

PUBLICATION

2010 FBAR Filing Deadline is Quickly Approaching

June 2, 2011

In recent years, the Internal Revenue Service (IRS) has renewed its focus on enforcing U.S. taxpayers' compliance with foreign financial account reporting requirements. Under current income tax and banking laws, certain taxpayers must annually file Form TD F 90-22.1, Report of Foreign Bank and Financial Accounts (FBAR), if the foreign financial accounts they own or over which they have signatory authority exceed, in the aggregate, \$10,000. Reportable foreign financial accounts include any bank, securities, securities derivatives or other financial instruments accounts; any savings, demand, checking, deposit or any other account maintained with a financial institution or other person engaged in the business of a financial institution; and any accounts in which an account holder holds an equity interest and in which assets are held in a commingled fund (including mutual funds).

The FBAR is an information return and no filing extension is available. Unlike most tax returns which are deemed filed when postmarked (under the so-called "Mailbox Rule"), the FBAR must be received by the IRS on or before June 30 of the following year to which it relates. Taxpayers violating the FBAR filing requirements may face significant civil penalties (up to \$100,000) and criminal penalties (up to \$500,000 and ten years in jail).

The deadline for filing the 2010 FBAR is June 30, 2011. However, on May 31, 2011, the Financial Crimes Enforcement Network released Notice 2011-1, which extends the filing deadline to June 30, 2012 for the following limited subset of individuals:

1. any employee or officer of an entity under 31 CFR 1010.350(f)(2)(i)-(v) (Covered Entity) who has signature authority over, but no financial interest in, a foreign financial account of another entity more than 50 percent owned, directly or indirectly, by the Covered Entity (Controlled Person); or
2. any employee or officer of a Controlled Person of a Covered Entity who has signature authority over, but no financial interest in, a foreign financial account of the Covered Entity or another Controlled Person of the Covered Entity.

For certain taxpayers with signature authority over, but no financial interest in, a foreign financial account for 2009 and prior calendar years, the IRS previously extended the deadline for filing FBARs for those years until June 30, 2011 in IRS Notice 2010-23. The IRS has not changed that deadline.

If you wish to discuss the FBAR reporting and filing requirements, please contact any attorney in the Firm's Tax Department.