FOREIGN BANK ACCOUNT REPORT (TD F 90-22.1): Tricky Turns Dangerous[†]

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The form for reporting foreign bank and similar accounts has always been a little tricky, but because of a little known implication of the new Patriot Act and greatly increased enforcement attention, this form has become dangerous.

Background

The requirement for filing this form arises from the Bank Secrecy Act ("BSA"), first enacted in 1970, amended, in order to add a number of anti-money-laundering provisions, in 1992, and amended most recently in October 2001 by the Patriot Act.[2] The BSA, in general, authorizes the Secretary of the Treasury to promulgate regulations requiring financial institutions and other persons to keep records and file reports that he determines will have a high degree of usefulness in criminal, tax, regulatory, intelligence, and counter-terrorism matters, and to implement counter-money laundering programs and compliance procedures. Section 5314 of the BSA specifically authorizes the Secretary to require residents or citizens of the U.S., or a person in and doing business in the United States, to keep records and/or file reports concerning transactions with a foreign financial agency. "This provision reflected congressional concern that foreign financial institutions located in jurisdictions with strict bank secrecy laws were being used to violate or evade domestic criminal, tax, and regulatory requirements."[3]

Pursuant to this provision, the Treasury Department promulgated regulations[4] stating:

> Each person subject to the jurisdiction of the United States (except a foreign subsidiary of a U.S. person) having a financial interest in, or signature or other authority over, a bank, securities or other financial account in a foreign country shall report such relationship to the Commissioner of the Internal Revenue for each year in which such relationship exists, and shall provide such information as shall be specified in a reporting form. …[5]

The form referenced is TD F 90-22.1 (Report of Foreign Bank and Financial Accounts, sometimes referred to as the Foreign Bank Accounts Report or FBAR). (The most recent version of this form, dated July 2000) is available in the Internal Revenue Service website.)

The Secretary of the Treasury delegated the authority to administer this requirement to the Director of the Financial Crimes Enforcement Network ("FinCEN") FinCEN is a bureau of the Treasury Department, alongside other bureaus and services, such as the Internal Revenue Service ("IRS"). FinCEN is responsible for the U.S. Government's domestic and international anti-

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[2] 1 Titles 1 and II of Public Law 91-508, as amended, codified at 12 U.S.C. 1829b, 12 U.S.C. 1951-1959, and 31 U.S.C. 5311-5330.

[3] U.S. Treasury Department, REPORT TO CONGRESS IN ACCORDANCE WITH §361(b) OF THE USA PATRIOT ACT SUBMITTED BY THE SECRETARY OF THE TREASURY APRIL 26, 2002, p. 3 [hereinafter "TREASURY REPORT"]. This report is required to be made each year, but the one due April 26, 2003 has not been filed as of June 1, 2003.

[4] 31 CFR Part 103 (2002).

[5] 31 CFR 103.24 (2002).

money laundering efforts. Among other things, it engages in information collection, data analysis, dissemination of analytical products, and technological assistance. This bureau is overseen by the Under Secretary of Enforcement, who reports to the Secretary of the Treasury through the Deputy Secretary.

Both FinCEN and its sister organization, the IRS, have responsibilities and roles with respect to the FBAR. The FBAR is an information return or report that is filed with the IRS Detroit Computing Center and input into the BSA financial database, which is jointly administered by Detroit Computing Center and FinCEN. After FBARs are posted—presumably by hand—to the BSA financial database, the forms are available to FinCEN analysts, law enforcement, and appropriate regulatory authorities for use, among other things, in tracking flows of money.[6] For example, with proper authorization from supervisors, a revenue agent or international examiner can obtain access to this information.

Pursuant to Treasury Directive 15-41 (12/1/92), the Secretary of the Treasury delegated to the IRS the authority to investigate possible violations of 31 U.S.C. § 5314 and federal regulation §103.24. The IRS examines for compliance with the FBAR requirements. The IRS/Criminal Investigation Division ("CI") reviews failures to file identified by the IRS examination staff (revenue agents and international examiners, for example) for possible criminal investigation. CI forwards cases that it recommends for prosecution through the IRS Office of Chief Counsel (which conducts its own independent review) to the Department of Justice, which has the final say on whether to initiate a criminal prosecution.

