account Owner(s) – if a joint account with a non-spouse, provide name(s) and address on separate sheet

Account Number

Account Currency

Name of Financial Institution

Street address of Financial Institution

City

State/Province

Postal Code

Country

Account opened in 2021

Account closed in 2021

How is this account owned? **Must check one**

Owned Solely

Owned Jointly with Spouse: SSN, EIN, Foreign ID#: _____

Owned Jointly: 2nd Owner's Name: _____

SSN, EIN or Foreign ID#: _____

Signature Authority only (no financial interest):

Account Owner's Name: _____

Owned as part of a company with financial interest (Officer, Director, etc.)

Must Report by U.S. calendar year:

2021 Highest balance:

_____ (local currency) USD _____

Balance on Dec. 31, 2021:

_____ (local currency) USD _____

TYPE OF ACCOUNT Must check one	
<input checked="" type="checkbox"/>	Bank account
<input type="checkbox"/>	Securities (no mutual funds)
<input type="checkbox"/>	Mutual funds # of shares _____
<input type="checkbox"/>	Retirement/Pension
<input type="checkbox"/>	Trust (Grantor or Non-Grantor)
<input type="checkbox"/>	Life Insurance/Annuity
<input type="checkbox"/>	Cryptocurrency

EARNINGS 1/1/21 – 12/31/21	LOCAL CURRENCY	OFFICE USE ONLY
Interest		
Dividends		
Capital Gains		

FOREIGN TAXES PAID ON EARNINGS IN 2021:		
	Local Currency	Office Use Only
Taxes Paid		

COPY PAGE FOR ADDITIONAL ACCOUNTS

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Financial Accounts outside of the United States

*** Use local currency – the tax professional will convert using IRS Treasury Rates ***

Account Information:

Name(s) of Account Owner(s) – if a joint account with a non-spouse, provide name(s) and address on separate sheet

Account Number

Account Currency

Name of Financial Institution

Street address of Financial Institution

City

State/Province

Postal Code

Country

Account opened in 2022

Account closed in 2022

How is this account owned? **Must check one**

Owned Solely

Owned Jointly with Spouse: SSN, EIN, Foreign ID#: _____

Owned Jointly: 2nd Owner's Name: _____

SSN, EIN or Foreign ID#: _____

Signature Authority only (no financial interest):

Account Owner's Name: _____

Owned as part of a company with financial interest (Officer, Director, etc.)

Must Report by U.S. calendar year:

2022 Highest balance:

_____ (local currency) USD _____

Balance on Dec. 31, 2022:

_____ (local currency) USD _____

TYPE OF ACCOUNT Must check one	
<input checked="" type="checkbox"/>	Bank account
<input type="checkbox"/>	Securities (no mutual funds)
<input type="checkbox"/>	Mutual funds # of shares _____
<input type="checkbox"/>	Retirement/Pension
<input type="checkbox"/>	Trust (Grantor or Non-Grantor)
<input type="checkbox"/>	Life Insurance/Annuity
<input type="checkbox"/>	Cryptocurrency

EARNINGS 1/1/22 – 12/31/22	LOCAL CURRENCY	OFFICE USE ONLY
Interest		
Dividends		
Capital Gains		

FOREIGN TAXES PAID ON EARNINGS IN 2022:		
	Local Currency	Office Use Only
Taxes Paid		

COPY PAGE FOR ADDITIONAL ACCOUNTS

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FOREIGN TAX ACRONYMS

CHEAT SHEET



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Foreign Tax Acronym Cheat Sheet

Acronym	Description
BEAT	Base Erosion and Anti-Abuse Tax
BSA	Bank Secrecy Act
CFC	Controlled Foreign Corporation
DIIRSP	Delinquent International Information Return Submission
ECI	Effectively Connected Income
FATCA	Foreign Account Tax Compliance Act
FBAR	IRS Report of Foreign Bank and Financial Accounts
FC	Foreign Corporation
FEIE	Foreign Earned Income Exclusion
FFA	Foreign Financial Account
FFI	Foreign Financial Institution
FI	Foreign Individual
FinCEN	Financial Crime Enforcement Network, Dept. of Treasury
FTC	Foreign Tax Credit
GILTI	Global Intangible Low-Taxed Income
PFIC	Passive Foreign Investment Company
SDOP	Streamlined Domestic Offshore Procedures
SFC	Specified Foreign Corporation
SFOP	Streamlined Foreign Offshore Procedures

