



## FOREIGN BANK ACCOUNT DISCLOSURE FORMS DUE JUNE 30, 2010

For 2010, the IRS has continued its strict enforcement efforts that culminated in the Voluntary Disclosure Program (ended on October 15, 2009) regarding the obligation of a *United States person* to file the Report of Foreign Bank and Financial Accounts (the "FBAR"). The term "United States person" means: (1) a citizen or resident of the United States, (2) a domestic partnership, (3) a domestic corporation, or (4) a domestic estate or trust, which is used to determine an individual's FBAR filing obligation for the 2009 and earlier calendar years.

**Penalties.** While it is certainly legal to have an account outside the U.S. and there are many everyday situations where it makes sense, the critical point is to disclose the account on your U.S. income tax return and, when applicable, on the FBAR. Willful failure to file the FBAR can result in substantial civil and criminal penalties, including up to 5 years in prison or both, and the total penalties imposed could far exceed the balance in the foreign financial account.

For calendar year 2009, the FBAR is due on June 30, 2010, with two exceptions noted below.

**Administrative Relief.** In [Notice 2010-23](#), the IRS provided the following regarding FBAR filings:

- Persons with signature authority over, but no financial interest in, a foreign financial account for which an FBAR would otherwise have been due on June 30, 2010, will now have until June 30, 2011, to report those foreign financial accounts.
- Persons with a financial interest in, or signature authority over, a foreign commingled fund that is a foreign mutual fund are required to file an FBAR unless another filing exception applies. The IRS will not interpret the term "commingled fund" as applying to funds other than mutual funds with respect to FBARs for calendar year 2009 and prior years. This means the IRS has determined that it will not apply its enforcement authority adversely in the case of persons with a financial interest in, or signature authority over, any other foreign commingled fund, such as a foreign hedge fund or private equity fund, with respect to that account for calendar year 2009 and earlier calendar years.

**FBAR-Related Questions on Federal Tax Forms.** A taxpayer who qualifies for the filing relief provided in [Notice 2010-23](#), provided the taxpayer has no other reportable foreign financial accounts for the year in question, should check the "no" box in response to FBAR-related questions found on federal tax forms for 2009 and earlier years that ask about the existence of a financial interest in, or signature authority over, a foreign financial account.

**Important Notes.** Extensions granted for federal tax returns do not extend the due date for filing the FBAR. Also, lawyers and CPAs are obliged to make reasonable inquiries when a client provides information that suggests participation in overseas transactions or accounts subject to FBAR. Finally, if a FBAR is filed, be certain that any income earned on the account is reported on Form 1040. Also, be aware that it usually is not the case that income earned in passive "offshore" accounts is free from U.S. tax until repatriated.

For more information, please contact [Mitch Horowitz](#) at (813) 222-1105, [Richard Jacobson](#) at (813) 222-1159 or [Jason Liu](#) at (813) 222-1163.

*Fowler White Boggs P.A. is experienced in handling all tax-enforcement related matters. The firm's attorneys include a former Assistant United States Attorney (AUSA) and federal prosecutor; a Senior Trial Attorney, Office of Chief Counsel, IRS, and a Trial Attorney with the U.S. Department of Justice's Tax Division.*