



DEPARTMENT OF THE TREASURY
INTERNAL REVENUE SERVICE
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SMALL BUSINESS/SELF-EMPLOYED DIVISION

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MEMORANDUM FOR BSA COMPLIANCE EXAMINERS AND MANAGERS

FROM: Beth M. Elfrey /s/ Beth M. Elfrey
Director, Fraud/BSA

SUBJECT: Interim Guidance (Reissued) on Money Transmitter Report of
Foreign Bank and Financial Accounts (FBAR) Filing
Requirements

The purpose of this memorandum is to re-issue expired Interim Guidance Memorandum SBSE-04-0607-024. Please ensure that this information is distributed to all affected employees within your organization.

Original Memorandum SBSE-04-0607-024:

The purpose of this memorandum is to provide guidance to the field on Money Transmitter FBAR Filing Requirements that will be addressed in IRM 4.26.16 which is in the process of being written.

BSA Examiners should continue to be alert to FBAR reporting and recordkeeping requirements encountered during all BSA compliance examinations. Examiners often encounter FBAR issues specific to the money transmission industry. Some of the most common issues and questions have been summarized and are addressed below.

Money transmitters in the U.S. send money overseas generally through the use of foreign banks or non-bank agents located in foreign countries. The arrangement permits the money transmitter to readily send payments, in the currency of the foreign country, to the recipient. The U.S. money transmitter wires funds to the foreign bank or non-bank agent and provides instructions to make payments to the recipient located in the foreign country. The money transmitter typically does not have signature or other authority over the agent's bank account. In this situation, the money transmitter is not required to file an FBAR for the agent's bank account.

However, if the money transmitter has a direct financial interest in the foreign financial account, has signature authority, or other authority, over the foreign financial account

and the aggregate value is in excess of \$10,000 at any time during the year in question, the money transmitter is required to file a FBAR. Another person holding the foreign account on behalf of the money transmitter does not negate the FBAR filing requirement.

Frequently Asked Questions (FAQ's):

FAQ 1. Is there a FBAR filing requirement when the money transmitter wires funds to a foreign bank account or has a business relationship with someone located in a foreign country?

Answer: No. Merely wiring funds to a foreign bank account or having a business relationship with someone located in a foreign country does not create a FBAR filing requirement.

FAQ 2. Is there a FBAR filing requirement where the money transmitter owns a bank account located in a foreign country or has signature authority over someone else's bank account located in a foreign country?

Answer: Yes, if the account exceeded \$10,000 at any time during the calendar year and the money transmitter was a United States person for FBAR purposes.

FAQ 3. Is an FBAR required to be filed by a money transmitter engaged in Informal Value Transfer System (IVTS)/Hawala transactions?

Answer: There would be no FBAR filing requirement if there is no foreign bank or other foreign financial accounts involved. The money transmitter's relationship with a foreign affiliate, by itself, does not create an FBAR filing requirement. However, if the money transmitter owned a bank account located in a foreign country or had signature authority over someone else's bank account located in a foreign country, was a United States person, and the account value exceeded \$10,000 at any time, the money transmitter would be required to file an FBAR.

FAQ 4. What constitutes "other authority" for FBAR reporting purposes?

Answer: "Other authority" is comparable to signature authority in that a person exercising "other authority" can through communication to the bank or other person with whom the account is maintained exercise power over the account. A distinction, however, must be drawn between having authority over a bank account of a non-bank foreign agent and having authority over a foreign agent who owns a foreign bank account. Having authority over a person who owns a foreign bank account is not the same as having authority over a foreign bank account.

FAQ 5. Does a money transmitter who has a business relationship with a person located in a foreign country have a financial interest in a foreign financial account if the person in the foreign country is providing services of a financial institution (such as money transmission services) and both parties maintain books and records of their

business transactions (including books and records of offsetting transactions or trade accounts receivable or payable)?

Answer: No. The money transmitter does not have a financial interest in a foreign financial account. A “financial account” for FBAR filing purposes includes bank accounts, investment accounts, savings accounts, demand checking, deposit accounts, time deposits, or any other account maintained with a financial institution or other person engaged in the business of a financial institution. “Accounts” as used to describe or identify the books and records of ordinary business transactions between businessmen are not “financial accounts” for FBAR reporting purposes.

FAQ 6. Do “receivables” accounts maintained by foreign non-bank agents which net out the US money transmitter settlement obligations to the foreign agent constitute a “financial account” for FBAR filing purposes?

Answer: No. Such “receivables” in accounting records are not “financial accounts” for FBAR reporting purposes.

FAQ 7. Do the FBAR filing requirements apply when a money transmitter maintains a bank account with a foreign bank for the purpose of settling money transmission transactions with a foreign bank?

Answer: Yes. If a money transmitter owns the account maintained with the foreign bank or has signature or other authority over it, the money transmitter may be required to file an FBAR.

The procedures in this memo will be incorporated into the revision of IRM 4.26.16 by June 18, 2009. Questions about this guidance can be directed to Senior BSA Analyst, Rod Lundquist.

cc: www.irs.gov