FOREIGN PENSION ACRONYMS

CHEAT SHEET



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Foreign Pension Acronym Cheat Sheet

Acronym	Description
CPF	Singapore Central Provident Fund
CPP	Canadian Pension Plan
ISA	UK Individual Savings Account
KIWISAVER	New Zealand Kiwi Saver
LIRA	Canadian Locked-in Retirement Account
MPF	Hong Kong Mandatory Provident Fund
NENKIN	Japan Kokumin Nenkin and Kosei Nenkin
PILLAR	Swiss Pension Systems (1-2-3)
QROPS	UK Qualifying Recognized Overseas Pension Scheme
ROPS	UK Recognized Overseas Pension Scheme
RESP	Canadian Registered Education Savings Plan
RRIF	Canadian Registered Retirement Income Fund
RRSP	Canadian Registered Retirement Savings Plan
SIPP	UK Self-Invested Personal Pension
SMSF	Australian Self-Managed Super Funds
SUPER	Australian Superannuation Fund (also New Zealand)
TSFA	Canadian Tax-Free Savings Account

Foreign Pension Acronym Cheat Sheet

Note that many countries have multiple types of pensions.

There are government pensions (similar to our social security system), occupational pensions (similar to our 401k plans), and self-funded pensions (for example, someone who is self-employed could establish and fund a plan).

Each type of pension has a different tax treatment, and research is necessary!



Foreign Gift / Inheritance Reporting



Tax Smart Training

Foreign Gift / Inheritance Cheat Sheet



Form 3520 is an information return (not a tax return) required for a U.S. person who received foreign gifts of money or other property from a Nonresident Alien (NRA) or Nonresident Corporation, Partnership or Estate during the tax year.



What is NOT a gift -- amounts paid for qualified tuition or medical payments on behalf of the U.S person.



Thresholds:

- Gifts or bequests valued at more than \$100,000 from a NRA or foreign estate (including foreign persons related to that NRA or foreign estate); or
- Gifts valued at more than \$16,649 for 2020 (adjusted annually for inflation) from foreign corporations or foreign partnerships (including foreign persons related to the foreign corporations or foreign partnerships).



Where to Report:

Gifts and inheritances are reported in Part IV of Form 3520. Gifts from foreign trusts are treated as trust distributions and are reported in Part III of Form 3520.



How to File:

Form 3520 does NOT get efiled. It is mailed to:

Internal Revenue Service Center
P.O. Box 409101
Ogden, UT 84409

Foreign Gift / Inheritance Worksheet

Client Name: _____ Tax Year: _____

Date of gift during tax year:

Cash:

Real Property:

Personal Property:

(i.e., jewelry, artwork)

Date of gift during tax year:

Cash:

Real Property:

Personal Property:

(i.e., jewelry, artwork)

Reporting Thresholds



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Reporting Thresholds

Cheat Sheet

SCHEDULE B / PART III

Must report any financial accounts regardless of the balances.

FBAR

Must be filed if the aggregate value of the foreign financial accounts exceeded \$10,000 USD at any point during the tax year. Remember to report all open accounts, even if there is nothing in them, if you have passed the \$10,000 threshold.

Reporting Thresholds

Cheat Sheet

FATCA

The FATCA reporting starts at a higher threshold, of at least \$50,000.

