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## IRS extends due date for filing some FBARs

A new notice (Notice 2009-62) extends the due date for filing Form TD F 90-22.1, Report of Foreign Bank and Financial Accounts (FBAR) in certain cases. The extension applies to (i) persons with signature authority over, but no financial interest in, a foreign financial account, and (ii) persons with a financial interest in, or signature authority over, a foreign commingled fund. Those persons have until June 30, 2010 to file an FBAR for 2008 and earlier calendar years with respect to these foreign financial accounts.

By way of background, an FBAR report is required to be filed by any U.S. person (including an individual, corporation, exempt organization, partnership, trust or estate) which has a financial interest in or signature or other authority over any foreign financial account. A financial account includes any bank, securities, securities derivatives or other financial instruments account (including any savings, demand, checking, deposit or other account maintained with a financial institution). Where assets are held in a commingled fund, such as a mutual fund, an equity interest in the fund is also considered a financial account under the form's current instructions. However, many significant reporting issues remain unresolved by the IRS, including application to U.S. persons and entities holding interests in foreign partnerships, foreign corporations and other entities holding and/or trading securities.

In a June FBAR teleconference, which included a panel of three Internal Revenue Service (IRS) personnel, the IRS representatives stated that an offshore hedge fund is a "foreign financial account" for FBAR purposes, and that every U.S. investor in an offshore hedge fund must file Form TD F 90-22.1, whether or not the fund itself has any offshore bank or securities accounts. It is not clear whether this interpretation is accurate and whether it applies only to hedge funds or also to private equity and other funds.

In June, the IRS posted "Frequently Asked Questions" (FAQs) on its website regarding its voluntary disclosure program for offshore activities. Question 9 of the FAQs indicates that for taxpayers who have reported all of their taxable income for prior years but did not file FBARs, they can file the delinquent FBAR reports for the relevant years by September 23, 2009, and the IRS will not impose penalties. Notice 2009-62 provides additional administrative relief for (i) persons with no financial interest in a foreign financial account but with signature authority over the account, and (ii) persons with a financial interest in, or signature authority over, a foreign account in which the assets are held in a commingled fund.

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Until more complete official guidance is available, it is recommended that all investments, including alternative investments, be reviewed. We recommend that U.S. persons with a potential financial interest in a foreign account evaluate whether to file prior years' FBAR reports by September 23, 2009. U.S. persons with a financial interest in a commingled fund should evaluate whether to take advantage of the June 30, 2010 extended due date for filing prior years' FBARs. In addition, those individuals who have signature or other authority over such accounts should separately consider filing Form TD F 90-22.1 by the June 30, 2010 extended due date.