



BDO Seidman, LLP
Accountants and Consultants

May 2005

Subject:

Deadline for Filing Form TDF 90-22.1: Report of Foreign Bank and Financial Accounts

International Tax Alert

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FOR MORE INFORMATION & YOUR LOCAL CONTACTS,

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Date/Timing:

Taxpayers are responsible for filing Form TDF 90-22.1, by **June 30, 2005**.

Affecting:

Subject to certain exceptions, any U.S. person (i.e., individual, corporation, partnership, trust or estate) who has a signature authority or direct/indirect financial interest in a foreign financial account (including bank, securities, or other types of financial accounts) in a foreign country that exceeds \$10,000 in the aggregate at any time during the calendar year, must report such accounts by filing TDF 90-22.1 (aka FBAR).

Notably, this disclosure also applies where the U.S. officer/shareholder/ partner of the U.S. company has signatory authority over a foreign subsidiary's foreign bank account. In addition, taxpayers who are currently filing Form 5471, Form 8865 or Form 3520 may also be subject to FBAR reporting requirements.

New Penalties for Failure to Comply:

The American Jobs Creation Act of 2004 (AJCA) included language amending the statutory penalties associated with failing to comply with the FBAR requirements. Whereas prior to the AJCA penalties were imposed on willful (i.e. intentional) violations, beginning October 22, 2004, penalties may be imposed on any violation of the FBAR requirements with willful violations being subject to harsher penalties.

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Failure to Comply:...(continued)

The revised penalties include both a new penalty for non-willful violations and increased penalty ranges for willful violations. Non-willful reporting violations are subject to penalties not to exceed \$10,000. Willful reporting violations are subject to a penalty which equals the *greater of* either (1) \$100,000 or (2) 50 percent of the amount of either (a) a transaction which is improperly reported or (b) the balance in an account which is improperly reported. As was the case prior to the enactment of the AJCA, criminal penalties could, under certain circumstances, amount to a fine of up to \$500,000 and imprisonment for up to ten years.

Note that persons required to file federal income tax returns must also answer the question on the return as to whether or not they have a financial interest in or signature over a foreign account, and whether the aggregate value of the accounts is over \$10,000 during the whole year. Failing to respond to the foreign bank account question could violate IRC Section 7206(1) if the taxpayer signing such a return knew that the return was not “true and correct as to every material matter.”

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