



IRS Extends FBAR Filing Deadline for Certain Funds to June 30, 2010

August 7, 2009

On August 7, 2009, the Internal Revenue Service ("IRS") issued a notice that it had extended the deadline for certain filers of the Report of Foreign Bank and Financial Accounts ("FBAR") to June 30, 2010 for filings for the 2008 and earlier calendar years. Specifically, the IRS will provide administrative relief for (i) persons with no financial interest in a foreign financial account but with signature or other authority over the foreign financial account, and (ii) persons with a financial interest in, or signature authority over, a foreign financial account in which the assets are held in a "foreign commingled fund."

The notice represents the second time that the IRS has extended the original FBAR deadline of June 30, 2009. On June 24, 2009, the IRS announced that certain persons had until September 23, 2009 to file FBARs if they had only recently learned of their filing obligation and had insufficient time to gather the necessary information to complete the FBAR filing by the deadline.

Since the IRS's revisions to the FBAR and accompanying instructions in October 2008, there has been considerable speculation that interests in hedge funds and perhaps even private equity funds may now be subject to FBAR reporting. The notice does not address whether these funds are subject to the FBAR filing requirements, but it does relieve persons with interests in offshore private equity funds and hedge funds from the need to make any filings with respect to this or prior years until at least June 30, 2010, by which time the IRS presumably will have provided clear guidance.

The IRS also announced that the U.S. Department of the Treasury has requested public comments by October 6, 2009 regarding the FBAR filing requirement with respect to a foreign "commingled fund," the phrase in the FBAR instructions (along with a recently added reference to "mutual funds") that gave rise to the FBAR controversy pertaining to private equity funds and hedge funds.

We will provide further updates as additional guidance becomes available. If you have any questions about the matters discussed in this memorandum, please contact your Simpson Thacher relationship partner. The names and office locations of all of our partners can be obtained from our website, www.simpsonthacher.com.

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