

**UPDATE: IRS ISSUES MORE FOREIGN FINANCIAL ACCOUNT GUIDANCE,
INCLUDING AMNESTY FOR CERTAIN LATE FILERS UNTIL SEPTEMBER 23, 2009**

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

As explained in our earlier memoranda, any U.S. person having a “financial interest” in or “signature or other authority over” one or more bank accounts, securities accounts, or other financial accounts located in foreign countries with aggregate assets of more than \$10,000 at any time during 2008 must file a report with the U.S. Department of the Treasury. This report, the Report of Foreign Bank and Financial Accounts (the “FBAR”), is filed on Form TD F 90-22.1. The form states that the filing deadline for reporting 2008 accounts is June 30, 2009.

On June 24, 2009, the Internal Revenue Service released a revised set of “Frequently Asked Questions” (“FAQs”) regarding the offshore amnesty program already in place for offshore accounts. Included in the revised FAQs is an extension of the IRS’s offshore tax amnesty program to late filers of the 2008 FBARs otherwise due on June 30, 2009.

As we reported in our June 19, 2009 memorandum, some IRS staff members have expressed a personal opinion that an offshore hedge fund falls within the definition of a “foreign financial account.” The revised IRS release does not provide any additional guidance regarding this issue, nor is any expected prior to the June 30 deadline. This uncertainty regarding the status of non-U.S. investment funds has significantly expanded the number of individuals and entities that may have an FBAR filing obligation for 2008. Many of those individuals and entities became aware of a possible filing obligation only very recently.

The revised FAQs indicate that U.S. 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” prior to the June 30, 2009 deadline can file such FBARs prior to September 23, 2009, without penalty. Certain conditions apply: (a) the filer must attach a statement to the completed Form TD F 90-22.1 explaining why the report is late; (b) the filer must also attach a copy of the filer’s 2008 tax return (unless the return is not due until after September 23); and (c) the FBAR and required attachments must be sent to a special IRS office in Philadelphia (rather than the address shown on the FBAR), Internal Revenue Service, 11501 Roosevelt Blvd., South Bldg., Room 2002, Philadelphia, PA 19154, Attn: Charlie Judge, Offshore Unit, DP S-611.

For U.S. persons with signature authority over foreign accounts who have not filed FBARs prior to June 30, 2009, the revised FAQs indicate that a “taxpayer may cure the FBAR delinquency for the account the taxpayer does not own by filing the FBAR with an explanatory statement by September 23, 2009.” The FAQs then reference the procedure described above but does not specify whether tax returns should be attached to the FBAR or to which IRS office such FBAR should be sent.

It is clear that individuals and entities filing by the June 30, 2009 deadline are not required to provide their tax returns or to comply with the other amnesty conditions described above. U.S. persons with an FBAR filing requirement, particularly one based solely on signature authority over a foreign account, should therefore consider filing by June 30, 2009, to avoid uncertainty regarding what must be filed and where it must be sent.

The IRS release may be found at <http://www.irs.gov/newsroom/article/0,,id=206012,00.html>.

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If you have any questions regarding the foregoing, or need additional information, please contact Russell L. Smith (202-303-1116, rsmith@willkie.com), Rita M. Molesworth (212-728-8727, rmolesworth@willkie.com), Joseph A. Riley (212-728-8715, jriley@willkie.com), Barbara Block (202-303-1178, bblock@willkie.com), or the Willkie attorney with whom you regularly work.

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