FBAR Filing Deadline Approaching

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Reports Due by the End of June

Every U.S. person that had a financial interest in, or signature or other authority over, a foreign financial account during 2014 must electronically file with the U.S. Treasury Department a Financial Crimes Enforcement Network ("FinCEN") Form 114, Report of Foreign Bank and Financial Accounts ("FBAR"), if the aggregate value of such foreign financial account(s) exceeded USD $10,000 at any time during 2014. If an FBAR for 2014 is required, it must be filed electronically with the Treasury Department on or before June 30, 2015. This deadline cannot be extended.

This reporting obligation is in addition to the IRS Form 8938 (Statement of Specified Foreign Financial Assets) which, if applicable, must be completed and filed with a taxpayer's U.S. federal income tax return. Unlike the IRS Form 8938, which currently applies only to individuals and is subject to its own set of rules, the FBAR filing obligation extends to domestic entities, including domestic corporations, partnerships, limited liability companies, trusts and estates.

To determine whether a taxpayer has an FBAR filing obligation, a taxpayer should consider the following definitions, which apply to both individuals and entities for FBAR purposes:

U.S. Person

A "U.S. person" means any (1) U.S. citizen or resident (including a resident alien), (2) entity (including, but not limited to, a corporation, partnership or limited liability company) created or organized in the United States, and (3) trust or estate formed under the laws of the United States. Entities and trusts that are disregarded for federal income tax purposes are not disregarded for FBAR purposes and, therefore, may be required to file an FBAR.

Financial Account

A "financial account" generally includes any savings deposit, demand deposit, checking, securities, security derivatives, debit card, prepaid credit card and any other financial instrument account, including certain insurance or annuity policies and pension funds. An account with a mutual fund or similar pooled fund which issues shares available to the general public that have a regular net asset value determination and regular redemptions is a financial account. However, an equity interest in a hedge fund, private equity fund or other private investment fund is not currently considered to be a financial account.

Foreign Financial Account

Only "foreign financial accounts" are reportable on the FBAR. A foreign financial account is a financial account that is maintained outside the United States. For this purpose, the United States includes the states, the District of Columbia, territories and possessions of the United States, and certain American Indian lands. An account maintained with a foreign branch of a U.S. financial institution is a foreign financial account for FBAR purposes. In contrast, an account maintained with a U.S. branch of a foreign financial institution is not a foreign financial account for FBAR purposes. The U.S. District Court for the Northern District of California recently held that web-based accounts held by a U.S. citizen and run by gambling websites that were licensed and regulated offshore are foreign financial accounts for FBAR purposes, regardless of the actual geographic location of the funds.

Financial Interest

A U.S. person has a "financial interest" in every foreign financial account for which such U.S. person is the owner of record or holds legal title, regardless of whether the account is maintained for such U.S. person's benefit or for the benefit of another.

In addition, a U.S. person has a "financial interest" in foreign financial accounts owned by entities (domestic or foreign) if such U.S. person owns, directly or indirectly: (a) in the case of a corporation, more than 50% of the voting power or the total value of the shares of such corporation; (b) in the case of a partnership, a more than 50% interest in the profits or capital of such partnership; or (c) in the case of other types of entities, more than 50% of the voting power or the total value of the equity or assets, or a more than 50% interest in the profits of, such other entities.

Similarly, if a U.S. person holds a present beneficial interest in more than 50% of the current income or assets of a trust that holds a foreign financial account, such U.S. person has a "financial interest" in such foreign financial account of the trust. A U.S. person with a remainder interest in a trust is not within the scope of the FBAR.

Signature or Other Authority

"Signature or other authority" is the authority of an individual (alone or in conjunction with another individual) to control the disposition of assets held in a foreign financial account by direct communication (whether in writing or otherwise) to the financial institution that maintains the foreign financial account.

If an FBAR is required, the following generally describes the procedural requirements and the consequences of non-compliance:

Filing

The FBAR must be filed electronically through FinCEN's Bank Secrecy Act E-Filing System on or before June 30, 2015. There is no longer a paper filing option. The online form and instructions may be **found here**.

The spouse of an individual who files an FBAR is not required to file a separate FBAR if all of the financial accounts that the non-filing spouse is required to report are jointly owned with the filing spouse and the filing spouse reports the jointly owned accounts on his or her FBAR. If jointly filing, both parties should complete and sign FinCEN Form 114a, Record of Authorization to Electronically File FBARs, which allows only one spouse to electronically sign a single FBAR for both parties. This form is kept for the taxpayers' records and is not sent to FinCEN. If spouses file FBARs separately, then each spouse must report the entire value of the jointly owned accounts on his or her FBAR.

A U.S. person deemed to have a financial interest in a foreign financial account of an entity, pursuant to the look-through rules described above, is required to file an FBAR with respect to such foreign financial account, unless, in the case of a trust, the trust, trustee or agent of the trust is a U.S. person and files an FBAR disclosing the trust's foreign financial accounts.

A U.S. individual who has signature authority over, but no financial interest in, a foreign financial account generally must file an FBAR with respect to such account, except in certain circumstances where the foreign financial account in question is owned by an entity subject to special treatment under the FBAR rules (including, for example, a publicly-traded entity or a financial institution that is registered with and examined by the Securities and Exchange Commission or the Commodity Futures Trading Commission), and the individual is an officer or employee of such entity.

Penalties for Non-Compliance

In general, failure to timely and properly file an FBAR may expose a taxpayer to a civil penalty of up to USD $10,000. Willful violations of FBAR filing obligations may expose a taxpayer to an increased civil penalty of up to the greater of USD $100,000 or 50% of the aggregate value of the taxpayer's foreign financial accounts at the time of the violation. In addition, willful violations may be subject to criminal penalties.

Offshore Voluntary Disclosure Program

A U.S. person who has failed to timely or properly file an FBAR in the past may be able to correct such failure and mitigate or eliminate any

applicable penalties through special programs currently administered by the Treasury Department. Taxpayers in this situation should consult with their Foley Hoag lawyer or tax advisor to discuss any available options.

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