

Trusts and Estates

May 12, 2009

“FBAR” Filings Disclosing Foreign Accounts Due June 30

New Rules Broaden Scope of Those Who Must File

All United States persons who have a financial interest in or signature or other authority over foreign financial accounts (including bank, securities or other types of financial accounts, as well as debit and prepaid credit card accounts, in a foreign country), worth in the aggregate over \$10,000¹ must file each calendar year a Report of Foreign Bank and Financial Accounts (“FBAR”). The FBAR report is due on or before June 30 of each succeeding year. Under new rules, even non-resident aliens and foreign entities may be required to file if they have certain U.S. business interests. The FBAR is an informational return and does not impose tax. However, **the penalty for wilful failure to file FBARs is the greater of \$100,000 or 50% of the amount of the foreign accounts.** In addition, there may be criminal prosecution.

The definition of “United States persons” who are required to file was recently significantly broadened and now includes all of the following, if the foreign accounts hold more than \$10,000 in the aggregate:

- Non-resident aliens and foreign entities “in and doing business” in the United States—This category of required filers was added last fall and pulls in many additional required filers. There has been very little guidance as to the scope of “in and doing business,” so non-resident aliens and foreign entities who do business in the United States may be required to file. Foreign persons must provide a foreign identification number on their FBAR.
- All forms of U.S. business entities, trusts and estates with foreign accounts—Note that this requirement may impose an FBAR filing responsibility on corporate employees with no personal interest in the account, as well as on the corporation.
- U.S. citizens and residents with signature or other authority over a foreign account
- Trust beneficiaries with a greater than 50% beneficial interest in a trust with a foreign account
- U.S. citizens and resident stockholders with greater than 50% of the value or vote of the shares of a corporation with foreign accounts
- Entities that are disregarded for tax purposes, such as limited liability companies

¹ Filing is required if the aggregate amounts in the foreign accounts exceeded \$10,000 at any time during the calendar year (even if on December 31 there is \$10,000 or less remaining in the foreign accounts).

For more information, please contact one of the Katten Muchin Rosenman LLP attorneys listed below:

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Because of the broad scope of the filing requirements and the onerous penalties for failure to file, it is imperative that you contact your attorney to discuss FBAR filing if you think there is any chance that you may have current or prior year filing requirements.²

Also note that a unique opportunity to take care of filing for past years was announced recently by the IRS, which has put in place a voluntary disclosure program until September 23, 2009, to allow taxpayers to disclose offshore assets with no criminal prosecution and to avoid penalties for the late filing of FBARs.

² Records of activities which are the subject of FBAR reporting must be retained for a five-year period.

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