
Treasury Department Issues Proposed Regulations on FBARs

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On February 26, 2010, the Treasury Department issued proposed regulations concerning Form TD F 90-22.1, Report of Foreign Bank and Financial Accounts (FBARs).

Concurrently, the IRS published Notice 2010-23, which provided that persons with signatory authority, but no financial interest in the foreign bank account will not have to file FBARs until June 30, 2011 to report those accounts. In addition, the IRS will not apply enforcement authority with respect to commingled funds that are mutual funds with respect to any year 2009 and earlier.

In Announcement 2010-16, the IRS suspended the FBAR requirement for persons that are not US citizens, US residents or domestic entities. A US person is generally a citizen or resident of the US, domestic partnership, domestic corporation or domestic estate or trust. This suspension applies to FBARs due on June 30, 2010.

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The proposed Regulations generally require each person having a financial interest in or are signatory or other authority over a bank, securities or financial account in a foreign country to file an FBAR. Generally, the foreign account must have an aggregate value that exceeds \$10,000 during the calendar year. Signatory authority is the authority of an individual (or in conjunction with others) to control the disposition of money, funds or other assets held in a financial account by delivery of instructions (whether in writing or otherwise) directly to the financial institution.

There are several exceptions to the FBAR filing requirement. The spouse of an individual who files an FBAR is not required to file a separate FBAR if both spouses sign the FBAR by the person who has signatory authority over the account. A person named in a consolidated FBAR filed by a more than 50% owner of an entity is not required to file a separate FBAR. An owner of an IRA is not required to file an FBAR with respect to any foreign bank account held by the IRA or a qualified retirement plan. A trust beneficiary with a financial interest is not required to report the trust foreign financial accounts on an FBAR if the trust, trustee, or agent of the trust is US citizen or resident or organized in the US.

FBARs generally should be filed on or before June 30 of each year with the Department of the Treasury, P.O. Box 32621, Detroit, Michigan 48232-0621. There is no extension of time for filing the FBAR and failure to file can result in a civil penalty not to exceed \$10,000 per year. A willful failure can result in a monetary penalty the greater of \$100,000 or 50% of the account balance at the time the violation occurred.

If you would like more information on FBARs, please call Phil Jelsma at 619.699.2565, or Michelle Graham at 858.756.4410.