

Title

Internal Revenue Service Issues Additional Guidance on Foreign Bank and Financial Accounts

Subject

Filing deadline extended to June 30, 2010, for certain taxpayers

Affecting

Taxpayers with financial interests in or signature authority over foreign bank or financial accounts.

Details

The Internal Revenue Service on August 7, 2009, issued Notice 2009-62, which extends to June 30, 2010, the filing deadline for taxpayers to report their interests in certain foreign bank accounts over which they have only signature authority or for those taxpayers which have signature authority over, and/or financial interests in, foreign commingled funds. The Notice is the latest in a series of FBAR-related guidance issued by the Service regarding the time for filing and taxpayers required to file Form TD F 90-22.1, Report of Foreign Bank and Financial Accounts (the "FBAR" form).

Background

In May 2009, the Service posted a series of frequently asked questions ("FAQs") relating to its March 2009 foreign-bank-account-related voluntary disclosure initiative. The FAQs have been updated and expanded in June and July 2009. Under the current FAQs, taxpayers who recently learned that they should have been filing FBAR forms, but have reported all their taxable income, are instructed to file their delinquent forms according to the instructions on the form and to send copies of the delinquent FBAR forms together with the tax returns for the relevant years to the Philadelphia Offshore Identification Unit of the Service by September 23, 2009. For those taxpayers that comply with these procedures, the FAQs indicate that the Service will not impose a penalty for the failure to file the FBARs. See FAQ 9, available at <http://www.irs.gov/newsroom/article/0,,id=210027,00.html>.

For taxpayers who reported and paid tax on all their 2008 income but recently learned that they have an FBAR filing obligation for 2008 but did not have sufficient time to gather the information necessary to properly file the form by June 30, 2009, the FAQs direct these taxpayers to file the delinquent FBAR forms according to the instructions along with a statement explaining the delinquency. A copy also should be sent to the Philadelphia Offshore Identification Unit by September 23, 2009. FAQ 43.

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Accountants and Consultants

Notice 2009-62

Recently, there has been uncertainty concerning the filing requirements of individuals with only signature authority over, and no financial interest in, a foreign account. Questions have also been raised concerning the status of certain commingled foreign funds as foreign accounts for FBAR reporting purposes. "Commingled funds," for purposes of FBAR reporting, have been defined as accounts in which the assets are held in a commingled fund and the account owner holds an equity interest in the fund. An example of such a commingled fund account would be a mutual fund account. See FBAR FAQs at <http://www.irs.gov/businesses/small/article/0,,id=210249,00.html>. Based on recent informal discussions with Service personnel, a commingled fund account may also include an interest in a hedge fund.

Notice 2009-62 provides that those persons (1) with only signature authority over (and no financial interest in) a foreign account, and (2) with signature authority over or a financial interest in a foreign commingled fund account now have until June 30, 2010, in which to file an FBAR for the 2008 or earlier calendar years with respect to these accounts. For these taxpayers, Notice 2009-62 supplements the earlier September 23, 2009, filing extension as provided in the FAQs. Therefore, for taxpayers who qualify for either the September 23, 2009, or June 30, 2010, filing extensions, any delinquent FBAR forms must be filed in accordance with the instructions and, additionally, copies of the FBAR forms and any relevant tax returns must be sent to the Philadelphia Offshore Identification Unit as provided in the FAQs.

The Treasury Department has requested public comments regarding the following:

1. When a person with only signature authority over, but no financial interest in, a foreign account should be relieved of filing an FBAR;
2. Whether a United States person should be relieved from an FBAR reporting obligation with respect to certain foreign commingled funds in other circumstances (*i.e.*, when such filing would be duplicative of other reporting);
3. Circumstances under which the FBAR filing exceptions for officers and employees of banks and certain publicly-traded domestic corporations should be expanded;
4. How the bank and publicly-traded company exception (including the requirement of notification that an FBAR was filed by a United States person with a financial interest in the account) might apply to officers and employees with only signature authority over accounts owned by clients of their employers; and
5. When an interest in a foreign entity (*e.g.*, corporation, partnership, trust, or estate) should be subject to FBAR reporting (*i.e.*, whether applying the principles of the passive foreign investment company rules should be used for purposes of determining when an interest in a foreign entity should be subject to FBAR reporting).

Comments should be submitted no later than October 6, 2009, for consideration.

To ensure compliance with Treasury Department regulations, we wish to inform you that any tax advice that may be contained in this communication (including any attachments) is not intended or written to be used, and cannot be used, for the purpose of (i) avoiding tax-related penalties under the Internal Revenue Code or applicable state or local tax law provisions or (ii) promoting, marketing or recommending to another party any tax-related matters addressed herein.

Material discussed in this tax alert is meant to provide general information and should not be acted on without professional advice tailored to your firm's individual needs.