

August 12, 2009

IRS Extends FBAR Filing Date

On August 7, 2009, the IRS issued Notice 2009-62, extending the deadline for the following two categories of U.S. persons to file the Report of Foreign Bank and Financial Accounts (FBAR) for 2008 and prior years to June 30, 2010:

1. Persons with signature authority over, but no financial interest in, a foreign financial account; and
2. Persons with a financial interest in, or signature authority over, a foreign financial account in which the assets are held in a commingled fund.

The Department of Treasury intends to issue regulations clarifying the FBAR requirements pertaining to these two categories of U.S. persons. Persons who do need to file, after issuance of that further guidance, will be expected to file for 2008, 2009 and earlier calendar years on or before June 30, 2010.

Based on this notice, a typical hedge fund, hedge fund manager, hedge fund investor, pension plan, and custodian of a pension plan would not be required to file an FBAR at least until June 30, 2010, if it has not already done so unless (i) it is a U.S. hedge fund or pension plan that directly has foreign bank or securities accounts, or (ii) it is a U.S. person or entity (including a domestic feeder fund) which owns more than 50% of an offshore fund (including a master fund) and the offshore fund has foreign bank or securities accounts. Persons described in (i) and (ii) may have until September 23, 2009, to make FBAR filings for 2008 and prior years.

The Treasury Department is seeking comments on issues affecting FBAR filing obligations, including:

- when a person having only signature authority or having an interest in a commingled fund should be relieved of filing an FBAR;
- in what circumstances the FBAR filing exceptions for officers and employees of banks and some publicly traded domestic corporations should be expanded; and
- when an interest in a foreign entity should be subject to FBAR reporting and whether the principles applicable to the definition of a passive foreign investment company (PFIC) should be relevant for this purpose.

Comments must be submitted by October 6, 2009.

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

Chicago

Jenny Louise Johnson

312.902.5636 / jenny.johnson@kattenlaw.com

Ziemowit T. Smulkowski

312.902.5651 / ziemowit.smulkowski@kattenlaw.com

Gary Howell

312.902.5610 / gary.howell@kattenlaw.com

New York

Robert Loewy

212.940.6303 / robert.loewy@kattenlaw.com

Beth Tractenberg

212.940.8538 / beth.tractenberg@kattenlaw.com

Fred M. Santo

212.940.8720 / fred.santo@kattenlaw.com

Wendy E. Cohen

212.940.3846 / wendy.cohen@kattenlaw.com

Jill Darrow

212.940.7113 / jill.darrow@kattenlaw.com

Joshua Rubenstein

212.940.7150 / joshua.rubenstein@kattenlaw.com

Ronni G. Davidowitz

212.940.7197 / ronni.davidowitz@kattenlaw.com

William B. Duff

212.940.8532 / william.duff@kattenlaw.com

Katten

Katten Muchin Rosenman LLP

www.kattenlaw.com

CHARLOTTE CHICAGO IRVING LONDON LOS ANGELES NEW YORK PALO ALTO WASHINGTON, DC

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