

# FOREIGN ACCOUNT REPORTING (FBAR) EXTENSION TO JUNE 30 2010 IS LIMITED

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## September 23 2009 Reporting Deadline Still Applies to Many Filers

The IRS continues to extend filing deadlines for certain reports of Foreign Bank and Financial Accounts (FBAR). But the IRS has not extended its September 23 deadline for participation in its voluntary compliance initiative for reporting offshore income and the related accounts.

Any U.S. person with a financial interest or signature authority over one or more financial accounts in a foreign country must file Form TD F 90-22.1 (FBAR) if the aggregate value of the accounts exceeds \$10,000 at any point during the calendar year. The annual filing deadline is June 30.

On June 5, the IRS temporarily suspended the filing requirement for 2008 FBARs for those persons who are not U.S. citizens, residents, or domestic entities. And on June 24, just before the June 30 deadline for filing 2008 FBARs, the IRS extended until September 23 the deadline for filing FBARs for certain persons who only recently learned of their obligation to file an FBAR.

Now the IRS has extended until June 30, 2010 the filing deadline for FBARs for 2008 and earlier calendar years for two categories of potential filers. They include (1) persons with 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 "foreign commingled fund." A foreign commingled fund might include, for example, an interest in a foreign corporation or partnership such as a hedge fund.

Although the extensions are helpful, it is important for each potential filer to determine how the reporting requirement will apply to a particular situation and whether an extension is now available, particularly given the September 23 deadline for disclosing foreign accounts with previously unreported income.

To encourage compliance with offshore financial accounts and foreign income reporting, the IRS announced a voluntary disclosure offer that ends September 23, 2009. A U.S. person who meets the terms of the voluntary disclosure offer must pay applicable back taxes and interest on unreported income for a 6 year look-back period and must pay either a 20 percent accuracy or a 25 percent delinquency

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penalty. Also, a penalty of 20 percent of the highest total annual value in the unreported account in the six-year period is imposed. That penalty is reduced to 5 percent in limited circumstances. Failure to participate in the voluntary disclosure program could potentially result in more significant monetary penalties and in criminal prosecution.

The IRS will forgo other potentially applicable penalties – for example, for civil fraud (75 percent of unpaid tax), for failure to file various information returns, and for willful failure to file the FBAR (the greater of \$100,000 and 50 percent of the foreign account balance), all of which apply annually. Moreover, those who come forward during the six-month voluntary disclosure window mitigate their risk of criminal prosecution. The IRS has now issued guidance on the requirements for the voluntary compliance initiative in two sets of question and answers. Also, the IRS recently encouraged use of its “optional” form of disclosure letter.

The requirements for FBAR reporting and voluntary disclosure continue to evolve and change, requiring careful attention to new developments.