

AN ALERT FROM THE BDO INTERNATIONAL TAX PRACTICE

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INTERNATIONAL TAXATION



► TITLE

UPDATE ON FILING DEADLINES FOR CERTAIN INDIVIDUALS WITH SIGNATURE AUTHORITY ONLY OVER FOREIGN FINANCIAL ACCOUNTS

► SUBJECT

The Treasury Department and Internal Revenue Service have provided additional time to file required reports of foreign financial accounts for prior years (2009 and earlier) for individuals with signature authority over (but no financial interest in) such accounts. In addition, the government provided a limited exception for certain individuals for all years through and including 2010.

► AFFECTING

Individuals with signature authority over (but no financial interest in) certain foreign financial accounts who failed to file required reports for prior years (2009 and earlier).

► DISCUSSION

Three significant notices have been released over the past few weeks by the Treasury Department and the Service with respect to the filing requirements of Form TD F 90-22.1, Report of Foreign Bank and Financial Accounts ("FBAR"), for certain categories of individuals with signature or other authority over (but no financial interest in) foreign bank or financial accounts.

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The first of these notices, FinCEN Notice 2011-1, was issued on June 1, 2011, by the Financial Crimes Enforcement Network (“FinCEN”) and addressed the filing requirement for officers or employees of regulated entities. This notice provides a deferral for 2010 and earlier calendar years.

The FinCEN notice was followed by the release of IRS Notice 2011-54 on June 16, 2011, providing additional time to file an FBAR to report signature authority over foreign financial accounts held during calendar year 2009 or earlier calendar years. An extension of time to file such reports was previously granted under IRS Notices 2009-62 and 2010-23.

Finally, on June 17, 2011, FinCEN issued Notice 2011-2, granting a one-year extension for certain officers and employees of investment advisers that have signature authority over, but no financial interest in, certain foreign financial accounts. This extension applies to 2010 and earlier calendar years.

All of these Notices are discussed in more detail below.

FINCEN NOTICE 2011-1

FinCEN Notice 2011-1 extended the FBAR deadline for filings otherwise due by June 30, 2011, to June 30, 2012, for certain individuals with respect to certain regulated entities. The individuals covered under this guidance included:

1. An employee or officer of a regulated entity (as specified in the FBAR final regulations) who has signature or other authority over, and no financial interest in, a foreign financial account of another entity more than 50% owned, directly or indirectly, by the regulated entity (a “controlled person”); or
2. An employee or officer of a controlled person of a regulated entity who has signature or other authority over, and no financial interest in, a foreign financial account of the regulated entity, the controlled person, or another controlled person of the regulated entity.

The definition of “regulated entity” can be found in the FinCEN regulations under 31 CFR 103.24(f)(2)(i)-(v).

IRS NOTICE 2011-54

IRS Notice 2011-54, issued June 16, 2011, provides yet another extension of time to file FBAR forms for those individuals with signature authority over (but no financial interest in) certain foreign accounts. Notice 2011-54 is one of many notices issued since 2009 regarding signature-authority filing requirements for FBAR reporting. On August 31, 2009, the Treasury Department and the Service published Notice 2009-62, which, in part, extended the filing deadline for persons with no financial interest in a foreign financial account but with signature or other authority over that account (“signature authority”) for 2008 or earlier calendar years. Subsequently, IRS Notice 2010-23 further extended relief to persons whose filing deadline was properly deferred by IRS Notice 2009-62 and provided a new filing deadline of June 30, 2011, to report signature authority over, but no financial interest in, foreign financial accounts for calendar year 2009 or earlier calendar years. The extensions were provided to allow the Treasury Department time to develop comprehensive FBAR guidance.

Earlier this year, on February 24, 2011, FinCEN published final regulations (76 Fed. Reg. 10234) amending the implementing regulations under the Bank Secrecy Act regarding FBARs. The regulations became effective on March 28, 2011, and apply to FBARs required to be filed by June 30, 2011, with respect to foreign financial accounts maintained in calendar year 2010, as well as to FBARs for subsequent calendar years. The final regulations also provide that individuals who properly deferred their FBAR filing obligations pursuant to IRS Notice 2010-23 may apply the provisions of the final regulations in determining their FBAR filing requirements for reports due June 30, 2011, with respect to foreign financial accounts maintained in calendar years beginning before 2010. In March 2011, the Service released a revised FBAR form with accompanying instructions that reflect the amendments made by the final FBAR regulations.

IRS Notice 2011-54 provides that persons having signature authority over, but no financial interest in, a foreign financial account in 2009 or earlier calendar years, for which the reporting deadline was extended by IRS Notice 2009-62 or IRS Notice 2010-23, will now have until November 1, 2011, to file FBARs with respect to those accounts. The deadline for reporting signature authority over, or a financial interest in, foreign financial accounts for the 2010 calendar year remains June 30, 2011.

The administrative relief provided in IRS Notice 2011-54 does not limit the relief provided in FinCEN Notice 2011-1, which was released on May 31, 2011, and revised on June 6, 2011. A copy of FinCEN Notice 2011-1 may be found at www.fincen.gov. Additionally, the administrative relief provided in this Notice does not affect the requirements to provide information or file FBARS in connection with the Service's 2009 Offshore Voluntary Disclosure Program ("OVDP") or the 2011 Offshore Voluntary Disclosure Initiative ("OVDI"). IRS Notice 2011-54 also does not alter the deadlines for electing to participate in, or fulfilling the submission requirements of, the OVDP or the OVDI.

FINCEN NOTICE 2011-2

FinCEN Notice 2011-2 provides an additional extension for another class of individuals with signature authority over foreign financial accounts. One of the exceptions included in the final regulations issued February 24, 2011, applies to officers and employees of authorized service providers who have signature or other authority over (but no financial interest in) a foreign financial account owned or maintained by an investment company that is registered with the Securities and Exchange Commission.

The term "authorized service provider" is defined as an entity that is registered with and examined by the Securities and Exchange Commission and that provides services to an investment company registered under the Investment Company Act of 1940 ("registered investment company").

Under FinCEN Notice 2011-2, FinCEN has granted an extension of the filing date to June 30, 2012, to allow additional time to file FBARS in the case of officers and employees of investment advisors registered with the Securities and Exchange Commission with signature or other authority over (but no financial interest in) the foreign financial accounts of persons that are not registered investment companies. The extension is applicable to FBARS for the calendar year 2010 and FBARS for the calendar year 2009 or earlier calendar years for which the filing deadline was properly deferred under IRS Notice 2009-62 or IRS Notice 2010-23.

Individuals with signature authority over, but not a financial interest in, a foreign financial account should review the application of the recent guidance to determine the applicable due date with respect to any required FBAR reporting.

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