

June 10, 2009

IRS Temporarily Relaxes FBAR Filing Requirements for Non-U.S. Persons

On June 5, the IRS announced a one-year postponement for the expansion of Foreign Bank Account Reporting (“FBAR”) filing requirements relating to foreign individuals and entities in and doing business in the United States. Non-U.S. persons and offshore entities will not have to file the FBAR form this year. Thus, for example, an offshore hedge fund itself will not have to file the FBAR form this year, even if it has a financial interest in a foreign financial account and conducts business in the United States. However, the filing requirement still applies to U.S. persons or entities that have signature authority over the foreign accounts of offshore entities, and to U.S. persons or entities that own a greater than 50% interest in offshore entities.

When the FBAR form was revised in October of 2008, the new instructions vastly expanded the number of individuals, partnerships and corporations required to file the FBAR. The new filing requirement expanded the scope of “United States persons” required to file to include “a person [or entity] in and doing business in the United States.” The reversion to the old, more narrow rule regarding who must file an FBAR is effective for FBAR returns for the 2008 calendar year required to be filed on or before June 30, 2009.

Under the old (and now effective for the upcoming June 30, 2009 deadline) definition, the term “United States person” only includes (1) a citizen or resident of the United States, (2) a domestic partnership, (3) a domestic corporation, or (4) a domestic estate or trust.

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