

March 4, 2010

New FBAR Guidance and Proposed Regulations Issued

The IRS recently issued important guidance (Notice 2010-23 and Announcement 2010-16) concerning the FBAR filing requirements for individuals and fund managers. Based on this guidance:

1. For calendar year 2009 (with respect to which filings would have been due by June 30, 2010) and earlier years, U.S. investors in offshore hedge funds and private equity funds do not have to file an FBAR unless they own more than 50% of the fund and the fund itself owns a foreign bank or security account (a "foreign financial account"). However, an interest of any amount in a foreign mutual fund is considered an interest in a foreign financial account for FBAR filing purposes.
2. U.S. persons with signature authority over, but no financial interest in, a foreign financial account need not file an FBAR until June 30, 2011 (an extension from the prior deadline of June 30, 2010). It is possible that prior to such time further guidance will be issued regarding their filing requirement.
3. For calendar year 2009 and earlier years, nonresident alien individuals and entities formed outside of the United States need not make FBAR filings.

The Financial Crimes Enforcement Network (FinCEN) also proposed new regulations regarding FBAR filing requirements. Written comments on the proposed regulations are due April 27.

If you have questions regarding the FBAR filing requirements applicable for June 30, 2010, or would like to consider submitting written comments on the proposed regulations, please contact any of the individuals listed below.

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