



BDO Seidman, LLP
Accountants and Consultants

June 2006

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, please contact:

Jack Frame
330 Madison Ave
New York, NY 10017
Phone: 212-885-8125
Fax: 707-982-0633
Email: jframe@bdo.com

Date/Timing:

Taxpayers are responsible for filing Form TDF 90-22.1 by **June 30, 2006**.

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 Form 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.

Furthermore, a U.S. person who holds an interest in a disregarded entity for which Form 8858 is required may be subject to FBAR reporting requirements if said disregarded entity holds a foreign bank account.

Exceptions:

Please note that certain exceptions apply to officers or employees of a bank or a domestic corporation. In the case of a bank, any officer or employee of a bank which is subject to the supervision of certain bank regulatory divisions (e.g. the FDIC or Federal Reserve System) need not report that he has signature or other authority over a foreign bank or other financial account maintained by the bank, provided he has NO personal financial interest in the account.

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In the case of an officer or employee of a domestic corporation, if the corporation's equity securities are listed upon national securities exchanges or has assets exceeding \$10 million and 500 or more shareholders of record, then such officer or employee need not file a report covering the other signature authority over a foreign financial account of the corporation provided that (1) he has NO personal financial interest in the account and (2) he has been advised over a foreign financial account of the corporation provided that (1) he has NO personal financial interest in the account and (2) he has been advised in writing by the chief financial officer of the corporation that the corporation has filed a current report, which includes that account.

We recommend that the form instructions are reviewed for additional information regarding the filing requirements.

Penalties for Failure to Comply:

The American Jobs Creation Act of 2004 (the "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 after October 22, 2004, penalties may be imposed on any violation of the FBAR requirements with willful violations being subject to harsher penalties.

The penalties include both a penalty of non-willful and 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 in violation of the reporting requirements or (b) the balance in an account which is improperly reported. 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 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."

Please note that the statute of limitations on FBAR reporting requirements is six years.

The information in this newsletter is for general guidance only and is not a substitute for professional advice. The BDO Member Firms accept no responsibility for any actions taken or not taken on the basis of the information in this newsletter.

To ensure compliance with Treasury Department regulations, we wish to inform you that any tax advice that may be contained in this communication (including any attachments) is not intended or written to be used, and cannot be used, for the purpose of (i) avoiding tax-related penalties under the Internal Revenue Code or applicable state or local tax law provisions or (ii) promoting, marketing or recommending to another party any tax-related tax-related penalties under the Internal Revenue Code or applicable state or local tax law provisions or (ii) promoting, marketing or recommending to another party any tax-related matters addressed herein.