

E-ALERT | Tax

June 7, 2011

FBAR FILING DEADLINE EXTENDED FOR CERTAIN US PERSONS

On May 31, 2011, the Financial Crimes Enforcement Network (“FinCEN”) extended the deadline to file foreign bank account reports (“FBARs”), from June 30, 2011 to June 30, 2012 for a limited group of US persons. The extension, issued as FinCEN Notice 2011-1, applies to certain persons with signature authority over one or more foreign financial accounts who may have been required by the final FBAR regulations issued in February to file an FBAR for the first time this year. We described this expansion of the reporting requirement in a prior client alert.¹

A US person with signature authority over a foreign bank account of his or her employer generally is required to file an FBAR reporting that signature authority, even though the employer separately must file a duplicative FBAR reporting its financial interest in the same account. The final FBAR regulations provide certain exceptions to the individual filing requirement if the individual has no financial interest in the account, which is often the case for company accounts. The exceptions apply to officers or employees of entities listed in the regulations (referred to below as “listed entities”).²

For example, one of the filing exceptions generally excuses the officers or employees of a US publicly traded parent corporation from filing an FBAR to report their signature authority over foreign accounts of the parent corporation. The exception similarly excuses officers or employees of the US subsidiaries of the parent corporation from filing an FBAR to report their signature authority over foreign accounts of the US subsidiary if the parent corporation files a consolidated FBAR that includes the subsidiary.

The exceptions in the final FBAR regulations, however, are narrower in certain cases than the exceptions provided in prior FBAR guidance. For example, officers or employees of foreign subsidiaries of the publicly traded parent corporation used to be granted a filing exception but no longer are. US persons such as these who were not required to file an FBAR under the prior guidance are now required to do so, and they are also required (as are all FBAR filers) to indicate in Schedule B, Part III, Line 7a of their personal federal income tax return (Form 1040) that they have signature authority over a foreign account. These new filing requirements went into effect on March 28, 2011. They were thus in effect at the time of the April 15 deadline for filing personal tax returns and are in effect for the June 30, 2011 filing deadline for the FBAR.³

FinCEN Notice 2011-1 now extends the FBAR filing deadline for one year with respect to certain officers and employees of listed entities and members of their controlled group. In general terms, the extension applies to an officer or employee of one member of a listed entity’s controlled group who has signature authority over a foreign account of a member of the controlled group. The controlled group for this purpose means the listed entity and any domestic or foreign entity (referred

¹ See [FBAR Final Regulations Expand Reporting Requirements](#) (Mar. 29, 2011).

² See 31 C.F.R. § 1010.350(f)(2)(i)–(v).

³ For instructions on answering questions on the 2010 Form 1040, see IRS Notice 2011-31, 2011-17 I.R.B. (March 30, 2011).

to below as a “controlled subsidiary”) owned more than 50 percent by the listed entity. Specifically, the extension applies to:

1. an officer or employee of a listed entity who has signature authority over and no financial interest in a foreign financial account of a controlled subsidiary; or
2. an officer or employee of a controlled subsidiary who has signature authority over and no financial interest in a foreign account of the listed entity, the controlled subsidiary, or another controlled subsidiary.⁴

These individuals have been granted a one-year extension of the time to file their 2010 FBAR. Notice 2011-1 should provide welcome relief to these individuals, many of whom were experiencing considerable difficulty in gathering the information required to file an FBAR by June 30, 2011. It is possible that FinCEN may expand the listed-entity exceptions to include some or all of the officers and employees eligible for the extension.

The notice comes with certain caveats, however. Notice 2011-1 does not provide any relief from the requirement to disclose foreign financial accounts on personal tax returns, such as IRS Form 1040. The IRS has not yet indicated that it will provide any relief from this requirement. In addition, in the case of “authorized service providers” (“ASPs”), the description of the situations to which the extension applies does not properly reflect the fact that there are two entities (rather than just one entity) involved in the ASP exception. The exception in the final regulations applies to officers and employees of the ASP with respect to accounts of an investment company registered with the SEC (and not with respect to accounts of the ASP itself). Based on the application of the extension in the context of the other listed entity exceptions, it appears that the intent of the Notice is to extend the deadline for officers and employees of subsidiaries of the ASP who have signature authority over accounts of the registered investment company.

It is possible that the IRS and FinCEN will issue additional guidance regarding the filing requirement to address these issues.

If you have any questions concerning the material discussed in this client alert, please contact the following members of our employee benefits, financial institutions and tax groups:

Dirk Suringa	202.662.5436	dsuringa@cov.com
Amy Moore	202.662.5390	anmoore@cov.com
William Paul	202.662.5300	wpaul@cov.com
Mark Plotkin	202.662.5656	mplotkin@cov.com
Michael Nonaka	202.662.5727	mnonaka@cov.com

This information is not intended as legal advice. Readers should seek specific legal advice before acting with regard to the subjects mentioned herein.

Under IRS standards of professional practice, certain tax advice must meet requirements as to form and substance. To assure compliance with these standards, we disclose to you that this communication is not intended or written to be used, and cannot be used, for the purpose of avoiding penalties.

⁴ The original notice extended the due date for officers and employees of a controlled subsidiary who had signature authority over, but no financial interest in, a foreign account of the listed entity or “another” controlled subsidiary—but did not extend the due date with respect to foreign accounts of the controlled subsidiary itself. On June 6, 2011, FinCEN amended the notice to include foreign accounts of the controlled subsidiary.

Covington & Burling LLP, an international law firm, provides corporate, litigation and regulatory expertise to enable clients to achieve their goals. This communication is intended to bring relevant developments to our clients and other interested colleagues. Please send an email to unsubscribe@cov.com if you do not wish to receive future emails or electronic alerts.

© 2011 Covington & Burling LLP, 1201 Pennsylvania Avenue, NW, Washington, DC 20004-2401. All rights reserved.