More recently, FinCEN delegated its enforcement authority for the FBAR to the IRS, to increase enforcement with respect to FBARs. Such authority includes the authority to collect civil penalties, to investigate possible civil violations of these provisions, to employ the summons power of subpart F of part 103, and to take any other action reasonably necessary for the enforcement of such provisions, including the pursuit of injunctions.[7]

It will be noted that the FBAR is not a tax return, as such, and is not attached to a taxpayer's Individual Federal Income Tax Return (Form 1040)**.** It follows that the information appearing on a FBAR is not subject to the stringent disclosure restrictions of IRC § 6103 (relating to confidentiality and disclosure of returns and return information). Thus, information contained in this form can be shared with other agencies of the Federal Government. In addition, "[t]he information collected may also be provided to appropriate state, local, and foreign law enforcement and regulatory personnel in the performance of their official duties."[8] What is not widely appreciated is that a private litigant may request and may well be given access to this information in a lawsuit. For example, a spouse might seek discovery of this information in the course of an action for divorce or separate maintenance. If the form has been filed, the information, one can anticipate, will be made available pursuant to a court order. If it has not been filed, but should have, the other spouse can be liable for all the very serious penalties described herein. If the other spouse says that he or she has not filed the form because there are no foreign bank accounts, and the requesting spouse doubts this is true, a court presumably could order the other spouse to request a copy of any and all filings with the IRS Detroit Computing Center.

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[6] In the last several years it has become more common, it appears, for the IRS Detroit Computing Center to send requests for missing information to individuals who have filed a FBAR.

[7] Financial Crimes Enforcement Network; Delegation of Enforcement Authority Regarding the Foreign Bank Account Report Requirements, 68 Fed. Reg. 26,489 (May 16, 2003) (to be codified at 31 C.F.R. § 103.56(g)).

[8] Privacy Act Notification on the face of TD F Form 90-22.1 (Rev. 7/00).

Cases that CI declines to investigate as a criminal matter may be reviewed further by the IRS for possible civil enforcement action. If a taxpayer refuses to pay the penalty, the matter can be referred to the Department of Justice to institute a penalty action in which both liability and the amount of penalty must be litigated.

Complying with the statutory and regulatory requirement to report foreign financial accounts is a two-part process. Form 1040 Schedule B, Part III, instructs a taxpayer to indicate an interest in a financial account in a foreign country by checking "Yes" or "No" in the appropriate box. Form 1040 then refers the taxpayer to Form 90-22.1, which provides that it should be used to report a financial interest in or authority over bank accounts, securities accounts, or other financial accounts in a foreign country. The instructions for Form 1040, Schedule B, provide that the taxpayer must check "Yes" if he/she owns more that 50% of the stock of any corporation (U.S. or foreign) that owns one or more foreign bank accounts or at any time during the year the taxpayer had any interest in or signature or other authority over a financial account in a foreign country (such as a bank account, securities account, or other financial account). Among the exceptions noted in these instructions the only one of general application is the one stating that if the combined value of the accounts was $10,0000 or less during the whole year, the "Yes" box need not be checked. If the account is denominated in a foreign currency, the value of the foreign currency is converted into US dollars using the "official" exchange rate at the end of the year; "official" in the case of freely traded currencies probably means interbank or market rate of exchange.[9]

The deadline for filing a FBAR is June 30 of the year following the calendar year during which the threshold requirements are met (*see* discussion below).

While the number of FBAR filings has been steadily increasing—from 116,600 in 1991 to 177,151 in 2001, the Treasury Department believes that many persons that should file are failing to do so.

> It is difficult to determine with any accuracy how many taxpayers are failing to file required FBARs in any calendar year. Extrapolating from the limited information available concerning the number of foreign bank and credit card accounts held by United States citizens, the IRS estimates that there may be as many as 1 million U.S. taxpayers who have signature authority or control over a foreign bank account and may be required to file FBARs. Thus, the approximate rate of compliance with the FBAR filing requirements based on this information could be less than 20 percent.[10]

In the past, criminal and civil prosecutions under these provisions have been few and far between. Between 1996 and 1998, only nine indictments were filed charging failure to comply with section 5314. In the following two years, no one appears to have been charged. The Customs Service reports only three convictions since 1995.[11] This picture may be slightly distorted since it is the case that IRS agents will sometimes raise the issue with taxpayers and use a failure to file a FBAR as a means of obtaining a favorable settlement of the tax case. Also, the issue might be raised in a different form, for example, as a charge of willfully subscribing false tax returns in violation of Internal Revenue Code § 7206(l) for failing to "check the box" on Schedule B of Form 1040.

