

Client Advisory | June 2009

Foreign Bank and Financial Account Reporting Requirements for June 30, 2009

June 30th is the deadline for filing a Report of Foreign Bank and Financial Accounts ("FBAR"), Treasury Form TD F 90-22.1 for calendar year 2008. In general, an FBAR must be filed by any U.S. person who had either a financial interest in or signatory authority (or other authority) over one or more "financial accounts" in a foreign country if the aggregate value of all such accounts exceeded \$10,000 at any time during the year. "Financial accounts" generally include (i) bank, securities or other financial accounts, (ii) accounts maintained at a foreign financial institution and (iii) any account in which assets are held in a commingled fund and the account owner owns an equity interest in such fund (including mutual funds). The FBAR must be filed by June 30 of the succeeding year and is deemed filed when received by the Department of Treasury.

The FBAR instructions have been revised for the filings due June 30, 2009 in respect of the 2008 calendar year. The revised instructions include a slightly modified definition of "financial accounts", which includes a reference to foreign mutual funds. This inclusion of "mutual funds" as a "financial account" has raised concerns regarding the scope of FBAR reporting for equity holders and authorized signatories of foreign hedge funds and private equity funds. In addition, the IRS has made recent unofficial statements that a U.S. person's equity interest in a foreign fund (such as a hedge fund or private equity fund) should be treated as an interest in a "foreign financial account" for purposes of the FBAR filing, similar to the treatment of mutual funds. The IRS perspective is that the FBAR requirements have not changed and that the new reference to "mutual funds" in the instructions and the

recent IRS statements simply clarifies the IRS position.

Failure to file the FBAR can result in significant civil or criminal penalties. The IRS recently issued guidance on a voluntary disclosure procedure for taxpayers who reported and paid tax on all taxable income for prior years, but did not file FBARs for such years. Under this procedure, delinquent FBARs may be filed without any civil penalty as long as (i) the delinquent FBAR is filed by September 23, 2009, (ii) the delinquent FBAR includes a statement explaining why it is being filed late and (iii) copies of tax returns for applicable years are included with the FBAR filing.

This summary does not address all issues relating to the FBAR filings. We recommend that you consult with your tax return preparer or tax advisor as to whether you are obligated to file an FBAR for current or prior tax periods.

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