



Reminder: Report of Foreign Bank & Financial Accounts Due June 30th

In October 2008, the Treasury Department issued a revised Form TD F 90-22.1, Report of Foreign Bank and Financial Accounts ("FBAR" form). The revisions to the form and to the definition of "United States person" have increased the range of taxpayers required to file.

The revised form defines a United States person as an individual, corporation, partnership, trust, or estate, or a person in and doing business, in the United States who has either signature authority or direct or indirect financial interest in financial accounts in a foreign country with a combined balance in all accounts exceeding \$10,000 US currency at any point during the calendar year. In other words, essentially any taxpayer who has any type of control over foreign bank accounts which exceed \$10,000 (separately or in total) is required to file.

The IRS is allowing voluntary disclosure at this time to minimize consequences for past non-compliance. If filing for a prior year, the revised form should be used, but the previous definition of required filers (a citizen or resident of the United States, a domestic partnership, a domestic corporation, or a domestic estate or trust) applies. The voluntary disclosure program is very specific, and the IRS is highly discouraging what it refers to as a "quiet disclosure" via public comments that threaten both criminal and civil penalties. The bottom line is, if you have undisclosed foreign bank accounts from prior year(s), we strongly recommend that you consult with your tax advisor as soon as possible.

In the case of closely-held corporations, it is often necessary for both the business entity and all persons who own, directly or indirectly, more than 50% of the total stock to file the FBAR form. Generally speaking, a United States person has a filing requirement if the taxpayer also files any of the following:

- Form 5471, Information Return of US Persons with Respect to Certain Foreign Corporations
- Form 8865, Return of US Persons with Respect to Certain Foreign Partnerships
- Form 8858, Information Return of US Persons with Respect to Foreign Disregarded Entities

The revisions to Form TD F 90-22.1 specifically identify mutual funds held in a commingled fund, in which the account owner holds an equity interest, as a type of financial account that must be reported. However, individual bonds, notes, or stock certificates held by the filer are not a financial account, and neither is an unsecured loan to a non-financial institution foreign trade or business.