

Foreign Bank and Financial Account Reports Due June 30—Recent Developments

The June 30 filing deadline for U.S. [Treasury Form TDF 90-22.1](#), Report of Foreign Bank and Financial Accounts (FBAR), is fast approaching. The FBAR, which has been revised for this filing year, raises a number of issues regarding reporting obligations. This Alert summarizes our current understanding of the government's position on certain of these issues based on public disclosures made by, and our discussions with, Internal Revenue Service (IRS) officials in recent weeks.

The FBAR requires, with very limited exceptions, that each U.S. person (including any individual or entity) who has a financial interest in or signature authority (or comparable authority) over one or more financial accounts in a foreign country report that relationship annually to the IRS if the aggregate value of the account(s) exceeds \$10,000 at any time during the calendar year. Such persons must file an FBAR by June 30 of the succeeding year (no filing extension is available). Failure to comply with the FBAR reporting requirements can result in significant civil and/or criminal penalties.

The following are recent developments relating to FBAR form filings:

- *IRS Interpretation of "Financial Account."* In response to questions about the revised definition of "financial account" in the FBAR instructions (specifically, adding a reference to foreign mutual funds), IRS officials stated publicly that a U.S. person's equity interests in foreign mutual funds, hedge funds, and other similar pooled investment vehicles constitute financial accounts for FBAR purposes. The officials view the new reference to foreign mutual funds as a mere clarification of financial accounts that should have been (and should continue to be) reported on the FBAR.
- *Special Procedure for Filing Delinquent FBARs.* The IRS may assess civil penalties for failure to timely file an FBAR. Ordinarily, if a person files a delinquent FBAR and attaches a statement explaining the reason for the late filing, the IRS will not impose these penalties upon a determination of reasonable cause. The IRS, however, recently announced a special procedure allowing taxpayers who had reported all taxable income but failed to file FBARs to file the delinquent FBARs by September 23, 2009 (at the special address indicated) with no civil penalty exposure so long as the filing includes an explanation for the late filing and copies of tax returns for all relevant years (see the IRS's ["Frequently Asked Question" #9](#) for the details of this special procedure). With respect to this special procedure, we are seeking guidance from the IRS as to whether persons having only signature authority over (and not a financial interest in) foreign accounts are required to attach copies of their prior year returns.
- *Temporary Suspension of FBAR Reporting Requirements for Non-U.S. Persons.* The IRS announced a temporary suspension of the FBAR reporting requirement for persons doing business in the U.S. who are not U.S. citizens, residents, or domestic entities for FBARs due for the calendar year 2008 (see [IRS Announcement 2009-51](#)). For years prior to 2008, non-U.S. persons were not required to file.

Please note that this Alert should not be viewed as a comprehensive discussion of all FBAR issues. If you would like to discuss these developments or other issues concerning the FBAR, please contact a member of the Ropes & Gray Tax & Benefits Department for more information.

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