

**UPDATE: FBAR DEADLINE POSTPONED TO JUNE 30, 2010  
FOR CERTAIN ACCOUNTS**

This further updates our Client Memoranda dated June 11, 19, and 25, 2009.

On August 7, 2009, the IRS announced in [Notice 2009-62](#) (the “August Notice”) that it has extended to June 30, 2010 the deadline for filing the “Report of Foreign Bank and Financial Accounts” (“FBAR”) with respect to 2008 and earlier years in the case of: **(1) persons having signature authority over, but no financial interest in, a foreign financial account and (2) persons with a financial interest in, or signature authority over, a commingled fund.** The August Notice also indicates that new regulations will be issued that clarify the filing requirements for these two categories of accounts.

The FBAR filing deadline for all other types of foreign financial accounts remains unchanged. In general, the FBAR filing deadline for a calendar year is the following June 30, but the IRS announced on June 24, 2009 a penalty-free extension of this deadline -- to September 23, 2009 -- for those persons “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” (<http://www.irs.gov/newsroom/article/0,,id=210027,00.html>). Contemporaneously, IRS staff reportedly recommended that FBARs be filed for financial interests in, or signature authority over, a foreign hedge or private equity fund held anytime since 2003.

The August Notice allows a U.S. person to postpone, until June 30, 2010, the FBAR filing deadline for 2008 and earlier years in respect of a foreign financial account if:

1. the person had signature authority over, but no financial interest in, the foreign financial account (regardless of whether it is a bank, securities, or other financial account located in a foreign country); or
2. the account is a foreign commingled fund (including, for example, an offshore hedge or private equity fund) regardless of whether the person had a financial interest in, or signature authority over, the foreign commingled fund.

This extension does not apply to a *financial interest* in other types of foreign accounts, such as bank or securities accounts.

In the August Notice, the Treasury Department requested public comment on the circumstances under which the following categories of persons should be exempted from the FBAR filing requirements:

1. persons with signature authority over, but no financial interest in, a foreign financial account;

2. officers and employees with signature authority over, but no financial interest in, any employer's financial account (such an exception currently applies to the officers and employees of banks and certain publicly traded U.S. companies); and
3. officers and employees with signature authority over accounts owned by *the clients* of their employer.

The Treasury Department also requested comment with respect to when an interest in a foreign entity (e.g., a corporation, a partnership, a trust, or an estate) should be subject to FBAR reporting, and whether and how the principles of Internal Revenue Code Sections 1297 and 1298(b) regarding passive foreign investment companies, and the thresholds for passive assets and passive income, should be applied in determining FBAR reporting requirements.

Finally, the Treasury Department asked whether an FBAR filing exemption should exist with respect to a foreign commingled fund in other circumstances, including to avoid duplicative reporting.

The timing and outcome of the Treasury Department's rulemaking are unclear. Individuals and entities that delay filings under this relief should retain all pertinent records in case the IRS decides not to provide further relief from the current requirements.

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