
Investors in Offshore Funds May File Late FBARs by September 23, 2009

2009-06-25

A statement reported in today's Wall Street Journal by an Internal Revenue Service ("IRS") official confirmed that the IRS takes the view that US persons are required to file a Report of Foreign Bank and Financial Accounts ("FBAR") with respect to interests in or signatory authority over private investment funds located outside the United States ("Non-US Funds"). A Non-US Fund could include a master fund, a feeder fund, or a stand-alone investment fund. The IRS official stated that this was not a new requirement, but reflected a stronger emphasis on international matters.

Apparently in connection with the foregoing, on June 24, 2009, the IRS issued a new Frequently Asked Question ("FAQ") # 43, available [here](#), regarding the FBAR filings for calendar year 2008 which are due on June 30, 2009. The FAQ states "taxpayers who reported and paid tax on all their 2008 taxable income but only recently learned of their FBAR filing obligation and have insufficient time to gather the necessary information to complete the FBAR, should file the delinquent FBAR report according to the instructions and attach a statement explaining why the report is filed late." Entities and individuals filing the late 2008 FBAR are also required to file a copy of the FBAR together with their previously-filed 2008 tax returns by September 23, 2009, at Internal Revenue Service, 11501 Roosevelt Blvd., South Bldg.,

Room 2002, Philadelphia, PA 19154, Attn: Charlie Judge, Offshore Unit, DP S-611. The IRS has stated that it will not impose penalties for late 2008 FBAR filings that are filed in accordance with these procedures.

US persons with a financial interest in or signature authority over a Non-US Fund in years prior to 2008 should also file late or amended FBARs for up to six prior years. US persons who failed to file the FBAR for prior years (or filed an FBAR that did not include the Non-US Fund), but reported and paid tax on all taxable income, may file late FBARs for the prior six years by September 23, 2009, following the instructions provided above. Again, the IRS will not impose penalties with respect to prior FBARs that are filed in accordance with these procedures.

Please refer to our prior Email Alert on this topic, available [here](#), which provides additional details on the scope of the FBAR filing generally and as it relates to Non-US Funds.

IRS CIRCULAR 230 DISCLOSURE:

To ensure compliance with requirements imposed by the IRS, we inform you that any U.S. tax advice 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 penalties under the Internal Revenue Code or (ii) promoting, marketing or recommending to another party any transaction or matter addressed herein.

Authors

William C. Benjamin

RETIRED PARTNER