



Delaware Companies & American “FBAR” Requirements

Recent changes in US legislation can create serious liabilities for beneficial owners of Delaware Companies. If your Delaware Company has a financial interest in or signature authority over a foreign financial account, including a bank account, brokerage account, mutual fund, investment trust or other type of foreign financial account, the Bank Secrecy Act of the United States of America requires you to report the account yearly to the Internal Revenue Service by filing a **Foreign Bank and Financial Accounts Report** (“FBAR”).

Background

The FBAR declaration is required because foreign financial institutions may not be subject to the same reporting requirements as US financial institutions. The US Government is using FBAR as a tool to help identify persons who may be using foreign financial accounts to circumvent United States law. Investigators use FBARs to help identify or trace funds used for illicit purposes or to identify unreported income maintained or generated abroad.

A FBAR carries a \$10,000 penalty for non-compliance and/or 20% penalty applied to the maximum balance in each year when a non-filer is contacted by the US Internal Revenue Service. A proactive approach is to be preferred. Once the FBAR declaration is prepared, a letter requesting Waiver of Penalty must be prepared to accompany the filings.

Even if no assessment is due, these additional annual reporting costs will accumulate with already burdensome Offshore Company fees.



Amendments to the FBAR regulations

When the original FBAR regulations were adopted, LLC's, like your Delaware Company, were not required to file these reports based on their not being available "entity" types. However, these regulations have been amended and now effectively require any and all US entities, including Delaware LLC Companies, to file the FBAR declaration if they have foreign financial accounts with a \$10,000.00 balance on any day during the tax year. In 2011, the US Treasury Department published final regulations amending the FBAR. All companies are now required to report.

There is no exception for Companies owned by non-US nationals. Technically, while the US Treasury has no jurisdiction over the foreign owners as private citizens of another country acting outside the US, it can require your Delaware Company to file, as it is deemed to be US entity for FBAR purposes.

How does this affect you?

These new amendments to the regulations apply to companies with a financial interest in or signature authority over any financial account in any country outside the United States, if the aggregate of accounts exceeds \$10,000 at any time during the calendar year.

For example, in Portugal, *Finanças* requires all companies - including Delaware Companies owing Portuguese property - to have a local bank account to assure that domestic fiscal compliance requirements are met. The threshold of US\$10,000 (\pm €7,800) can easily be exceeded at some point, triggering the FBAR obligations.

What should you do?

While still in use in certain enclaves in Portugal, Delaware Companies have grown increasingly suspect in recent years due to prejudicial



rules issues by the Bank of Portugal, potential Double Tax Treaties liabilities allowing tax authorities to *look through* the Offshore Company as well as a dubious market perception as a viable long-term property holding vehicle.

Owners considering selling their holding should be the first to realise that the Delaware Company structure is going to be accurately perceived as a “*white elephant*” in the market place, making an otherwise appealing property unattractive to potential buyers.

Portuguese Nominee Companies, on the other hand, are growing increasing popular due to their unparalleled advantages: fully compliant, tax-efficient yet economical. The absence of the growing complications associated with owning a Delaware Company, such as this most recent “FBAR” example, only serves to highlight why *redomiciling your company to Portugal* can be an inviting solution to an ever-deteriorating situation.

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