

FBAR Penalty - Summary Proposal Resource

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Purpose This resource is to be used solely as a tool in the identification and inclusion of all facts relevant to your conclusion. It is not intended to be all-inclusive.

Other References

- IRM 4.26.16 - Bank Secrecy Act - Report of Foreign Bank and Financial Accounts (FBAR)
- IRM 4.26.17 - Bank Secrecy Act - Report of Foreign Bank and Financial Accounts (FBAR) Procedures
- Deputy Commissioner Memorandum (dtd 12/xx/11) Recommendations for FBAR Penalties
- RGS Leadsheet - FBAR Penalties; Post 10/22/04; Non-BSA Examinars Lead Sheet
- FFA - Foreign Financial Assets

FBAR Penalty -- Factors to Consider

Relevant		Included	Factor	Evidence - Options
Y	N			
			Original Return Preparer - Solicited information (written or verbally) about FFA(s) from TP	Memorandum of Interview (MOI), Affidavit, Signed Statement, Other
			Original Return Preparer - Standard Business Practice relative to Information Gathering regarding FFA(s)	MOI, Affidavit, Signed Statement, Other (including summonsed information)
			TP's Disclosures to the Return Preparer	Documents, MOI, Other
			Current/Prior Filing of FBARs	CBRS, TP Testimony, Other
			Accuracy of Current/Prior FBARs	Known account absent? Amount inconsistent with
			Past FBAR Sanctions	CBRS, TP Testimony, Other
			Indicators of a Quiet Disclosure	IDRS, Statements, Amended/Delinquent Returns
			FBAR Timely Filed in 2008 and later	Indicative of a Change in Reporting Consistent with 2009 OVDP
			Knowledge as to the Existence of the FBAR	Sophistication, Offshore Business Arrangements, Education, Profession, Other
			Reason Offered for FTF during Period of Non-compliance	MOI(s), Affidavit
			Promotional Material Relied Upon by the TP	Copies, Internet Sites, etc.
			Passive Income (Int, Div, CG/L) Reported on Original Tax Return for all Periods under Consideration	Reporting domestic passive income may suggest inherent knowledge regarding the taxability of foreign passive income.
			Source of the Account's Principle	Pre v post U.S. Taxation
			Earned Income (deposits) Reported on Original Tax Return for all Periods under Consideration	Evidence of Diversion of Income from U.S. Taxation
			Source of the Deposits to the Account	Impact to the TPs Form 1040 and/or related entities
			Tax Impact from Unreported Foreign Financial Account	Period Consistent with Penalty Proposal
			Tax Impact from Unreported Foreign Financial Account	Other Periods (consistent with known facts)
			Level of TP/POA Cooperation	Responsiveness to IDR, Credibility, Summons
			TP/POA Acknowledgement of Responsibility (potential agreement and payment status)	MOI, TP/POA Correspondence, et al
			Multiple Willful FBARs Proposed	Detailed Explanation Required
			Willful Blindness Indicators	See IRM 4.26.16.4.5.3[6]