



IRS Delays FBAR Filing Date for Certain U.S. Entities

Recent informal IRS guidance indicated that pension plans with offshore interests in commingled investment funds were required to file FBAR reports for 2008 and prior years by June 30, 2009, which came as a surprise to many plan sponsors. The IRS has now delayed the FBAR filing date until June 30, 2010 for certain categories of U.S. entities – those with signature authority over but no financial interest in a foreign financial account, and those with a financial interest in or signature authority over foreign commingled funds. The extension does not appear to provide FBAR relief to pension funds with a direct interest in a foreign account, such as a foreign custodial account. However, delinquent filers that do not qualify for the above relief but only recently discovered their FBAR reporting obligations can file without penalty by September 23, 2009. Treasury is expected to issue regulations clarifying the FBAR filing requirements and has solicited comments.

Background

[IRS Form TD F 90-22.1](#), *The Report of Foreign Bank and Financial Accounts* (FBAR), has been in existence for a number of years and is required for reporting information regarding financial interests and signing authority in foreign bank and financial accounts. The information collected from the FBAR is used for tax, criminal, or other regulatory investigations, including anti-terrorism activities.

The current instructions to the FBAR generally provide that a “U.S. person” (including entities, such as pension trusts, and individuals, such as benefit plan fiduciaries) must file an FBAR if it has a financial interest in or signature or other authority over foreign financial accounts. These include banks, securities, securities derivatives, or other financial instruments accounts, including those in which assets are held in a commingled fund, such as a mutual fund. Currently, an FBAR must be filed by a U.S. entity even if it would be duplicative, i.e., the foreign account owner also reports the same account on a separate FBAR.

In general, an FBAR must be filed with Treasury for a given calendar year on or before June 30 of the next calendar year. FBARs for the 2008 calendar year were due on or before June 30, 2009. Penalties for willful violations of the FBAR requirement can be as high as the greater of \$100,000 or 50% of the total balance of the foreign account.

FBAR Filing Extensions in IRS Q&As and Notice 2009-62

Delinquent FBAR Filers Given Short Extension. In May and June of 2009, the IRS posted [Q&As](#) to its website which, among other things, provide an extension to September 23, 2009 for certain delinquent FBAR filers without penalty. This extension is available to taxpayers who have otherwise reported all taxable income but only

recently learned of their obligation to file FBARs. These late filers must also include a statement of explanation (Q&As 9 and 43).

In addition, on June 5, 2009, in [Announcement 2009-51](#), the IRS temporarily suspended the FBAR filing requirement for persons who are not U.S. citizens, residents or domestic entities.

One-Year FBAR Filing Extension for Certain Categories of Filers. In response to previously uncertain IRS guidance, the IRS has now issued [Notice 2009-62](#). This notice further delays the filing deadline until June 30, 2010 for 2008 and earlier calendar years for two categories of U.S. filers –

- entities with signature authority over, but no financial interest in, a foreign financial account
- entities with a financial interest in, or signature authority over, a foreign commingled fund.

BUCK COMMENT. *The extension granted to this second category of U.S. filer – entities with a financial interest in, or signature authority over, a foreign commingled fund – appears to cover most pension funds with interests in offshore commingled funds, such as hedge funds and private equity funds.*

This extension does not appear to provide FBAR relief to pension funds with a direct interest in a foreign account, such as a foreign trust or custodial account. However, delinquent filers have until September 23, 2009 to file FBARs under the IRS Q&As described above.

Conclusion

Taxpayers not eligible for the extended relief in Notice 2009-62 must file delinquent FBAR reports by September 23, 2009 or be subject to penalties. The IRS has solicited comments relating to FBAR filing requirements by October 6, 2009 and Treasury is expected to issue regulations. Buck's consultants would be pleased to discuss these developments with you.

This FYI is intended to provide general information. It does not offer legal advice or purport to treat all the issues surrounding any one topic.