

REMINDER: FOREIGN ACCOUNT FILING DEADLINE APPROACHES**Filing must be made by June 30th**

Each U.S. person having signature authority over, or a financial interest in, bank, securities or other financial accounts that are located in foreign countries and had aggregate assets exceeding \$10,000 at any time during 2007 must file with the U.S. Internal Revenue Service a report on Form TD F 90-22.1 (the “Form”) by June 30, 2008. Failure to file the Form, which requires basic information about foreign domiciled accounts, can result in significant civil and/or criminal penalties. In recent years, Congress has urged the Treasury Department to improve its enforcement of this requirement.

BACKGROUND

The obligation to file an annual Report of Foreign Bank and Financial Accounts (“FBAR”) arises from the Bank Secrecy Act (the “BSA”) — the umbrella statute incorporating U.S. anti-money laundering policies — and the implementing regulations issued by the Department of the Treasury. The original purpose of FBAR was to enhance the U.S. government’s ability to detect unreported income, tax evasion and other criminal activity. Following the enactment of the USA PATRIOT Act, however, FBAR has become an additional means of tracking international movements of funds and the development of financial instruments used in terrorist financing.

APPLICABILITY AND KEY DEFINITIONS*Who Must Report*

The FBAR reporting requirement applies to “each person subject to the jurisdiction of the United States” which, according to the Treasury Department, includes any citizen or resident of the United States as well as domestic corporations, partnerships, estates and trusts — referred to collectively as “U.S. persons.”¹

What Triggers the Reporting Requirement

To be covered by the FBAR requirement, a U.S. person must have “a financial interest in, or signature or other authority over” the type of financial account described below. According to the Treasury Department:

¹ Although the instructions to the Form do not expressly refer to limited liability companies (“LLCs”), we believe that LLCs are subject to the FBAR filing requirement based on the broad definition of “person” within BSA regulations, which includes “all entities cognizable as legal personalities.”

- “Signature authority” means the ability to control the disposition of funds or property in an account by delivery of a document bearing the U.S. person’s signature (either solely or with the signatures of others) to the financial institution or other person with whom the account is maintained.
- “Other authority” includes the ability to control the funds through oral or other instructions to the financial institution.
- A “financial interest” exists when, in general, the account is in a U.S. person’s name or the account is for a U.S. person’s benefit.

What Types of Foreign Financial Accounts are Covered

A U.S. person is required to report a financial interest in or signature authority over: any bank, securities, securities derivatives or other financial instruments account; any account in which the person’s assets are pooled with the assets of others in a commingled fund and the person holds an equity interest; or “any other account maintained with a financial institution or other person engaged in the business of a financial institution.”

One or more foreign financial accounts trigger the reporting requirement when the aggregate value of all such accounts exceeded \$10,000 at any time during the calendar year for which the report is filed. If a foreign account was valued at less than \$10,000 at all times during the calendar year, the filer must nonetheless report the account if all of the filer’s foreign accounts in the aggregate met the reporting threshold.

A person with interests in 25 or more foreign financial accounts can simply disclose the number of such accounts on the FBAR without providing the additional account information a filer must otherwise report on the Form, but will be required to report the more detailed information upon request by the Treasury Department.

FILING INFORMATION

The Form is available at the websites of the IRS (www.irs.gov) and the Treasury Department’s Financial Crimes Enforcement Network (www.fincen.gov). The Form must be filed on or before June 30th with the IRS’s Detroit Computing Center at either of the addresses provided on the Form, or can be hand-delivered to any local IRS office for forwarding to Detroit. Currently, there are no provisions for electronic filing or an extension of the filing date.

RECORDKEEPING

Each FBAR filer must retain for a period of five years certain records with respect to the accounts reported, including: the name of the account holder; the account number or other designation; the name and address of the foreign financial institution or other entity at which the account is maintained; the type of account; and the maximum value of the account during the calendar year for which the FBAR was filed.

PENALTIES

The consequences of a failure to comply with the reporting requirements can be quite serious. For example, a non-willful failure to file can result in a civil penalty of up to \$10,000 for each violation, and a willful failure to file can result in (i) a civil penalty ranging up to \$100,000 per violation or 50 percent of the amount in an account at the time of the violation, whichever is greater, or (ii) a criminal penalty of up to \$250,000 and/or five years in prison. A violation of the reporting requirement occurring in connection with a violation of another federal law, or as part of a pattern of certain unlawful activity, can subject the violator to a fine of up to \$500,000 and/or ten years in prison.

In addition, failing to file a required Form, or filing a Form containing materially false information, may result in a separate violation of federal law, which criminalizes the act of knowingly and willfully making false statements to the government.

CONCLUSION

Although the basic obligation to report certain foreign bank and financial accounts may appear relatively simple, the Treasury Department has issued little substantive guidance on the FBAR requirements. In addition, Congress, through various means, has urged the Treasury Department to pay increased attention to FBAR enforcement. In view of the potentially severe fines and the government's increased interest in enforcement, affected persons should carefully consider the applicability of this reporting requirement to their foreign financial accounts.

If you have any questions regarding the foregoing, or need additional information, please contact: Russell Smith (202-303-1116), rsmith@willkie.com; Rita Molesworth (212-728-8727), rmolesworth@willkie.com; Barbara Block (202-303-1178), bblock@willkie.com; Michael S. Didiuk (202-303-1280), mdidiuk@willkie.com or the attorney with whom you regularly work.

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