



ALERT

FBAR - REPORT OF FOREIGN BANK AND FINANCIAL ACCOUNTS IRS Extends 2008 Filing Deadline to June 2010

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Background

On June 19, 2009, Brown Rudnick issued a Client Alert (*IRS Enforces Report of Foreign Bank Account (FBAR) Rules*) in which we discussed the broad range of United States persons required to file a Report of Foreign Bank and Financial Accounts ("FBAR").

Generally, FBAR filing requirements apply to any person subject to the jurisdiction of the U.S. having a financial interest in, or signature or other authority over, a bank, securities or other financial account in a foreign country. In October 2008, the Internal Revenue Service announced that for FBAR purposes a foreign "financial account" includes any bank, securities, securities derivatives, or other financial instruments account. In guidelines, the IRS also provided that the FBAR reach extended to "accounts in which the assets are held in a commingled fund and the account owner holds an equity interest in the fund (including mutual funds)."

The IRS guidance only created further confusion among tax practitioners, business persons and the public. Specifically, persons with signature authority over foreign financial accounts in which the assets are held in a commingled fund – and their advisors – were particularly focused on the lack of clarity in the IRS position.

Interim Relief Issued

On August 7, 2009, the IRS issued Notice 2009-62 granting temporary relief for certain persons with respect to the 2008 filing period and earlier calendar years. The Notice states that the Department of Treasury intends to issue regulations clarifying the FBAR filing requirements pertaining to persons with a financial interest in, or signature authority over, a foreign financial account in which the assets are held in a commingled fund.

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The Notice further states that the IRS is extending the FBAR filing deadline for 2008 and earlier calendar years to June 30, 2010 for certain U.S. persons. Specifically, the IRS states:

In light of the additional time needed for the Department of the Treasury to address issues pertaining to FBAR filing requirements and the need to provide administrative relief for (i) persons with signature authority over, but no financial interest in, a foreign financial account, and (ii) persons with a financial interest in, or signature authority over, a foreign commingled fund, *this Notice provides that those persons have until June 30, 2010, to file an FBAR for the 2008 and earlier calendar years with respect to these foreign financial accounts.* Thus, eligible persons that avail themselves of the administrative relief provided in this Notice may need to file FBARs for the 2008, 2009 and earlier calendar years on or before June 30, 2010, to the extent provided in future guidance.

Conclusion

The Department of Treasury and the IRS acknowledge the lack of certainty currently associated with FBAR filing requirements. Accordingly, the Department of Treasury intends to issue regulations which clarify the open issues.

In anticipation of such regulations, the IRS has granted temporary relief by extending the FBAR filing deadline for 2008 and earlier calendar years to June 30, 2010 for the following persons:

- (i) persons with signature authority over, but no financial interest in, a foreign financial account, and
- (ii) persons with a financial interest in, or signature authority over, a foreign commingled fund.

It is expected that the Department of Treasury will issue regulations prior to June 30, 2010 which will clarify the scope of persons required to file FBARs.

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