

FBAR filings extended for certain individuals with signature authority

On May 31, 2011, the Financial Crimes Enforcement Network (FinCEN) released Notice 2011-1, which extended the time to file a Report of Foreign Bank and Financial Accounts (FBAR) until June 30, 2012 for a narrowly defined category of individuals with signature authority over foreign financial accounts.

Background

U.S. persons are required to file FBARs (Form TD F 90-22.1) annually if they have a financial interest in or signature authority over financial accounts, including bank, securities or other types of financial accounts, in a foreign country, if the aggregate value of these financial accounts ("reportable accounts") exceeds \$10,000 at any time during the calendar year.

Limited FBAR filing exception

FinCEN issued final FBAR rules on February 24, 2011 ("final rules"). Under the final rules, officers or employees of certain entities are not required to file FBARs if the officer or employee holds signature or other authority over a reportable account owned directly by that entity and the officer or employee has no financial interest in the reportable account (hereafter referred to as a "signature authority employee"). The limited exception applies to signature authority employees of the following entities (hereafter referred to as a "regulated entity" for purposes of the signature or other authority exception):

- A publicly held company, whether foreign or domestic, with a class of equity securities, listed on any U.S. national securities exchange;
- A U.S. subsidiary of a U.S. entity with a class of securities listed on a U.S. national securities exchange if the subsidiary is included in a consolidated FBAR report filed by the U.S. entity¹;
- A bank that is examined by federal authorities²;
- A financial institution that is registered with and examined by the Securities and Exchange Commission or Commodity Futures Trading Commission; and
- An authorized service provider where there is an account owned or maintained by an investment company that is registered with the Securities and Exchange Commission.

The FBAR filing exception in the final rules is available to signature authority employees only if the reportable account is **directly** owned by the regulated entity that employs the signature authority employee. In the case of a signature authority employee of a U.S. subsidiary of a U.S. entity with a class of securities listed on a U.S. national securities exchange, the exception applies only if the U.S. subsidiary is included in the parent's consolidated FBAR report and the reportable account is **directly** owned by the U.S. subsidiary.

Notice 2011-1

According to Notice 2011-1, after the release of the final rules, FinCEN received questions about the application of the above-referenced FBAR filing exceptions by the June 30, 2011 compliance deadline. In response, FinCEN released Notice 2011-1 which provides an extended filing date of **June 30, 2012** to individuals that fall within the purview of the following two categories of FBAR filers:

- An employee or officer of a regulated entity, including a foreign entity with a class of equity securities listed on any U.S. national securities exchange, who has signature or other authority over and no financial interest in a foreign financial account of another entity more than 50 percent owned, directly or indirectly, by the regulated entity (a "controlled person").
- An employee or officer of a controlled person, whether foreign or domestic, of a regulated entity who has signature or other authority over and no financial interest in a foreign financial account of the regulated entity or another controlled person of the regulated entity.

The following examples illustrate situations that fall within the Notice 2011-1 extended filing period:

Example 1: John is a U.S. citizen and employee of X, a publicly held U.S. corporation that is the parent of a corporate group. John has signature authority over, but no financial interest in, the foreign bank account of Y, a wholly owned U.S. subsidiary of X. John is required to file an FBAR because John is not an employee of Y, but has an extension of time until June 30, 2012 to file.

Example 2: Richard is a U.S. citizen and an employee of Y, a wholly owned U.S. subsidiary of X, a publicly held U.S. corporation that is the parent of a corporate group. Richard has signature authority over, but no financial interest in, a foreign financial account of Z, a controlled foreign corporation wholly owned by X. Richard is required to file an FBAR because Richard is not an employee of Z, but has an extension of time until June 30, 2012 to file.

Example 3: Maria is a U.S. citizen and employee of X, a publicly held U.S. corporation that is the parent of a corporate group. Maria has signature authority over, but no financial interest in, the foreign bank account of JV, a forty percent owned joint venture of X. Maria is required to file an FBAR by June 30, 2011 reporting this account because the joint venture is not a controlled person of X.

Prior year deferrals

Notice 2010-23 provided administrative relief to defer the pre-2010 FBAR filing obligation for officers and employees with no financial interest in a foreign financial account but with signature or other authority over the foreign financial account to June 30, 2011. Individuals to whom Notice 2011-1 applies and who relied on Notice 2010-23 to defer their 2009 and earlier year FBAR filings may rely on Notice 2011-1 to defer their 2010 and prior year FBAR filings until June 30, 2012 for the specified accounts. Individuals to whom Notice 2011-1 does not apply and who relied on Notice 2010-23 to defer prior year FBAR filings are required to file their FBARs by June 30, 2011. For example, a signature authority employee of a non-regulated entity who deferred filings under Notice 2010-23 is required to file an FBAR for the foreign financial accounts of the non-regulated entity for 2010 and prior years by June 30, 2011.

The June 30, 2012 extension applies only to individuals and accounts identified in Notice 2011-1 and all other U.S. persons required to file an FBAR this year are required to meet the filing date of **June 30, 2011**.

¹ The U.S. subsidiary itself need not be regulated provided the parent is a U.S. entity with a class of securities listed on a U.S. national securities exchange.

² Federal authorities include the Office of the Comptroller of Currency, the Board of Governors of the Federal Reserve System, the Federal Deposit Insurance Corporation, the Office of Thrift Supervision, or the National Credit Union Administration.

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