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[9] With the precipitous rise in the value of the Euro, many Euro-denominated accounts, which were opened with an initial deposit of say 8,000-9,000 dollars that were then converted into Euros, will have drifted above the reporting threshold.

[10] TREASURY REPORT at p. 6.

[11] TREASURY REPORT at p. 8.

Important Developments

While in the past the FBAR has had a relatively low profile, it is receiving and undoubtedly will continue to receive much greater attention.

The government's focus on foreign bank accounts is clear. The past year and a half alone has witnessed the following developments:

- *Enactment of the Patriot Act,* which makes it easier for the Treasury Department to obtain foreign bank account information and puts the foreign bank somewhat at risk of losing its ability to maintain a correspondent account with a U.S. bank.[12] *See* discussion at "Caution—Danger Ahead", below.
- *The Treasury Department Report to Congress concerning FBAR reporting*, as mandated by the Patriot Act, which stated among other things that the only way to improve FBAR filing compliance among those individuals who are aware of the FBAR involves "a series of highly publicized criminal actions against intentional violators to raise the cost of being an FBAR scofflaw. Ideally, such cases would be brought not only as adjuncts to other types of criminal conduct such as tax evasion and bankruptcy fraud, but also as stand-alone cases."[13]
- *The implementation of the IRS Voluntary Compliance Initiative Program*, which offered taxpayers with unreported foreign bank accounts an opportunity to avoid many otherwise applicable penalties.[14]
- *The ongoing IRS John Doe summons investigations*, where the IRS has issued a series of summonses to obtain information about US citizens holding payment cards tied to foreign bank accounts. This investigation has produced numerous cases being referred to the Criminal Investigation Division of the IRS.[15]

On the other hand, the FBAR, which is a short, two-page form, is deceptively simple. Its concise format hides several latent issues. More critically, the FBAR filing requirements' broad applicability combined with the association in the minds of most practitioners and lay people of the FBAR with so-called "tax cheats," who use unreported foreign bank accounts to commit tax fraud, causes many people to fail to understand that they must file an FBAR.

Who Must File an FBAR?

Each US person with a financial interest in or signature or other authority over any financial account in a foreign country must file an FBAR if the aggregate value of all such accounts exceed $10,000 at any time during the calendar year. The FBAR must be filed on or before the June 30 after the calendar year in which the relationship existed. The FBAR is required in addition to the reporting obligations with respect to foreign accounts on Form 1040, Schedule B.[16]

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[12] Almost all foreign banks that need to receive or make payments in dollars maintain a correspondent account with a U.S. bank, typically a large bank located in New York. Today, dollars are dealt with electronically through the DTC system, and access to this system is through the large banks that have usually one DTC account.

[13] TREASURY REPORT at p. 11.

[14] Rev. Proc. 2003-11, 2003-4 I.R.B. 311.

[15] *See Early Information Reveals Strong Response to Offshore Initiative, IRS Says,* 2003 TNT 85-17 (May 1, 2003).

[16] There is not a great deal of authority bearing on the "backfiling" of FBARs voluntarily or even after notice from the IRS or FinCEN. In the case of nonfilers who are "catching up" with their filing of income tax returns, the authors recommend that they also "backfile" FBARs. The recent Voluntary Compliance Initiative Program requires, among other things, the backfiling of FBARs.

Certain people do not have to file an FBAR. These include officers or employees of certain banks and large publicly traded corporations with signature/other authority over foreign financial accounts maintained by that bank or large corporation, where they have no personal financial interest in the account, and they have been advised in writing by the corporation's chief financial officer that the corporation has filed a current FBAR, which includes such account. To illustrate, E, a General Motors executive, based in London, with signature authority over a GM bank account in London in which E has no personal financial interest, and who otherwise satisfies the requirements of the exception, does not have to file an FBAR. In contrast, F, an executive in London under exactly the same circumstances but employed by a non-publicly traded company, must file an FBAR.