Single or Married Filing Separately	Reside in the U.S.	Total value of your specified foreign financial assets is more than \$75,000 at any point in the tax year or more than \$50,000 on 12/31 of the tax year.
Married filing jointly	Reside in the U.S.	Total value of your specified foreign financial assets is more than \$150,000 at any point in the tax year or more than \$100,000 on 12/31 of the tax year.
Single or Married Filing Separately	Live abroad	Total value of your specified foreign financial assets is more than \$300,000 at any point in the tax year or more than \$200,000 on 12/31 of the tax year.
Married filing jointly	Live abroad	Total value of your specified foreign financial assets is more than \$600,000 at any point in the tax year or more than \$400,000 on 12/31 of the tax year.

DUE DATES



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Due Dates



Don't let the various due dates trip you up! In case they were missed, there may be some available options, such as penalty abatement, delinquent information return submission procedures, etc. Make it a practice to confirm these dates noted below on the IRS website.

<u>FORM</u>	<u>DUE DATE</u>
FinCEN 114 (FBAR)	Due 4/15; automatic extension (2020 filing) to 10/15. Even if no tax return filing is due, this form is a requirement if the taxpayer meets the filing thresholds.
Form 3520 & Substitute Form 3520-A	Due date of tax return; with a valid extension filed, it's the extension due date. These forms are filed separately from the tax return.
Form 5471	Due date of tax return; with a valid extension filed, it's the extension due date.
Form 5472	Due date of tax return; with a valid extension filed, it's the extension due date.
Form 8621	Due date of tax return; with a valid extension filed, it's the extension due date.
Form 8938	Due date of tax return; with a valid extension filed, it's the extension due date.



Unreported Accounts



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UNREPORTED ACCOUNTS (Non-willful)

If you or your client discover that there are unreported accounts for prior years (FBARs and income tax returns), there may be amnesty programs available. As of this writing, there are two available programs if income was not properly reported on the tax return -- only IF the oversight was not willful:

- Streamlined Foreign Offshore Procedures
- Streamlined Domestic Offshore Procedures

These programs are for the taxpayer that did not file FBARs nor their original tax returns (Foreign Offshore), or the taxpayer that did not file FBARs and failed to report the proper tax on the originally-filed tax return (Foreign Domestic).

If the client resides in the U.S., use the **Streamlined Domestic Offshore Procedures**.

If the client meets the non-residency requirements, you will choose the **Streamlined Foreign Offshore Procedures**. To meet the requirements, in any one or more of the most recent three years for which the U.S. tax return due date (or properly applied for extended due date) has passed, the individual must not have had a U.S. abode and the individual must have been physically outside the United States for at least 330 full days.

These programs will cap the number of FBARs and tax returns that must be filed.

If the taxpayer properly reported all accounts on the tax return and does not need to file delinquent or amended tax returns to report and pay additional tax, there is another option. The **Delinquent FBAR Submission Procedures** allows the taxpayer to file delinquent FBARs, selecting a reason why they are late. There will be no penalties for the failure to file any delinquent FBARs as long as the client has not been previously contacted regarding these delinquent forms or an income tax examination.

Check the IRS website for the latest information ([IRS.gov](https://www.irs.gov)).

UNREPORTED ACCOUNTS (Willful)

The IRS defines **willful** as a voluntary, intentional violation of a known legal duty.

Did your client have knowledge of the reporting requirements, and was a conscious choice made to not comply with them? Can the IRS find evidence of willfulness?

What about **willful blindness**? Did your client make a conscious effort to avoid learning about the FBAR reporting and recordkeeping requirements? Isn't it true that a person could learn of the filing and recordkeeping requirements easily?

The burden of proof is on the IRS, and every case has its own facts and circumstances. While willfulness is a state of mind, there are various documents that can establish willfulness – copies of foreign account statements, the IRS examiner's interview with the taxpayer, correspondence, criminal activity related to the non-filing of the FBAR or other documents, promotional material from an offshore bank or promoter, debit and credit card statements, etc.

If you think your client may fall under the category of willfulness, an attorney is a must. Stop work immediately and have your client retain an attorney.

