

May 2010

TAX ALERT

TAX DEADLINE TO REPORT FOREIGN ACCOUNTS FAST APPROACHING

We are fast approaching June 30, 2010—the deadline for the U.S. Department of the Treasury (“the Treasury”) to receive Form TD F 90-22.1 (Report of Foreign Bank and Financial Accounts or “FBAR”) from U.S. persons (not only U.S. individuals but also U.S. companies, partnerships, trusts, estates and the like) who owned and/or held certain authority over foreign financial accounts during 2009 where the aggregate balance of these accounts at any time during calendar year 2009 exceeded \$10,000. Failure to timely and properly file the FBAR form could result in significant civil and even criminal penalties. Unlike the filing of one’s income tax return where mailing on or before the due date (if supported by proper evidence) is considered timely filing, the filing of the FBAR form is timely only if the Treasury is in actual receipt of the filing on or before June 30. There is a technical exception to this deadline for certain U.S. persons who had no ownership interest in a foreign account but did have signature or similar authority over one or more foreign accounts meeting the \$10,000 test: for these persons the Treasury has extended the filing deadline to June 30 of next year.

It is very important to note that this reporting requirement applies not only to foreign bank accounts but to foreign brokerage accounts, foreign mutual funds and the like. The filing requirement applies not only to U.S. persons who directly own foreign accounts but to many U.S. persons who own interests in companies, partnerships, or trusts (whether U.S. or foreign) that themselves own foreign financial accounts.

Completion of the FBAR form includes disclosing such information as the name and number of each account and the maximum value in each account during the calendar year (converted into U.S. dollars in the case of accounts denominated in non-U.S. currencies based on year-end exchange rates).

It should be noted that U.S. persons who did not previously include foreign mutual funds in their FBAR filings for tax years prior to 2009 or consider them in determining whether or not to file FBAR forms for tax years prior to 2009 may now have to file or amend previous filings for these pre-2009 tax years by June 30, 2010 or face stiff penalties.

The application of the IRS rules and instructions, especially when dealing with indirect interests in foreign financial accounts and the technical exception to this year’s deadline mentioned above, can be challenging. We would be happy to assist you with any questions you may have as to whether you are subject to the filing requirement and, if you are, in assisting you and your accountants and other advisors in filing a satisfactory FBAR form.

Members of our Tax Department are available to provide counsel and guidance concerning similar tax issues, as well as in other related areas, such as trusts and estates, not discussed in this Alert. Please contact us for more information.

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