Key Definitions

For FBAR purposes, a person has a "financial interest" in a foreign financial account if he is the owner of record or has legal title, regardless of whether that account is maintained for his own benefit or for the benefit of others, including non-U.S. persons. For joint accounts, each owner has a financial interest in that account. In addition, a U.S. person has a financial interest in a foreign financial account where the owner of record is any of the following:

- Another person who acts on such person's behalf (*e.g.,* agent, nominee, attorney).
- A corporation in which such person owns more than 50% of the value of the shares.
- A partnership in which such person owns an interest in more than 50% of the profits.
- A trust in which such person either has a present interest in more than 50% of the assets or from which such person receives more than 50% of the current income.[17]

A "financial account" includes any bank, securities, securities derivatives or other financial instruments accounts. Such accounts generally also "encompass any accounts in which the assets are held in a commingled fund, and the account holder holds an equity interest in the fund." But there are many gray areas. To illustrate, if a U.S. person places $1 million cash into a safe deposit box in Switzerland, does this constitute a financial interest in a foreign account, which triggers the FBAR filing requirements? As with many other FBAR issues, no authoritative guidance answers this issue. However, it appears that in the safe deposit box context, application of the FBAR requirements depends on the precise nature of the arrangement between the bank and the safe deposit box holder. For example, if the holder gives the bank the right to access more than $10,000 of cash in a safe deposit box in order to secure a credit card issued by that bank, then it appears that the holder may be required to file an FBAR. The rationale for this is that this arrangement is substantively no different than if the holder deposited such cash into a checking or other financial account with the bank, which would trigger the FBAR filing requirements. To illustrate a different situation, if a U.S. person creates a grantor trust, which in turn owns a foreign financial account valued at more than of $10,000, does the U.S. person need to file an FBAR? Here, it appears that the U.S. person must file an FBAR if he is treated as the grantor of the trust under the grantor trust rules.[18]

To determine whether the $10,000 filing threshold has been surpassed, "account valuation" is defined as "the largest amount of currency and nonmonetary assets that appear on any quarterly

[17] Tying reporting requirements to a percentage of profits or current income can cause difficulties, as the individual concerned may not know the total amount of profits or current income. In some cases another filing might help him/her, as is the case with beneficiaries of foreign trusts that may receive statements from the foreign trust showing the necessary figures.

[18] This point can be argued either way. The argument for the proposition that filing is required is based not on section 671 of the Internal Revenue Code but on the BSA provisions.

or more frequent account statements issued for the applicable year." If periodic account statements are not issued, the maximum account asset value is the largest amount of currency and non-monetary assets in the account at any time during the year. For this purpose, filers must convert foreign currency by using the year-end official exchange or conversion rate. The value of stock, securities or other non-monetary assets is the fair market value at year-end, or at withdrawal from the account, if earlier. Each account must be valued separately in accordance with the foregoing rules. The $10,000 filing threshold is an aggregate threshold; that is, it applies if the aggregate value of all foreign financial accounts held by the person in question exceeds $10,000 at any time during the calendar year.

A person has "signature authority" over an account if he can control the disposition of money or other property in that account by delivery of a document containing his signature, or his signature along with that of one or more other persons, to the bank or other person with whom the account is maintained. A person has "other authority" if that person can exercise comparable power over an account by direct communication to the bank or other person with whom the account is maintained, either orally or by some other means. This definition occasionally has counterintuitive results. For example, it is clear that an individual who establishes a foreign bank account and receives a credit card secured by that account has the requisite signature authority to trigger the FBAR filing requirements. On the other hand, if a German entrepreneur gives his US resident daughter a credit card issued to his German closely held company by a German bank, does the daughter now have to file an FBAR? If the credit card is secured by the German bank account the answer is yes. This results even though the daughter is certainly not the type of person the FBAR is directed at. On the other hand, if the credit card is unsecured, similar to most credit cards issued in the US, then it appears the daughter need not file an FBAR.

A US person, for FBAR purposes, includes US citizens and residents, domestic partnerships, domestic corporations, and domestic estates or trusts. This definition catches several types of people unawares. To illustrate, each of the following individuals must file an FBAR, even though they may not realize this:

