

VOLUNTARY DISCLOSURE PROGRAM FOR OFFSHORE FINANCIAL ACCOUNTS EXTENDED TO OCTOBER 15, 2009

Any United States person (as defined below) having a financial interest in, or signatory or other authority over, a bank, securities, mutual fund, brokerage, or other type of financial account in a foreign country must file an information return, Form TD F 90-22.1, Report of Foreign Bank and Financial Accounts (known as the FBAR) by June 30 of each year. Although the risks of failing to file the required FBARs are high—including significant fines up to 50% of the value of the account in each year and criminal penalties—many holders of foreign financial accounts were previously unaware of their filing obligations.

United States persons who must file an FBAR may include:

- US citizens or residents (such as green card holders) with a foreign financial account;
- US business entities, tax-exempt entities, trusts, and estates with a foreign financial account;
- Trust beneficiaries with more than 50% beneficial interest in a trust with a foreign financial account; and
- US citizens, residents, or entities with greater than 50% of the vote or value in a corporation or partnership with a foreign financial account.

Due to recent changes in Internal Revenue Service (IRS) FBAR guidance and instructions, two categories of potential FBAR filers—(1) persons with signature or other authority over the foreign financial account, but with no other financial or ownership interest in the account; and (2) persons with a financial interest in, or signature authority over, a foreign commingled fund, such as a hedge fund—have been granted an extension until June 30, 2010 to file FBARs for 2008 and prior years.

In the wake of recent litigation involving US holders of Swiss bank accounts, the IRS announced a “voluntary disclosure” program for taxpayers who did not previously comply with the FBAR filing requirement for offshore financial interest. This IRS

Brussels
+32 (0)2 290 7800

Denver
+1 303.863.1000

London
+44 (0)20 7786 6100

Los Angeles
+1 213.243.4000

New York
+1 212.715.1000

Northern Virginia
+1 703.720.7000

San Francisco
+1 415.356.3000

Washington, DC
+1 202.942.5000

This advisory is intended to be a general summary of the law and does not constitute legal advice. You should consult with competent counsel to determine applicable legal requirements in a specific fact situation. © 2009 Arnold & Porter LLP

arnoldporter.com

US Treasury Circular 230 Notice

Any US federal tax advice included in this communication (including any attachments) was not intended or written to be used, and cannot be used, for the purpose of (i) avoiding US federal tax-related penalties or (ii) promoting, marketing, or recommending to another party any tax-related matter addressed herein.

program requires taxpayers to pay back taxes and interest on any income earned in the foreign accounts, but may, in many cases, substantially reduce the applicable penalty and allow the taxpayer to avoid criminal prosecution. However, to be eligible for the program, taxpayers must contact the IRS prior to October 15, 2009, when the voluntary disclosure program ends.¹

If you have any questions regarding the requirement to file the FBAR form or eligibility to participate in the voluntary disclosure program, please contact your Arnold & Porter LLP attorney or:

James P. Joseph

+1 202.942.5355

James.Joseph@aporter.com

Bridget M. Weiss

+1 202.942.5839

Bridget.Weiss@aporter.com

¹ The new deadline was announced in a notice from the IRS on September 21, 2009 and represents a one-time extension of the original deadline of September 23, 2009 for taxpayers to disclose hidden offshore financial accounts. <http://www.irs.gov/newsroom/article/0,,id=213463,00.html>