

FACTA AND FBAR – CORPORATE CONSIDERATIONS

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IS FACTA AN ISSUE?

(DIFFERENT RULES FOR CORPORATIONS?)

IS FACTA AN ISSUE FOR CORPORATIONS?

- Currently Form 8938 is only required for individuals.
- The instructions for Form 8938 note that the IRS expects to be issuing regulations for specified domestic corporations
- Stay tuned for future developments in this area!

FBAR – WHAT IS REQUIRED?

FOR THE CORPORATION AND THE
OFFICERS/EMPLOYEES OF THE CORPORATION

FBAR – WHO MUST FILE?

Any **United States person*** is required to file an FBAR if:

1. The United States person had a financial interest in or signature authority over at least one financial account located outside of the United States; and
2. The aggregate value of all foreign financial accounts exceeded \$10,000 at any time during the calendar year to be reported.

*A United States person means United States citizens; United States residents; **entities**, including but not limited to, **corporations**, partnerships, or limited liability companies created or organized in the United States or under the laws of the United States; and trusts or estates formed under the laws of the United States.

FBAR – MODIFIED REPORTING FOR EXPATRIATES

A United States person who

1. resides outside of the United States,
 2. is an officer or employee of an employer who is physically located outside of the United States, and
 3. has signature authority over a foreign financial account that is owned or maintained by the individual's employer.
- Only complete Part I and Part IV, Items 34-43 of the FBAR. (Part IV, Items 34-43 should only be completed once with information about the employer.)

FBAR – EXCEPTIONS TO REPORTING

Exceptions to the filing requirements for the following United States persons or foreign financial accounts:

- **United States persons included in a consolidated FBAR (see slide 9);**
- Correspondent/nostro accounts (only used by banks with each other);
- Foreign financial accounts owned by a governmental entity;
- Foreign financial accounts owned by an international financial institution (if the United States Government is a member); and
- **Certain individuals with signature authority over but no financial interest in a foreign financial account (see slides 10-12).**

FBAR – EXCEPTION FOR CONSOLIDATED FBAR

- An entity that is a United States person that owns directly or indirectly a greater than 50 percent interest in another entity that is required to file an FBAR is permitted to file a consolidated FBAR on behalf of itself and such other entity. (Check box “d” in Part I, Item 2 and complete Part V.)
- If filing a consolidated FBAR and reporting 25 or more foreign financial accounts, complete only Items 34-42 for each entity included in the consolidated FBAR.

FBAR – EXCEPTIONS FOR OFFICERS/EMPLOYEES OF CORPORATIONS

- An officer or employee of a bank that is examined by the Office of the Comptroller of the Currency, the Board of Governors of the Federal Reserve System, the Federal Deposit Insurance Corporation, the Office of Thrift Supervision, or the National Credit Union Administration is not required to report signature authority over a foreign financial account owned or maintained by the bank.
- An officer or employee of a financial institution that is registered with and examined by the Securities and Exchange Commission or Commodity Futures Trading Commission is not required to report signature authority over a foreign financial account owned or maintained by the financial institution.

FBAR – EXCEPTIONS FOR OFFICERS/EMPLOYEES OF CORPORATIONS (CONT.)

- An officer or employee of an entity that has a class of equity securities listed (or American depository receipts listed) on any United States national securities exchange is not required to report signature authority over a foreign financial account of such entity.
- An officer or employee of a United States subsidiary is not required to report signature authority over a foreign financial account of the subsidiary if its United States parent has a class of equity securities listed on any United States national securities exchange **and** the subsidiary is included in a consolidated FBAR report of the United States parent.

FBAR – EXCEPTIONS FOR OFFICERS/EMPLOYEES OF CORPORATIONS (CONT.)

- An officer or employee of an entity that has a class of equity securities registered (or American depository receipts in respect of equity securities registered) under section 12(g) of the Securities Exchange Act is not required to report signature authority over a foreign financial account of such entity.
- An officer or employee of an Authorized Service Provider* is not required to report signature authority over a foreign financial account that is owned or maintained by an investment company that is registered with the Securities and Exchange Commission.

*Authorized Service Provider means an entity that is registered with and examined by the Securities and Exchange Commission and provides services to an investment company registered under the Investment Company Act of 1940.

QUESTIONS?

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Narelle is a well known international tax consultant, located in San Diego. She has over 30 years experience in business with over 20 years experience in international taxes. She lectures in US International Tax at San Diego State University.

Narelle seeks to understand the business operations and drivers to ensure that the global tax planning and compliance works in synergy with the business, and maximize the returns to shareholders, whilst ensuring such tax planning is done to the highest ethical standards.

She has worked in both public accounting and industry for employers such as United Technologies (which acquired Goodrich Corporation), PricewaterhouseCoopers LLP, and Toyota Australia. Her business experience has covered diverse industries and activities, including supply chain activities and initiatives, identification and implementation of new manufacturing facilities, establishing representative offices, secondment arrangements, customer sales and support initiatives and general cross-border issues.

Narelle has advised on cross-border activities in many and diverse countries and works with tax advisors in those countries to identify optimal, strategic tax solutions for you and your clients. Some of the various countries she works with are: US (federal and state), Mexico, Brazil, Singapore, China, Scotland, India, Turkey, Japan, Germany, South Korea, Netherlands, Canada, Luxembourg, Chile, Sweden, Norway, Russia, Australia, UK and France.

She is an Australian CPA and a Californian CPA .