

## Employee Benefit Plans Must Assess FBAR Filing Requirement for Offshore Accounts

Administrators of employee benefit plans may previously not have been aware of their possible obligation to make “FBAR” filings with the Internal Revenue Service. All U.S. persons with a financial interest in, or signature or other authority over, foreign financial accounts with an aggregate value over \$10,000 in a calendar year must file Form TD F 90-22.1, Report of Foreign Bank and Financial Accounts (FBAR).

Recently, the IRS broadened the definition of the “U.S. persons” to whom the FBAR requirements apply and made some other changes to the FBAR form. The publicity about these changes has also focused more attention on the FBAR filing requirement itself.

Employee benefit plans may be subject to the FBAR requirement under circumstances involving investments such as the following:

1. A private equity, real estate or hedge fund that is organized outside the U.S.
2. An offshore “feeder” fund that invests in a “master” fund
3. A securities or futures trading account maintained for the plan in a foreign jurisdiction

The FBAR normally is due June 30 of the year following the calendar year for which it is filed. For 2008 FBARs, the IRS has announced that taxpayers who have recently learned of the FBAR requirement have until September 23 to file. Separately, the IRS has announced that FBARs for pre-2008 calendar years may be filed without penalty by September 23, provided that the taxpayer reported and paid any tax due with respect to the foreign account.

Further information about FBAR filing requirements appears in Katten Client Advisories from [June 25](#), [June 16](#) and [May 12](#).

The appropriate persons involved in plan administration should consider whether a plan and/or individuals involved in the administration of the plan may be subject to the FBAR filing requirements for 2008 or prior calendar years, and consult with tax advisors to determine if any action is necessary.

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