

T O U R F R I E N D S A N D C L I E N T S

M e m o r a n d u m



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IRS Offers Additional Relief for Filing 2008 (and Earlier) FBARs

We previously advised about significant uncertainties that exist with respect to Form TD F 90-22.1, Report of Foreign Bank and Financial Accounts and related instructions (the "FBAR") (most notably, with regard to whether US persons who hold interests in offshore hedge funds or offshore private equity funds are required to file FBARs with respect to such interests). For a more detailed discussion, please see our client memorandum dated June 17, 2009, entitled "[Uncertainties Regarding Applicability of FBAR Filings due June 30, 2009.](#)"

Additionally, we alerted you that the IRS had issued relief extending the deadline for filing 2008 FBARs to September 23, 2009, for certain FBAR filers who had only recently learned of their filing obligations and had insufficient time to gather the required information. Please see our client memorandum dated June 24, 2009, entitled "[IRS Offers Relief for Filing 2008 FBARs.](#)"

Today, the IRS issued Notice 2009-62 providing additional relief for certain FBAR filers with regard to FBAR filings for 2008 (which were due June 30, 2009) and for earlier years. The Notice extends the deadline for filing 2008 and earlier FBARs to June 30, 2010 for (i) persons with signature authority over, but no financial interest in, a foreign financial account and (ii) persons with a financial interest in, or signature authority over, a foreign commingled fund (in each case for these foreign financial accounts). The Notice states that the Department of the Treasury intends to issue regulations clarifying the application of the FBAR filing requirements in these circumstances and also requests public comments on other FBAR issues.

This is welcome news for holders of interests in foreign hedge funds and foreign private equity funds (*i.e.*, foreign commingled funds) for two reasons. First, it is possible that additional guidance will either exempt foreign hedge funds and private equity funds from the definition of financial accounts, or will exempt investors from filing in certain circumstances. Second, even if the filings are required, affected US persons will have significantly more time to submit their filings. *Please note, however, that US persons with financial interests in foreign financial accounts, other than commingled funds, who were unable to file*

their 2008 (and prior year) FBARs by June 30, 2009, but are entitled to the filing relief mentioned in our June 24th client memorandum, are still required to file their 2008 (and prior year) FBARs by September 23, 2009.

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