While the Offshore Voluntary Disclosure Program (OVDP) has ended, the Voluntary Disclosure Practice is available. See IRS Form 14457 (Preclearance Request and Application). While there is not immunity from prosecution, the voluntary disclosure will be considered along with other factors in the investigation to determine if criminal prosecution is recommended. As long as the taxpayer is truthful and cooperative throughout the process, there is a good chance that they will not face criminal prosecution. Again, the client is best served working with an attorney.

Potential Minefields



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POTENTIAL MINEFIELDS



FOREIGN PENSIONS/RETIREMENT ACCOUNTS

- Depending on the foreign country and tax treaty (or lack thereof), annual foreign gains in a foreign pension/retirement account will not be deferred, because the account does not qualify as a U.S. 401(k) plan or the equivalent, and may be taxable each year. There are exceptions.
- These foreign pensions may be considered foreign trusts, and if so, additional reporting will be required (trusts are reported on Form 3520 & Form 3520A). See Rev. Proc. 2020-17 for exceptions.
- In some cases (i.e., Australian superannuations), the IRS has provided limited guidance, and it is not clear whether you must include the gains in income for retirement plans set up by the employer. It can depend on the percentage of employee contributions. There are many arguments all over the Internet, but no definitive guidance. Best practice - disclose your position when you file the returns; at least you will have reasonable cause for any omissions. (Note that if the superannuation plan was set up by the taxpayer directly, gains will need to be included on the tax return, along with reporting on Form 3520 and Form 3520A.)
- The tax treaty is a good place to start for information relating to foreign pensions.

FOREIGN MUTUAL FUNDS

- The U.S. has a penalty regime attached to foreign mutual funds, to discourage foreign investments.
- These funds are called PFICs -- passive foreign investment companies. If the fund is considered a PFIC, there is a great deal of complex reporting. Familiarize yourself with Form 8621, and watch for reinvested dividends, distributions, and dispositions.
- If an entity is involved, the taxpayer may still have a reporting requirement on Form 1040, as the PFIC is considered to be held by the taxpayer, even if it is in a trust, partnership, etc.

FOREIGN RENTAL PROPERTY

- Beginning in 2018, the IRS expanded the scope of those U.S. persons required to file Form 8858 with their tax return. A non-U.S. rental may be considered a foreign branch, which now must be reported on this form.
- A foreign rental property may be considered a qualified business unit (QBU), and this is determined by facts and circumstances.

TAX CUTS & JOBS ACT - SECTION 965

- The TCJA brings further complexity to tax return filings.
- U.S. persons who are U.S. shareholders with ownership in a specified foreign corporation with positive post-1986 earnings and profits may be subject to a tax (the calculation is extensive and confusing).
- You must look closely if that taxpayer is involved with a controlled foreign corporation (CFC) or a foreign corporation which has at least one domestic corporation as a U.S. shareholder.

TAX CUTS & JOBS ACT – GILTI

- U.S. shareholders of one or more CFCs must take into calculate its pro rata share of the tested income or tested loss of the CFC(s) in determining the U.S. shareholder's GILTI inclusion. The reporting starts on Form 8992 and Form 8992 Schedule A.

Best Practices

CHECKLIST

FAST Ten Guidelines for Clients with Foreign Accounts

1

Interview the Client

You can do this in person, give them a separate questionnaire, or include the questions in your Organizer. There is no wrong way to do this.

2

Have the client sign off on their responses to the Foreign Account questions you ask them.

The questions and their responses will be in your files, and you are protected, should a discrepancy arise in the future.

3

Discuss penalties...

... especially if you encounter hesitancy or pushback. Sometimes our clients need a little guidance to make the right choice.



Best Practices

C H E C K L I S T

4

Explain to clients that there are information returns.

Certain accounts and transactions must be reported, but not always taxed (i.e., gifts on Form 3520, etc.).

5

Ask about non-U.S. trusts, gifts and inheritances.

Sometimes we tend to focus only on the bank and brokerage accounts.

6

Do not let the client do the currency conversions.

Always ask them to provide the figures in local currency. They frequently use the wrong date (i.e., today's date), which of course, is not correct.

