

Report of Foreign Bank and Financial Accounts Filing Requirements

Form TD F 90-22.1, Report of Foreign Bank and Financial Accounts (FBAR), must be filed when a U.S. person has a financial interest in an account maintained with a financial institution in a foreign country the value of which is greater than \$10,000. A financial interest exists where a U.S. person has a financial interest in, signature authority or other authority over the financial account.

In August 2009, the Internal Revenue Service (IRS) issued Notice 2009-62 which extended the date for filing the FBAR. The Notice also stated that the IRS intended to issue regulations clarifying the FBAR filing requirements for certain persons and solicit comments related to the FBAR filing requirements.

On February 26, 2010, the IRS issued [Announcement 2010-16](#) and [Notice 2010-23](#) in order to clarify those U.S. persons required to file the FBAR and provide relief to certain persons required to file the FBAR for the 2009 calendar year and earlier.

In Announcement 2010-16, the IRS stated that persons who are not United States citizens, United States residents or domestic entities are not required to file an FBAR. The Service also stated that taxpayers can rely on the definition of a United States person as defined in the July 2000 version of the FBAR instructions for determining who has an FBAR filing obligation for calendar year 2009.

The July 2000 FBAR instructions define a United States person as (1) a citizen or resident of the United States, (2) a domestic partnership, (3) a domestic corporation, or (4) a domestic estate or trust. Please note that this definition is only applicable for FBARs filed for calendar years 2009 and earlier.

In response to solicited public comments, Notice 2010-23 provides two significant changes to the FBAR filing requirements. First, it provides a one-year extension for filing the FBAR where a person has signature authority over, but no financial interest in, a foreign financial account for which a report would have been due on June 30, 2010.

Second, a U.S. person with a financial interest in, or signature authority over, a foreign commingled fund that is a mutual fund is required to file an FBAR unless another filing exception applies. For these purposes, the Service will not interpret the term "commingled fund" as applying to funds other than mutual funds. The Notice explicitly excludes hedge funds and private equity funds. This is an important clarification as it limits the reach of the FBAR filing requirements.

For more information, contact Joyce Waterbury at 919.301.6715.

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