

AN ALERT FROM THE BDO INTERNATIONAL TAX PRACTICE

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► SUBJECT

INTERNAL REVENUE SERVICE ISSUES NEWLY REVISED FORM TD F 90-22.1 FOR FOREIGN BANK AND FINANCIAL ACCOUNT REPORTING

► AFFECTING

Any United States person who holds a financial interest in or has signature (or other) authority over a foreign bank or financial account.

► BACKGROUND

United States persons who hold a financial interest in or have signature authority over one or more bank or financial accounts in foreign countries are required to file Form TD F 90-22.1, Report of Foreign Bank and Financial Accounts (the so-called "FBAR form"), no later than June 30 following the calendar year in which the accounts were held.

After a series of notices and clarifications over the past two years with respect to the filing requirements related to foreign financial accounts, the Treasury Department Financial Crimes Enforcement Network ("FinCen") recently issued final regulations clarifying which persons are required to file reports of bank or financial accounts under federal banking law. See our March 2011 alert at www.bdo.com/download/1618.

Subsequent to issuance of the final FinCen regulations, Treasury released a new version Form TD F 90-22.1, which had been last updated in October 2008.

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► DETAILS

Under federal banking law, any United States person with a financial interest in or signature authority over any bank or financial account in a foreign country must file an FBAR form if the value of the foreign account at any time during the calendar year exceeds \$10,000.

On February 24, 2011, FinCen released final regulations concerning reporting by United States persons of interests in foreign financial accounts, which are generally effective for FBAR forms due on June 30, 2011, *i.e.*, for the calendar year 2010, as well as FBAR forms for future calendar years. Subsequent to the release of the final regulations, on March 26, 2011, the Treasury Department released the newest version of the FBAR form as well as Notice 2011-31, which provides guidance to taxpayers on how to answer questions related to foreign financial accounts when completing 2010 federal income tax and information returns.

Some specific changes which can be found on the revised FBAR form include (but are not limited to):

1. Changes to the definition of a United States person (removing the phrase “or a person in or doing business in the United States” as previously used in the October 2008 form instructions);
2. Changes to the definition of “financial account” to include a commodity futures or options account, an insurance policy with cash value (such as a whole life insurance policy), an annuity policy with a cash value, and shares in a mutual fund or similar pool fund; and
3. Clarification of certain exceptions to FBAR filing requirements, such as individual retirement account owners and beneficiaries, participants in and beneficiaries of tax-qualified retirement plans, signature authority, and certain trust beneficiaries if the trust, trustee of the trust, or the agent of the trust is a United States person and files an FBAR disclosing the trust’s foreign financial accounts.

In addition to the above, Notice 2011-31 states that, for all FBAR forms filed after March 27, 2011, the final regulations are effective and the revised FBAR form and instructions should be referred to when answering foreign financial account related questions on 2010 tax and information returns.

United States persons and their advisors should review the new FBAR form instructions and the final FinCen regulations in completing FBAR form reporting in advance of the June 30, 2011 due date for 2010 FBAR reporting.

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Material discussed in this tax alert is meant to provide general information and should not be acted on without professional advice tailored to your firm's individual needs.