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FBAR Update

There have been several recent developments regarding reporting requirements for foreign financial accounts, commonly known as "FBAR."

Under the FBAR rules, U.S. persons with financial interests in, or signature or other authority over, financial accounts maintained in a foreign country are required to file a Form TD F 90-22.1, *Report of Foreign Bank and Financial Accounts*, with the IRS if the aggregate amount maintained in these accounts during a calendar year exceeds \$10,000. In general, the Form TD F 90-22.1 is due by June 30 following the calendar year in which such foreign financial accounts meet this threshold. Significant civil and criminal penalties may apply for failure to comply with FBAR.

This article briefly highlights these recent developments.

For more information about FBAR, see previously published Global IRW Newsbriefs articles including [*New FBAR rules significantly expand the number of employees now required to file an FBAR by June 30, 2011*](#) and [*Final foreign bank account reporting \(FBAR\) regulations released*](#).



FBAR E-File Mandate

On September 14, 2011, the Financial Crimes Enforcement Network ("FinCEN") announced a proposal to require electronic filing of certain reports required under the Bank Secrecy Act, including FBARs, starting June 30, 2012. FinCEN also requested comments on the e-file mandate proposal.

Observation: *It is unclear whether software enabling preparers to assist companies and individuals e-file their FBARs will be available by the June 30, 2012 proposed start date of the FBAR e-file mandate.*

This FBAR e-file mandate is being proposed at a time of significant change regarding the FBAR filing requirements. New FBAR regulations were published in February 2011. Many individuals who never had an FBAR filing obligation now have an FBAR filing obligation under the new regulations. Because of this and the complexity associated with first time compliance, the government delayed the FBAR filing due date until June 30, 2012 for certain individuals. As a result, many individuals will be filing an FBAR for the first time on June 30, 2012.

Observation: *Given the fact that 2012 will be the first year that a significant number of individuals will be required to file an FBAR, an FBAR e-file mandate beginning on June 30, 2012 could add unnecessary burden to an already burdensome and complex filing obligation.*

New Rules for Amending FBARs

Until now, the FBAR instructions required filers amending an FBAR to attach to the amended FBAR a copy of the previously filed FBAR and an explanation of the changes and corrections. The instructions were not clear regarding whether the amended FBAR should include only the additions or corrections, or whether it should include all of the information that should have been reported if the FBAR was correctly prepared in the first instance.

Under new rules effective December 1, 2011, a copy of the previously filed FBAR and an explanation of the changes and corrections are no longer required to be attached to the amended FBAR. In addition, FinCEN clarified that the amended FBAR should include the amended information as well as the information correctly reported on the original FBAR.

Observation: *The current FBAR e-file system does not accept attachments. Removing the requirement to attach information to an amended FBAR will facilitate electronic filing of amended FBARs.*

New FBAR Form

On November 1, 2011, the IRS issued a new Form TD F 90-22.1 and instructions. This new form and instructions replace the March 2011 version of the form and instructions and should be used for all FBAR filings going forward.

Observation: *The only change to the new form is a change in instructions to conform to the new rules for filing amended FBARs, discussed above.*

New IRM Section on FBAR Penalties

On November 1, 2011, the IRS added new section 8.11.6, *FBAR Penalties*, to the Appeals Internal Revenue Manual (IRM) to provide guidance and processing instructions for handling FBAR penalty cases within Appeals. We anticipate that other IRM sections relating to FBAR, such as IRM section 4.26.16 and IRM section 4.26.17, may also be updated to reflect the new regulations.

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