

tax lawflash

January 4, 2013

FinCEN Announces Third Extension for Certain FBAR Filers

Certain individuals having only signature authority over foreign financial accounts now have until June 30, 2014, to file the Report of Foreign Bank and Financial Accounts.

On December 26, 2012, the U.S. Department of the Treasury's Financial Crimes Enforcement Network (FinCEN) released Notice 2012-2,¹ which states that certain persons who are obligated to file Form TD F 90-22.1, Report of Foreign Bank and Financial Accounts (FBAR), now have until **June 30, 2014**, to file the form.² This extended filing deadline applies to certain individuals with signature authority over, but no financial interest in, one or more foreign financial accounts and also applies to certain employees or officers of investment advisers registered with the Securities and Exchange Commission (SEC) who have signature authority over, but no financial interest in, certain foreign financial accounts. FinCEN cites "ongoing consideration of questions regarding the filing requirement and its application to individuals with signature authority over but no financial interest in certain types of accounts" as the basis for this latest extension. This is the third filing extension applicable to such persons. It covers not only the reporting of signature authority held by such persons for 2012, but also for all other years for which filing was previously extended to June 30, 2012, under FinCEN Notices 2011-1 and 2011-2. All others who are required to file an FBAR must still do so by June 30, 2013.

Generally, FinCEN Notice 2012-2 further extends the FBAR filing deadline for the following employees and officers of certain "excepted entities" (as defined in the final regulations released by FinCEN on February 24, 2011³):

- An employee or officer of an excepted entity who has signature or other authority over, but no financial interest in, a foreign financial account of a controlled person of the entity.
- An employee or officer of a controlled person of an excepted entity who has signature or other authority over, but no financial interest in, a foreign financial account of the entity or another controlled person of the entity. For this purpose, a "controlled person" is a U.S. or foreign entity that is more than 50% owned (directly or indirectly) by an excepted entity.

Notice 2012-2 also generally extends the filing deadline for employees or officers of investment advisers

1. View Notice 2012-2 at http://www.fincen.gov/statutes_regs/guidance/pdf/FinCEN_Note_2012-2_FBAR_Filing_Extension.pdf.

2. The prior deadline for such persons was June 30, 2013. For further details on the FBAR, see our previous LawFlashes on the subject: "Important New Development Regarding Reporting of Foreign Bank and Financial Accounts: What Corporations and Individuals Need to Know" (Jan. 27, 2009), available at http://www.morganlewis.com/pubs/Tax_ForeignBank_LF_27jan09.pdf; "FinCEN and IRS Issue Guidance on FBAR Filing Requirements for Certain U.S. Persons" (Feb. 26, 2010), available at http://www.morganlewis.com/pubs/TaxLF_FinCEN_IRSGuidanceOnFBARFilingReqs_26feb10.pdf; "FinCEN Issues Final FBAR Regulations for Certain U.S. Persons Holding Foreign Financial Accounts" (Mar. 11, 2011), available at http://www.morganlewis.com/pubs/TaxLF_FinCENIssuesFinalFBARRegulations_11march11.pdf; "FinCEN Issues Extension for Certain FBAR Filers" (June 3, 2011), available at http://www.morganlewis.com/pubs/TaxLF_FinCENIssuesExtensionFBARFilers_03june11.pdf; "Two More Extensions: IRS and FinCEN Issue Extensions for Certain FBAR Filers in IRS Notice 2011-54 and FinCEN Notice 2011-2" (June 20, 2011), available at http://www.morganlewis.com/pubs/TaxLF_IRSFinCENIssueExtensionsforFilers_20june11.pdf; and "FinCEN Issues Additional Extension for Certain FBAR Filers" (March 1, 2012), available at http://www.morganlewis.com/pubs/Tax_LF_FinCENAddExtensionforFBARFilers_01march12.pdf.

3. For further details, see our June 3, 2011, LawFlash, "FinCEN Issues Extension for Certain FBAR Filers," available at http://www.morganlewis.com/pubs/TaxLF_FinCENIssuesExtensionFBARFilers_03june11.pdf.

Morgan Lewis

registered with the SEC who have signature or other authority over, but no financial interest in, foreign financial accounts of persons that are not investment companies registered under the Investment Company Act of 1940 (1940 Act). The exemption set forth in the final regulations only covers employees of “authorized service providers” with respect to accounts of mutual funds that are registered under the 1940 Act.⁴

As noted, the above-described employees or officers now have until June 30, 2014, to file FBARs if FinCEN ultimately decides that such filings are required. Our “Ultimate FBAR Due Date Chart” has been updated to reflect these extended deadlines and is available at <https://www.morganlewis.com/pubs/UltimateFBARDueDateChart.pdf>.

Contacts

If you have any questions or would like more information on the issues discussed in this LawFlash, please contact any of the following Morgan Lewis Tax Practice attorneys:

London

Charles G. Lubar +44 (0)20 3201 5531 clubar@morganlewis.com

New York

Richard S. Zarin 212.309.6879 rzarin@morganlewis.com

Philadelphia

William P. Zimmerman 215.963.5023 wzimmerman@morganlewis.com
Gabriel A. Quihuis 215.963.4796 gquihuis@morganlewis.com

Washington, D.C.

Richard C. LaFalce 202.739.5506 rlaface@morganlewis.com

About Morgan, Lewis & Bockius LLP

With 24 offices across the United States, Europe, and Asia, Morgan Lewis provides comprehensive litigation, corporate, transactional, regulatory, intellectual property, and labor and employment legal services to clients of all sizes—from globally established industry leaders to just-conceived start-ups. Our international team of lawyers, patent agents, benefits advisers, regulatory scientists, and other specialists—more than 1,600 legal professionals total—serves clients from locations in Almaty, Beijing, Boston, Brussels, Chicago, Dallas, Frankfurt, Harrisburg, Houston, Irvine, London, Los Angeles, Miami, Moscow, New York, Palo Alto, Paris, Philadelphia, Pittsburgh, Princeton, San Francisco, Tokyo, Washington, D.C., and Wilmington. For more information about Morgan Lewis or its practices, please visit us online at www.morganlewis.com.

IRS Circular 230 Disclosure

To ensure compliance with requirements imposed by the IRS, we inform you that any U.S. federal tax advice contained in this communication (including any attachments) is not intended or written to be used, and cannot be used, for the purpose of (i) avoiding penalties under the Internal Revenue Code or (ii) promoting, marketing, or recommending to another party any transaction or matter addressed herein. For information about why we are required to include this legend, please see <http://www.morganlewis.com/circular230>.

This LawFlash is provided as a general informational service to clients and friends of Morgan, Lewis & Bockius LLP. It should not be construed as, and does not constitute, legal advice on any specific matter, nor does this message create an attorney-client relationship. These materials may be considered **Attorney Advertising** in some states. Please note that the prior results discussed in the material do not guarantee similar outcomes. Links provided from outside sources are subject to expiration or change. © 2013 Morgan, Lewis & Bockius LLP. All Rights Reserved.

4. For further details, see our June 20, 2011, LawFlash, “Two More Extensions: IRS and FinCEN Issue Extensions for Certain FBAR Filers in IRS Notice 2011-54 and FinCEN Notice 2011-2,” available at http://www.morganlewis.com/pubs/TaxLF_IRSFinCENIssueExtensionsforFilers_20june11.pdf.