

Offshore insurance update



IRS Extends Date for Filing an FBAR for Certain Persons for the Years Ended December 31, 2008 and Earlier

August 11, 2009

Alert 09-04

Offshore (re)insurers and their employees should be aware of a new extended deadline that impacts certain persons required to file a foreign bank account report ("FBAR") that was due June 30, 2009 and originally extended to certain persons, who only recently learned of their obligation to file an FBAR, to September 23, 2009.

On August 7, 2009, the Internal Revenue Service ("IRS") issued Notice 2009-62 to provide administrative relief for certain persons with respect to their FBAR filing obligations for the years ended December 31, 2008 and earlier. In Notice 2009-62, the IRS stated that the following persons have until June 30, 2010 to file an FBAR for 2008 and earlier:

- Persons with signature authority over, but no financial interest in, a foreign financial account.
- Persons with a financial interest in, or signature authority over, a foreign commingled fund.

The most recent FBAR instructions issued in October 2008 require disclosure of those foreign financial accounts that include any bank, securities, securities derivatives, or other financial instrument accounts. Such accounts generally also encompass any accounts in which the assets are held in a commingled fund, and the account owner holds an equity interest in the fund (including mutual funds).

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

- Employees, Directors, and Officers who are U.S. citizens or residents and have signature authority over, but no financial interest in, foreign financial accounts held by the company.
- U.S. shareholders with a greater than 50% of value or voting power due to a 'deemed' indirect ownership in a foreign commingled fund.

The Notice also indicates that those eligible persons that avail themselves of the administrative relief (enumerated above) may need to file FBARs for 2008, 2009 and earlier years on or before June 30, 2010, to the extent provided in future guidance.

The Department of the Treasury is seeking additional time to address FBAR filing requirements and is requesting comments concerning several issues, including:

- When a person with signature authority over, but no financial interest in, a foreign financial account should be relieved of filing an FBAR for the account.
- What circumstances the exception from FBAR filing currently available for officers and employees of banks and certain publicly-traded domestic companies might be expanded to apply to all officers and employees with only signature authority over, and no financial interest in, an employer's foreign financial account or accounts owned by client's of the employer.
- When an interest in a foreign entity should be subject to FBAR reporting.
- Whether a U.S. person should be relieved from an FBAR filing requirement with respect to a foreign commingled fund, such as when filing would be duplicative of other reporting.

PwC Observations

Given the evolving guidance regarding certain persons' FBAR filing obligations, offshore companies and their employees should continue to carefully assess their filing obligations.

Please consult your PricewaterhouseCoopers tax adviser or Rick Irvine at (441) 299-7136 and Laurie Bailey at (441) 299-7104 for further information or guidance.

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