

AN ALERT FROM THE BDO INTERNATIONAL TAX PRACTICE

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SUBJECT

SURFACE TRANSPORTATION AND VETERANS HEALTH CARE CHOICE IMPROVEMENT ACT OF 2015 FINCEN FORM 114 (FBAR) DUE DATE CHANGES

DATE/TIMING

As a result of the Surface Transportation and Veterans Health Care Choice Improvement Act of 2015, significant changes will be made to the due date and extension time of FinCEN Form 114, Report of Foreign Bank and Financial Accounts (FBAR), for tax returns for tax years beginning after Dec. 31, 2015.

AFFECTING

Any United States persons with a financial interest in or signature authority over foreign bank and financial accounts with a total balance exceeding \$10,000 at any time during the calendar year.

BACKGROUND

Taxpayers are currently responsible for filing FinCEN Form 114 (FBAR), on or before June 30th of the year immediately following the calendar year being reported and there is no provision for extensions. As a result of the Act, the due date for FBARs will be changed From June 30th to April 15th. Additionally, a maximum extension will be available for a 6-month period ending on October 15 under rules similar to the rules in Reg. § 1.6081-5. The Act also provides that for any taxpayer required to file Form 114 for the first time, any penalty for failure to timely request for, or file, an extension, may be waived by the Treasury Secretary.

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DETAILS

FinCEN requires that FBARs be filed electronically. United States persons are required to file an FBAR if they have a financial interest in foreign bank accounts with an aggregate value exceeding \$10,000 at any time during the calendar year. FBAR filing is also required by certain individual United States persons even if they do not have a financial interest in a reportable account if they have signature authority over one or more reportable accounts. This may include an officer or employee of a United States entity who has the requisite control over the transfer or withdrawal of funds from foreign financial accounts.

Failure to file an FBAR report may subject the non-filer to civil and criminal penalties. Penalties for a willful failure to file can be as much as the greater of \$100,000 or 50 percent of the amount in the account at the time of the violation. Since the statute of limitations for civil or criminal violations is generally six years for FBARs, total penalties from failure to file for multiple years could be more than the value in the account.

Relief exists for delinquent FBAR filers who properly reported all income related to their foreign financial accounts on their United States income tax return but who inadvertently failed to file an FBAR. Provided that these taxpayers have not yet been contacted by the IRS regarding their delinquent FBARs and are not currently under IRS review, delinquent FBARs may be submitted penalty-free.

HOW BDO CAN HELP

Due to increased scrutiny and severe penalty regime with respect to failure to file FBARs, it is important for all individuals and entities to review whether there is any financial interest in or signature authority over accounts subject to FBAR reporting. BDO can help you review these requirements and submit any FBARs electronically.

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