- A US citizen studying overseas who opens up a bank account at a foreign bank for convenience, which had over $10,000 at any time during the year.
- A child of a foreign entrepreneur who attends college in the US, who has a foreign bank account from childhood on, worth more than $10,000, will become subject to the FBAR requirements if that child ultimately becomes a US resident or if it obtains an immigrant visa permitting him/her to reside in the U.S. on a permanent basis (*i.e.*, a "green card").
- A US citizen marries a Dutch citizen who is temporarily stationed in the US. If the US citizen, along with his new spouse, returns to Denmark, retains US citizenship, and opens a financial account (e.g., a brokerage account) in the Denmark, he or she must file an FBAR if the account value exceeds $10,000 at any time during the year.
- A US citizen or resident is temporarily stationed in Mexico by his employer. The individual opens a bank account in Mexico, and maintains a nominal amount in that account throughout the year. At year-end, the employer gives the individual a $15,000 bonus, which he deposits in his bank account in Mexico.
- A so-called "accidental American" has an account outside the U.S. An "accidental American" is someone who was born in the U.S. of foreign parents. For example, a couple give birth to a daughter while studying in the U.S. The daughter is a U.S. citizen, even though she, together with her parents, live in Switzerland, and she has never returned to the U.S. after leaving at a very early age. This individual should file an FBAR for all foreign accounts.

Each of the foregoing situations is common. In each situation, frequently, the individuals do not realize that they must file an FBAR, and that they are subject to both civil and criminal penalties for failing to do so. Moreover, often the accountants, attorneys, financial planners, and other professionals who advise such individuals do not think about the FBAR, thus exposing them to malpractice liability.

What information is required?

What about the FBAR itself? Is it difficult to complete? No, the FBAR itself is very easy to complete. It requires taxpayers to provide the following information:

- Filer's name, address, taxpayer identification number, date of birth, and country.
- Whether the accounts are jointly owned, and if so, the number of joint owners. If the filer owns the account jointly with only one other party, and all accounts listed are held jointly with that party, then the filer must provide the name of that party, and its taxpayer identification number, if known.
- The number of foreign financial accounts in which the filer holds an interest.
- The type of account.
- The maximum value of the account during the year.
- The account number and the name of the financial institution with which the account is held.
- The name, address, and taxpayer identification number of the account holder.

If the filer has a "financial interest" in more than twenty-five foreign bank accounts, information for the accounts need not be provided but must be made available to the Treasury Department upon request. If the filer has an interest in fewer than twenty-five accounts, the information listed above must be provided for each account

Criminal and Civil Penalty Exposure

What happens if someone fails to file an FBAR? What is his or her liability exposure? Failure to file a FBAR or filing a false FBAR may trigger criminal penalties. The base penalty is a maximum fine of $250,000, a maximum term of imprisonment of five years, or both. The alternative penalty, which is a fine of not more than $500,000, or imprisonment of not more than ten years, or both, applies if the defendant violates any other U.S. law or if the violation was part of a pattern of any illegal activity involving more than $100,000 in a twelve-month period. In addition, the false-statement statute, 18 USC § 1001, may be violated if a false form is filed. For this purpose, a separate criminal violation will occur for each FBAR not filed or falsely filed. Because Form 1040, Schedule B outlines the FBAR reporting requirement, willfulness may not be exceptionally difficult for the government to prove.

In addition to criminal penalties, failure to file a FBAR or filing of a false FBAR may also trigger civil penalties. To illustrate, an individual who willfully violates the FBAR reporting requirement can be fined either $25,000 or an amount equal to the balance in the account at the time of violation (not to exceed $100,000), whichever is greater. Although not entirely clear, it appears that if multiple accounts exist, the fine would be a minimum of $25,000 per account, even if multiple accounts should have been reported on the same form.

Caution—Danger Ahead

The requirement to file an FBAR falls within the anti-money laundering programs instituted by the U.S. Government; section 5314, in fact, sits in the U.S. Code just a few sections away from a number of new provisions added by the Patriot Act. Under section 5318 of Title 31 (Compliance,

Exemptions, And Summons Authority) of Section II (Records And Reports On Monetary Instruments Transactions), of Chapter 53 (Monetary Transactions, which Chapter also deals with money laundering and related crimes), the Secretary of the Treasury or the Attorney General[19] may issue a summons or subpoena to any foreign bank that maintains a correspondent account in the United States and request records related to such correspondent account, including records maintained outside of the United States relating to the deposit of funds into the foreign bank. "Correspondent account" is defined in new section 5318A (Special Measures For Jurisdictions, Financial Institutions, Or International Transactions Of Primary Money Laundering Concern) as "an account established to receive deposits from, make payments on behalf of a foreign financial institution, or handle other financial transactions related to such institution." Service and acceptance of service are streamlined by new provisions that, in effect, require the foreign bank to appoint an authorized agent for receipt of legal process for records regarding the correspondent account. (The U.S. bank that is operating the account will require this. The U.S. bank is referred to by the statute as a "covered financial institution.") If a foreign bank fails to comply with a summons or subpoena issued under these new provisions, the covered financial institution, upon notification by the Secretary of the Treasury or the Attorney General, can be forced to terminate (shut down) the correspondent account or itself face severe penalties.

