

Legal Updates & News

Legal Updates

IRS Extends Deadline for FBAR Amnesty Program for Certain Filers and May Be Reconsidering FBAR Filing Requirement in Certain Circumstances

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by [Edward L. Froelich](#), [Joseph Fletcher](#)

Today, the IRS announced an extension to June 30, 2010 for certain filers who are eligible under the March 23, 2009 voluntary disclosure program for those who failed to disclose their foreign financial accounts for the past six years. The IRS explained that it needed more time to provide timely guidance and 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. The notice can be accessed through this link: <http://www.irs.gov/pub/irs-drop/n-09-62.pdf>.

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The IRS also requested public comments on the following issues:

- Whether the disclosure by an owner of a financial account should be sufficient without the additional filing by persons with signature authority over such account. In other words, the IRS is asking whether to drop the filing requirement for persons who only have signature or other authority over the account. This would be a significant change to current filing requirements.
- In what circumstances the exception from FBAR filing currently available for officers and employees of banks and certain publicly-traded domestic companies might be expanded to apply to all officers and employees with only signature authority over, and no financial interest in, an employer's foreign financial account.
- When should an interest in a foreign entity (e.g., a corporation, partnership, trust, or estate) be subject to FBAR reporting, for example, whether PFIC principles should apply to determine when an interest in a foreign entity should be subject to FBAR reporting.
- Whether a U.S. person should be relieved from an FBAR filing requirement with respect to a foreign commingled fund in other circumstances, such as when filing would be duplicative of other reporting.

Absent in the solicitation for comments was a clear request on the question whether hedge funds are commingled funds. We previously reported on the IRS's informal statements regarding treatment of foreign hedge funds as financial accounts for purposes of FBAR reporting.

<http://www.mofo.com/news/updates/files/15729.html>. These statements surprised practitioners and

taxpayers alike and generated a significant amount of activity in the very month the 2008 FBAR was due. Comments on this question were submitted to the IRS in the few weeks leading up to June 30, 2009 deadline.