7

Don't forget to include foreign account income on the tax return.

Remember -- worldwide income is taxable, such as interest, dividends and capital gains, unless specially excluded by a treaty or tax code.



Best Practices

CHECKLIST

8

Ask about visas and a history of time in and out of the United States.

This will affect reporting, and day count calculations may be necessary.

9

Check the Tax Treaty.

There may be exceptions to the usual rules. But remember -- the exceptions still may require the filing of an FBAR.

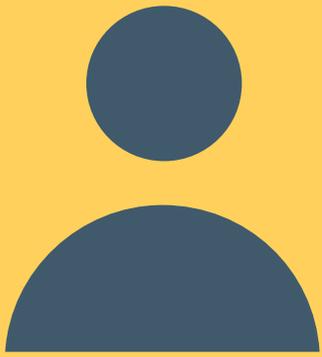
10

Make sure you check all applicable boxes on Schedule B!

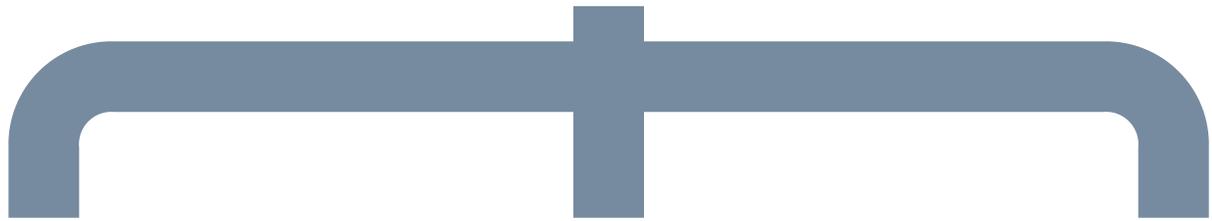
Forgetting can cost you AND your client!



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RESOURCE DIRECTORY



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RESOURCES

Note: We have disabled links for your protection. Please type the government URL addresses directly into your browser to avoid potential viruses.

FBAR Instructions: www.fincen.gov

BSA E-Filing System for FBARs: bsaefiling.fincen.treas.gov

For the following IRS Forms and Publications, visit www.irs.gov

IRS Publication 901 – U.S. Tax Treaties

Form 926 Return by a U.S. Transferor of Property to a Foreign Corporation – see form and instructions.

Form 3520 Annual Return To Report Transactions With Foreign Trusts and Receipt of Certain Foreign Gifts - see form and instructions.

Form 3520A Annual Information Return of Foreign Trust With a U.S. Owner - see form and instructions.

Form 5471 Information Return of U.S. Persons With Respect To Certain Foreign Corporations - see form and instructions.

Form 5472 Information Return of a 25% Foreign-Owned U.S. Corporation or a Foreign Corporation Engaged in a U.S. Trade or Business - see form and instructions.

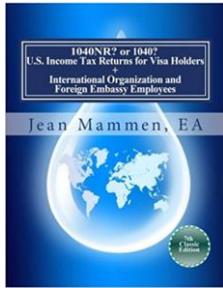
Form 8938 Statement of Foreign Financial Assets (FATCA) - see form and instructions.

Form 8858 Information Return of U.S. Persons With Respect to Foreign Disregarded Entities - see form and instructions.

Form 8865 Return of U.S. Persons With Respect to Certain Foreign Partnerships - see form and instructions.

Form 8992 and Form 8992 Schedule A – U.S. Shareholder Calculation of Global Intangible Low-Taxed Income (GILTI) - see form and instructions.

Helpful book on visa types and their affect on residency



1040NR? or 1040? U.S. Income Tax Returns for Visa Holders + International Organization and Foreign Embassy Employees Seventh Edition (available at Amazon)



PFIC (IRS Form 8621) Calculator Software

Free trial available

[https://Form 8621.com/pfic-calculator/](https://Form8621.com/pfic-calculator/)



Section 965 Tax Calculator

<https://expattaxtools.com/section-965-tax-calculator/>

