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FBAR Compliance – The IRS Is Listening

On Friday, August 7, 2009 the US Internal Revenue Service (IRS) issued [Notice 2009-62](#), which is to be formally published in Internal Revenue Service Bulletin 2009-35, dated August 31, 2009. This Notice extends the due date for the filing of foreign bank account reports (FBARs) for 2008 and prior years for certain US persons until June 30, 2010.

In recent Client Alerts (see our [April](#) and [May](#) Alerts), we discussed the obligations imposed on US persons to report their signature authority over, or ownership interest in, a foreign "financial account." The original due date for calendar year 2008 FBAR filings had been June 30, 2009. This due date was previously extended to September 23, 2009, only for persons who had signature authority over, but no financial interest in, a foreign financial account and persons with authority over or an interest in a foreign commingled account or fund. It is no coincidence that this is the same due date for the IRS' much publicized Voluntary Compliance Initiative for foreign tax compliance reporting. A number of groups – including the New York State Bar Association Tax Section, which on July 17, submitted a lengthy and detailed letter requesting formal guidance for FBAR compliance – requested a further extension of the due date because of the lack of formal IRS guidance and the pressing need for further clarification of the IRS' FBAR position to avoid a number of unnecessary FBAR filings. Such massive filings could overwhelm the US Department of Treasury and make the government's compliance review of the submitted FBARs impractical.

The IRS, responding favorably to these comments and requests, has extended the due date for eligible US persons to June 30, 2010. Persons eligible for this new,

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extended due date are the same persons eligible for the earlier extension – i.e., persons who had signature authority over, but no financial interest in, a foreign financial account and persons with authority over or an interest in a foreign commingled financial account or fund. In the interim, the IRS has requested that comments on these specific and other aspects of FBAR compliance where significant uncertainty has existed or has arisen as result of recent informal public discussions of FBAR compliance be submitted by October 6, 2009. The expectation is that the IRS will review these issues and formally publish substantive guidance (preferably initially in draft form) in time for US taxpayers to comply with the new extended reporting date.

If you have any questions as to your eligibility for the extended due date for FBAR filings or would like to discuss the submission of comments addressing a particular FBAR compliance issue, please contact one of the lawyers listed in this Alert.

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