

Offshore insurance update



Additional Burdens Surrounding Foreign Bank Account Reporting for the Year Ended December 31, 2008

June 9, 2009

Alert 09-02

Offshore (re)insurers and their employees should be aware of major changes to the foreign bank account reporting rules ("FBAR") that impact filings due June 30, 2009.

The Internal Revenue Service ("IRS") has made considerable changes to its foreign bank account reporting requirements for the calendar year ending December 31, 2008. Through the issuance of a revised version of Form TD F 90-22.1, Report of Foreign Bank and Financial Accounts, the IRS has significantly expanded its scope and amount of disclosure required in relation to certain foreign financial accounts. Failure to properly file the Form TD F 90-22.1 on a timely basis may result in significant monetary and criminal penalties. As such, those persons (both legal entities and individuals) who may potentially have a Form TD F 90-22.1 filing requirement should begin to assess the impact of the new rules and determine the best course of action.

The most relevant changes to the FBAR rules include:

- Persons who file due to signature authority over a foreign account must now also disclose the primary owner of the financial account.
- Expanded concept of "financial interest" through indirect ownership of partnerships and corporations.
- Increased scope of signature authority over a foreign financial account.
- Inclusion of the term "mutual fund" within the definition of "financial account."
- Maximum US\$ amount of each foreign account must be reported.

As such, the following persons should consider the impact of the revised FBAR rules (please note that this listing is not all-inclusive):

- U.S. shareholders with a greater than 50% of value or voting power due to a 'deemed' indirect ownership in foreign accounts and investment funds of the company.
- Employees, directors, and officers who are U.S. citizens or residents and have signature authority over foreign financial accounts held by the company.

PwC Observations

Given the ambiguity in the Form TD F 90-22.1 instructions and lack of clear guidance currently available, offshore companies and their employees should consider the risk of significant penalties and carefully assess their Form TDF 90-22.1 filing obligations.

Please consult your PricewaterhouseCoopers tax adviser or Rick Irvine at (441) 299-7136 for further information or guidance.

For additional information please call Richard E. Irvine at (441) 299-7136 or contact your local insurance tax professional.

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