



To Our Clients and Friends

March 3, 2010

IRS Grants Relief from FBAR Filing Obligations for Three Groups:

- **U.S. Persons with Interests in Foreign Hedge Funds and Private Equity Funds**
- **U.S. Persons with Signature Authority but No Financial Interest in Foreign Accounts**
- **Foreign Persons Doing Business in the United States**

By: Michael J. Miller, Richard A. Levine, Howard J. Levine, Mark David Rozen, and Ellen S. Brody

On February 26, 2010, the IRS issued important guidance regarding the obligation to file a Foreign Bank Account Report ("FBAR") on Form TD F 90-22.1.

U.S. Persons with Interests in Foreign Hedge Funds and Private Equity Funds

Background

Shortly before the June 30, 2009, due date for filing FBARs relating to 2008, the IRS created much panic and confusion by informally indicating that it considers interests in foreign hedge funds and possibly private equity funds to be "commingled funds" that constitute financial accounts and must therefore be reported on the FBAR. Following such panic and confusion, the IRS announced in Notice 2009-62 that it was studying this question and that the due date for reporting such interests, with respect to 2008 and prior years, was extended until June 30, 2010.

New Guidance

In Notice 2010-23, the IRS announced that, for 2009 and prior years, it will not interpret the term "commingled fund" to apply to funds other than mutual funds. Consequently, a U.S. person with a financial interest in, or signature authority over, an interest in a foreign hedge fund or private equity fund does not need to report such interest on such U.S. person's 2009 FBAR due June 30, 2010. Furthermore, if such U.S. person has no other reportable foreign financial accounts, such U.S. person may check the "no" box in response to the FBAR-related question on all applicable federal tax forms for 2009 and prior years, indicating that such U.S. person has no financial interest in, or signature authority over, any foreign financial accounts.

U.S. Persons with Signature Authority but No Financial Interest in Foreign Accounts

Background

Recognizing that many U.S. persons are unaware of their obligation to file FBARs for foreign financial accounts over which they have signature authority, but no financial interest, the IRS announced in [Notice 2009-62](#) that the due date for reporting such accounts was extended until June 30, 2010, for 2008 and prior years.

New Guidance

In [Notice 2010-23](#), the IRS announced that U.S. persons with signature authority over, but no financial interest in, foreign accounts for which FBARs would otherwise be due on June 30, 2010, are granted an extension of such filing deadline to June 30, 2011. Furthermore, if a U.S. person has no other reportable foreign financial accounts, such U.S. person may check the "no" box in response to the FBAR-related question on all applicable federal tax forms for 2009 and prior years, indicating that such U.S. person has no financial interest in, or signature authority over, any foreign financial accounts.

Foreign Persons Doing Business in the United States

Background

In October 2008, the IRS published revised instructions to the FBAR that changed the definition of U.S. person to include any person "in and doing business in the United States." This created numerous questions including the definition of doing business in the United States and whether foreign persons treated as U.S. persons under this rule were required to report all of their foreign financial accounts or only those related to their U.S. business activities. In response to these concerns, the IRS issued [Notice 2009-51](#), which provided that, for the 2008 FBARs due June 30, 2009, potential filers could rely on the prior definition of U.S. person as set forth in the prior version of the FBAR instructions, published in July 2000. Pursuant to this definition, a U.S. person is: (1) a citizen or resident of the United States, (2) a domestic partnership, (3) a domestic corporation, or (4) a domestic estate or trust.

New Guidance

In [Announcement 2010-16](#), the IRS announced that the requirement to file a 2009 FBAR by June 30, 2010, is suspended for persons who are not U.S. citizens, U.S. residents, or domestic entities. The Announcement further provides that, for 2009 and prior years, all persons may rely upon the definition of U.S. person as set forth in the July 2000 FBAR instructions. Accordingly, foreign persons that were, or may have been, engaged in business within the United States are not required to file FBARs for 2009 or prior years.