

IRS Grants FBAR Filing Extension for Certain U.S. Persons

August 10, 2009

The Internal Revenue Service (IRS) on August 7, 2009 issued Notice 2009-62, which provides an extension of time for specified persons to file Form TD F 90-22.1, Report of Foreign Bank and Financial Accounts (FBAR), for 2008 and prior years. Notice 2009-62 permits U.S. persons that have only signature authority over foreign financial accounts (such as employees of institutions with ministerial powers over non-U.S. bank accounts) or that have beneficial ownership over “foreign commingled funds” (which may include interests in offshore hedge funds and other investment vehicles) to make timely FBAR filings for 2008 and prior years by June 30, 2010 (rather than by the June 30, 2009 or September 23, 2009 dates that would otherwise apply). In addition, Notice 2009-62 invites comments as to changes in filing requirements that may reduce or eliminate FBAR filing obligations in various circumstances.

Generally, any U.S. person or entity that at any time during a calendar year had a financial interest in, or signature or other authority over, financial accounts located in a foreign country with an aggregate value in excess of \$10,000 is required to file. The filing deadline for FBARs for each year is June 30 of the following year.

Revisions to the FBAR form instructions in 2008 and subsequent informal statements made by IRS officials and information provided on the IRS website resulted in significant confusion as to the FBAR filing requirements for certain U.S. persons. A number of groups contacted the IRS to request clarification of the filing requirements and extension of the 2008 due date. On May 6, 2009 and June 24, 2009, the IRS posted to its website certain conditions and procedures for relief from the filing penalties for a late filing if an FBAR form for 2008 that was otherwise due on June 30, 2009 is filed by September 23, 2009. This relief extended in certain circumstances to FBAR forms for prior years as well.

Notice 2009-62 provides additional administrative relief for the following U.S. persons:

- Persons with no financial interest in a foreign financial account but with signature or other authority over the foreign financial account
- Persons with a financial interest in, or signature authority over, a foreign financial account in which the assets are held in a commingled fund

For these specified persons, Notice 2009-62 provides that they have until June 30, 2010, to file an FBAR for 2008 and earlier calendar years with respect to foreign financial accounts. Therefore, persons eligible

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