

THE FOLEY ADVISER

June 20, 2006

DEADLINE APPROACHES TO FILE ANNUAL INFORMATION REPORT ON FOREIGN FINANCIAL ACCOUNTS

Every U.S. person with a financial interest in, or signature or other authority over, any financial account outside the U.S. must file an annual report on Treasury Form TD F 90-22.1 if the aggregate value of all such accounts exceeds 10,000 USD at any time during the calendar year. **Form TD F 90-22.1 must be filed by June 30th each year.**

This filing requirement generally applies to U.S. citizens and tax residents, and to domestic corporations, partnerships, trusts and estates. A financial account for this purpose includes a bank account, securities account, securities derivative account, an account in which assets are held in a commingled fund, and other financial accounts or accounts maintained with any financial institution. "Signature or other authority over" a financial account generally includes the ability to control the disposition of money or other property in or from the account, whether by delivery of a document containing a signature (or a signature and that of one or more other persons) or otherwise by direct communication with or to the financial institution with which the account is maintained.

Form TD F 90-22.1 is a relatively short form. It requires the filer to provide personal identification information and the number of foreign accounts. With respect to each foreign account, the form also requires the account number and institution at which it is held, identification of the kind of account (i.e. bank, securities, other), the range of value in the account, and the country in which the account is located.

Although this filing requirement is not new, renewed focus has been placed on it recently because in the last two years Congress significantly increased the penalties for noncompliance and the Treasury has significantly stepped up its enforcement of these rules. The 2004 American JOBS Creation Act eliminated the requirement that a violation be willful in order for penalties to be imposed, and increased the minimum penalty for failure to timely file Form TD F 90-22.1 to 10,000 USD. The maximum civil penalty for failure to comply is 100,000 USD or 50 percent of the value of the foreign account(s). Criminal penalties and imprisonment may also apply for failure to file or supply information, and for filing false or fraudulent reports.

Companies, advisors and managers with questions about this filing requirement should contact Rick Schaul-Yoder of Foley Hoag's Tax Department at (617) 832-1000.

United States Treasury Regulations require us to disclose the following: Any tax advice included in this document and its attachments was not intended or written to be used, and it cannot be used, for the purpose of avoiding tax penalties.

Sidebar Note

These filing requirements and the potentially significant civil and criminal penalties for failure to comply apply to, among others:

- U.S. Hedge Fund Managers with authority over foreign financial accounts.
- U.S. Directors of Offshore Funds, if such directors have signature or other authority over such funds' foreign financial accounts.
- U.S. Hedge Funds with controlling interests in Offshore Funds with foreign financial accounts.