While a FBAR is clearly not the only "predicate" to institution of these summons or subpoena procedures, it is one, and the requirement to file an accurate report is an easy one to point to. Foreign banks will want to take note of the connection between Patriot Act summons and subpoenas and FBARs. They may wish to provide reminders to customers that the rules of countries, such as the United States, may require them, the customers, to report "foreign" accounts, and that information regarding the account may become the subject of a summons or subpoena directed at the bank. The bank may wish to notify its customers that it will comply with such formal requests and to obtain the customers' consent in advance. So far as summons and subpoenas based on a FBAR or failure to file a correct and complete FBAR, these thoughts are, in general, only relevant to U.S. persons, that is, U.S. citizens, U.S. residents, U.S. partnerships, U.S. corporations, U.S. trusts, and U.S. estates.[20] Affected individuals should know that these new mechanisms make it much easier for the U.S. Government to look at foreign accounts.

The Patriot Act and newer generation mutual legal assistance treaties are obviously designed to make it easier for the U.S. Government to obtain admissible evidence of undisclosed foreign accounts. Prosecutors, it is believed, will be urged to take a second look when deciding whether to charge a FBAR failure to file.

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[19] Apparently this authority does not run to a grand jury. This is a technical problem that may be fixed by legislation or otherwise.

[20] The regulations promulgated under 31 U.S.C. 5314 speak in terms of "[e]ach person subject to the jurisdiction of the United States (except a foreign subsidiary of a U.S. person) having a financial interest in, or signature or other authority over, a bank, securities or other financial account in a foreign country…." The instructions to the FBAR form, however, refer to "United States person" and define that term as a citizen or resident of the U.S., a domestic partnership, a domestic corporation, or a domestic estate or trust. The Internal Revenue Code contains a definition of "United States person" that is similar but not identical to the FBAR-related definitions, and clearly the FBAR rules are not simply cross-referencing the tax law definition. For example, a Delaware trust that "flunks" the test in I.R.C. section 7701(a)(30)(E) is not a United States person for tax purposes but may be for FBAR reporting purposes. Also, there is no clarity as to the definition of a "domestic estate." Is the estate of a U.S. citizen who lived the last 40 years of his life in Europe, which estate is administered outside the U.S., a domestic estate? What if the decedent was not a U.S. citizen or resident but the estate owns commercial real estate in the U.S.? This last estate probably is a "foreign estate" under the income tax rules in I.R.C. section 7701(a)(31). It is this type of confusion that needs to be dispelled.

Also, it should be noted that the Senate version of the Jobs and Growth Tax Relief Reconciliation Act of 2003 (P.L. 108-27) would have added an additional $5,000 civil penalty that, if enacted, would have allowed the IRS to impose such penalty on any person who failed to properly file an FBAR, *without regard to willfulness*.[21] This change would make it considerably easier for a prosecutor to charge the violation. Although this provision did not make it into the final version of the Act, such proposals have a way of recurring until they are enacted.

The FBAR form almost certainly will be changed in many important respects in the very near future. In its Report to Congress dated April 26, 2002, the Treasury Department stated that FinCEN would take responsibility for updating this form and the accompanying instructions. The target date for doing so was set at December 31, 2002. One suspects that the delay is due in part to work on Patriot Act and other regulations, the contents of which will bear on this form.

Conclusion

The Foreign Bank Accounts Form has never been something to sneeze at, as it is a crime to violate the underlying rules. It is undoubtedly true, however, that individuals and their advisers have too often not given this form the attention it deserves. In light of the Treasury Department's and IRS's new focus on these provisions, born in large measure from the events of "911" and the drive to prevent money-laundering, and the new Patriot Act provisions, TD F 90-22.1 must be treated with a great deal more respect. If in doubt, the answer should be to file the forms; there is no indication that the fact that one files triggers an audit. To do otherwise is dangerous.

[21] See *Ratzlaff v. United States*, 510 U.S. 135 (1994), involving a different part of the BSA.