

## FOREIGN BANK AND INVESTMENT ACCOUNTS

For 2013, the IRS has continued its strict enforcement efforts regarding the obligation of a United States person to file the Report of Foreign Bank and Financial Accounts (the "FBAR"). The term "United States person" means (1) a citizen or resident of the United States, (2) a domestic partnership, (3) a domestic corporation, or (4) a domestic estate or trust, which is used to determine an individual's FBAR filing obligation for the 2013 and earlier calendar years

The Report of Foreign Bank and Financial Accounts form (FBAR) is an information return – there is no tax or payment related to a timely filed return. The FBAR is due on/by June 30, 2014. **THIS YEAR THE FORM MUST BE FILED.** There is no extension for this form. If you have a non-US bank account of any sort, you may be subject to reporting information on this form.

### WHO MUST FILE OR REPORT

Any U.S. citizen or resident having a financial interest in or signature authority over a financial account(s) located in a foreign country with aggregate values in excess of \$10,000.

### PENALTIES:

- While it is legal to have an account outside the U.S., it is critical that it be disclosed when applicable, on the FBAR.
- Willful failure to file the FBAR can result in substantial civil and criminal penalties, including up to 5 years in prison or both, and the total penalties imposed could far exceed the balance in the foreign bank account.
- For calendar year 2013, the FBAR is due (must be received by) on June 30, 2014.

### IMPORTANT NOTES:

- Extensions granted for federal tax returns do not extend the due date for filing the FBAR.
- Lawyers and CPAs are obliged to make reasonable inquiries when a client provides information that suggests participation in overseas transactions or accounts subject to FBAR.
- Income earned on any account, regardless of country of origin, should be reported on Form 1040.
  - Please note that income earned in passive "offshore" accounts is most likely NOT free from U.S. tax until repatriated.
- Persons with financial interest in, or signature authority over, a foreign commingled fund that is a foreign mutual fund are required to file an FBAR unless another filing exception applies. The IRS will not interpret the term "commingled fund" as applying to funds other than mutual funds with respect to FBARs for calendar year 2013 and prior years. This means the IRS has determined that it will not apply its enforcement authority adversely in the case of persons with a financial interest in, or signature authority over, any other foreign commingled fund, such as a foreign hedge or private equity fund, with respect to that account for calendar year 2013 and earlier calendar years.

### Definitions

- SIGNATURE AUTHORITY MEANS - authority to control the movement of funds in writing or verbally and authority as an agent for a company.
- FINANCIAL INTEREST MEANS – owner of record, regardless of beneficial ownership (for example, as an agent). Majority ownership of a company that holds a foreign account with more than

50% of the value of stock of a corporation or the right to the profits of a partnership, including indirect ownership.

- **FINANCIAL ACCOUNT MEANS** – (1)An account that holds assets, including a savings, demand, checking, deposit, a time deposit account. (2)A bank, securities, securities derivatives, or other financial instruments account (including retirement accounts).
- **LOCATED ABROAD MEANS** – A branch bank that is located abroad, whether the institution is foreign or U.S. (excluded are branches located in the U.S., Guam, Puerto Rico, the Virgin Islands and military banks located abroad).
- **AGGREGATE VALUE MEANS** – If multiple accounts add up to over \$10,000 USD, then each account must be reported. Valuing the assets – Use the value of securities at the time of withdrawal or close of the calendar year. For currency, use the highest account balance that appeared on a statement during the year (if no statement at least quarterly, use highest value). To convert the currency to USD, use the exchange rate on December 31<sup>st</sup>.
- **RECORD KEEPING** – Records must be kept for each account for 5 years. These records include the name in which each account is held or maintained, the number or other designation of the account, the name and address of the of the foreign financial institution, the type of account and the maximum value of each account
- **PENALTIES – CIVIL** – up to \$10,000 for each non-willful failure to file; penalties for willful violations are the greater of \$100,000 or 50% of the amount in the account at the time of the violation. Penalties may be doubled if account records are not kept for five years.
- **PENALTIES – CRIMINAL** – penalties may be imposed for each foreign account, for each year, and for each violation. Criminal penalties are up to \$250,000 fine or 5 years in jail or up to a \$500,000 fine or 10 years in jail under certain aggravating circumstances.

### Due Dates

We can prepare the FBAR for you, and efile it for you. In order to do this and send you the Form you must provide back to us BEFORE we can efile the form with the Financial Enforcement Division of the IRS, we must have your FBAR information **NO LATER THAN JUNE 15, 2014**. If you have already sent your FBAR information to us, please disregard this message.

We have enclosed a data sheet for you to complete to send your information to us. If you wish to prepare your own FBAR, we have attached a copy of the form to this letter. Please notify us so that we may add this information to your US Form 1040 as required by law.

For more information, please contact us at 727.822.9393 or [info@robergco.com](mailto:info@robergco.com).