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## Treasury Issues Final Regulations on FBAR Filing Requirements

2011-03-02

On February 24, 2011, the Treasury Department issued final regulations (the "Regulations") regarding the Report of Foreign Bank and Financial Accounts ("FBAR"). The Regulations, which can be found [here](#), are effective March 28, 2011 and apply to FBARs for 2010 due on June 30, 2011, as well as any FBARs for prior years which were deferred under prior IRS guidance (discussed [here](#) and [here](#)). The Regulations reflect comments submitted in response to the Notice of Proposed Rulemaking issued on February 26, 2010 (discussed [here](#)). The Regulations clarify a number of provisions in the Notice of Proposed Rulemaking. Some of these clarifications appear only in the narrative preamble, but will presumably be incorporated in revised instructions to the FBAR (TD F 90-22.1) that are anticipated to be released soon. The Treasury also noted that it plans to permit electronic filing of the FBAR (once technology updates are implemented), but did not announce a specific timeframe for electronic filing.

Key provisions of the Regulations include:

- **Signature Authority.** An individual has "signature or other authority" over a financial account if he or she has the authority to control the disposition of assets held in the account "by direct communication" to the person maintaining the account.
- **Recordkeeping.** Officers and employees who have signature authority over an employer's foreign financial accounts are required to file FBARs, but are not personally required to maintain records of such accounts.
- **Foreign Financial Accounts.** An account is not "foreign" if it is maintained with a financial institution located in the U.S. even though the account may hold foreign assets such as foreign securities. Further, omnibus accounts established at a foreign financial institution by a U.S. bank as a global custodian for foreign assets of its customers are not considered to be foreign financial accounts of the customers so long as the customers cannot directly access their foreign assets maintained at the foreign institution.
- **U.S. Person.** Only U.S. persons (including those living abroad) and U.S. entities are subject to the FBAR rules. FBAR filing obligations do not apply to foreign persons who are only doing business in the United States.
- **Private Investment Funds.** Private investment entities (e.g., foreign hedge funds and

private equity funds) are not addressed expressly and guidance on their status as "foreign financial accounts" continues to be under consideration. As a result, for the time being, interests in such private investment entities are not treated as foreign financial accounts and FBARs do not have to be filed with respect to such interests. In contrast, interests in foreign mutual funds or similar pooled funds which issue shares to the general public are considered foreign financial accounts and must be reported.

- **Trusts.** The preamble indicates that a trust which is created, organized or formed under the laws of the United States is considered a U.S. person for purposes of FBAR reporting even if it is not considered a U.S. person for federal income tax purposes.
- **Due Date.** No change has been made to the June 30 due date for FBARs. Unlike tax forms which may be considered filed with the IRS on the mailing date, the FBAR must be received by the Treasury on or before June 30.

The Treasury declined the requests of several commentators to expand exemptions from FBAR reporting for certain pension and welfare benefit plans (note that governmental pension, retirement and welfare funds remain exempt) and to provide an exception to FBAR reporting where duplicative FBARs would be submitted, noting that FBAR filings provide a valuable investigatory tool for the U.S. government.

Links to our prior Email Alerts on the FBAR are provided below.

[Investors in Offshore Funds May Have to File FBARs by June 30, 2009](#) (June 22, 2009)

[Investors in Offshore Funds May File Late FBARs by September 23, 2009](#) (June 25, 2009)

[IRS Postpones Deadline for Certain Filers of FBARs until June 30, 2010](#) (August 7, 2009)

[IRS Extends September 23 FBAR Deadline for Taxpayers](#) (September 21, 2009)

[Treasury and IRS Issue Guidance on FBAR Filings](#) (March 1, 2010)

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