

Part III – Administrative, Procedural, and Miscellaneous

FBAR Filing Requirements – Extended Filing Date for U.S. Persons Having Signature Authority Over, But No Financial Interest In, a Foreign Financial Account, and for U.S. Persons with Financial Interest In, or Signature Authority Over, Foreign Commingled Funds: Request for Public Comments on FBAR Filing Requirements

Notice 2009-62

I. Background and Purpose

The Report of Foreign Bank and Financial Accounts, Form TD F 90-22.1 (hereinafter referred to as “FBAR”), provides necessary information for certain governmental agencies. Information on the FBAR may be used in criminal, tax, or regulatory investigations or proceedings, or in the conduct of intelligence or counterintelligence activities, including analysis, to protect against international terrorism. This governmental need for information is balanced with the administrative concerns presented by the filing of the information by U.S. persons.

In October 2008, the IRS revised the FBAR and the accompanying instructions. On June 5, 2009, the IRS issued Announcement 2009-51, 2009-25 I.R.B. 1105, which stated that the IRS is temporarily suspending the filing requirement of the FBAR for those persons who are not U.S. citizens, residents, or domestic entities. On May 6, 2009 and June 24, 2009, the IRS posted questions and answers (Q&As-9 and -43, respectively) on its public website (www.irs.gov) that provide relief to certain persons who only recently learned of their obligation to file an FBAR by setting forth conditions and procedures for filing Form TD F 90-22.1 by September 23, 2009. More information

concerning this relief is available at

<http://www.irs.gov/newsroom/article/0,,id=210027,00.html>. This Notice provides additional administrative relief for (i) persons with no financial interest in a foreign financial account but with signature or other authority over the foreign financial account (hereinafter referred to as “signature authority”), and (ii) persons with a financial interest in, or signature authority over, a foreign financial account in which the assets are held in a commingled fund (hereinafter referred to as “foreign commingled funds”). The Department of the Treasury intends to issue regulations clarifying the FBAR filing requirements pertaining to those persons with respect to these foreign financial accounts, and solicits comments related to these FBAR filing requirements in this Notice.

II. Extended Filing Date for Specified Persons

A. Current FBAR Instructions

The current instructions to the FBAR provide, with certain exceptions, that U.S. persons that have signature authority over, but no financial interest in, a foreign financial account are required to file an FBAR. These persons must report the account on an FBAR even if the foreign financial account is reported on an FBAR filed by the owner of the account (or other person that has a financial interest in the account).

The current instructions to the FBAR also provide that a foreign financial account that must be reported on an FBAR includes any bank, securities, securities derivatives, or other financial instruments account. The FBAR instructions further provide that those accounts "generally also encompass any accounts in which the assets are held in a commingled fund and the account owner holds an equity interest in the fund (including

mutual funds).”

The current instructions to the FBAR also provide that Form TD F 90-22.1 with respect to a given calendar year must be filed with the Department of the Treasury on or before June 30 of the succeeding year. Thus, except as provided in the prior relief granted by the IRS on its public website and the relief granted in this Notice, FBARs with respect to the 2008 calendar year should have been filed on or before June 30, 2009.

B. Extended Date for Filing an FBAR

In light of the additional time needed for the Department of the Treasury to address issues pertaining to FBAR filing requirements and the need to 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, this Notice provides that those persons have until June 30, 2010, to file an FBAR for the 2008 and earlier calendar years with respect to these foreign financial accounts. Thus, eligible persons that avail themselves of the administrative relief provided in this Notice may need to file FBARs for the 2008, 2009 and earlier calendar years on or before June 30, 2010, to the extent provided in future guidance.

The FBAR filing extension provided by this Notice applies to FBARs with respect to 2008 and earlier calendar years. 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 FBAR filing extension provided in this Notice supplements the filing extension to September 23, 2009,

previously provided by the IRS on its public website.

III. Request for Public Comments

The Department of the Treasury is interested in receiving comments on the following issues affecting a person's FBAR filing obligation.

The Department of the Treasury requests comments regarding when a person with signature authority over, but no financial interest in, a foreign financial account should be relieved of filing an FBAR for the account. For example, comments are requested regarding whether relief from filing would be appropriate if a person with a financial interest in the account has filed an FBAR.

The Department of the Treasury requests comments discussing 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, including circumstances in which an individual has been advised that an FBAR has been filed with respect to a foreign financial account for which that person has signature authority. The Department of the Treasury also requests comments discussing how the bank and publicly-traded company exception (including the requirement of notification that an FBAR was filed by a U.S. 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 employer.

The Department of the Treasury requests comments concerning when an interest in a foreign entity (e.g., a corporation, partnership, trust, or estate) should be

subject to FBAR reporting. For example, comments are requested regarding the possibility of applying the principles of sections 1297 and 1298(b) of the Internal Revenue Code to determine when an interest in a foreign entity should be subject to FBAR reporting. Comments are also requested regarding whether the passive asset and passive income thresholds of 50 percent and 75 percent, respectively, are appropriate and whether the tests should apply conjunctively.

The Department of the Treasury also requests comments on 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.

Interested persons should submit comments and suggestions with respect to the guidance on FBAR reporting in this Notice by October 6, 2009, to:

Internal Revenue Service
Attn: CC:PA:LPD:PR (Notice 2009-62)
Room 5203
P.O. Box 7604
Ben Franklin Station
Washington, D.C. 20044

or hand deliver comments Monday through Friday between the hours of 8 a.m. and 4 p.m. to:

Courier's Desk
Internal Revenue Service
Attn: CC:PA:LPD:PR (Notice 2009-62)
1111 Constitution Avenue, N.W.
Washington, D.C. 20224

A copy of those comments should also be sent to:

Financial Crimes Enforcement Network
Department of the Treasury
P.O. Box 39

Vienna, VA 22183

Alternatively, the public may submit comments electronically via e-mail to the following address: Notice.Comments@irsounsel.treas.gov with a copy to regcomments@fincen.gov. Respondents should include "Notice 2009-62" in the subject line of any comment submitted.

All comments submitted by the public will be made available for public inspection and copying in their entirety.

IV. Effective Date

This Notice applies to FBARs (Form TD F 90-22.1) with respect to calendar year 2008 and prior calendar years.

V. Contact Information

For further information regarding the relief relating to signature authority, contact Terra-Lynn Zentara at (202) 283-7659 (not a toll-free call). For further information regarding foreign commingled funds, contact Joseph Henderson at (202) 622-3446 (not a toll-free call).