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TAX BULLETIN--ACTION REQUIRED

Date February 4, 2009

Re Foreign Bank and Financial Account Reporting

This Bulletin is a reminder to all tax return preparers that, when gathering information for tax returns (including, for example, Forms 1040, 1041, 1065, and 1120), the preparer must inquire of all clients about the existence of any foreign bank accounts or other financial accounts over which they may have either ownership, control, or signature authority. This information should then be disclosed in response to the relevant tax return question—even if the taxpayer has no includable interest or dividends—such as Question 7, Part III of Form 1040, Schedule B, Interest and Ordinary Dividends, Line 3 Other Information, Schedule G of Form 1041, Line 10 of Schedule B of Form 1065, and Line 6a of Schedule N of Form 1120.

All taxpayers who are currently filing Form 5471, Form 8858, Form 8865, or Form 3520 **may** also be subject to foreign bank and financial account reporting requirements. The inclusion of these forms in a taxpayer's tax return should also cause additional inquiry and review of whether additional reporting is required.

The requirement of foreign financial and bank account reporting is not only an important feature of federal tax law, but it also imposes a duty under our professional standards. As practitioners, we must comply with the foreign bank account reporting rules as part of our due diligence obligation under Section 10.22 of Circular 230. This due diligence obligation does not require that the practitioner "audit" the client. Due diligence does, however, require that a practitioner make reasonable inquiries when a client provides information that suggests possible participation in overseas transactions or investment in overseas accounts, which may be subject to United States reporting. A practitioner may rely on information provided by a client in good faith. The practitioner may not, however, ignore implications learned from information provided to, or actually known by, the practitioner. Practitioners are also required to advise their clients of potential penalties likely to apply to a position taken, such as failing to abide by the foreign reporting requirements. The practitioner must make reasonable inquiries if information appears incorrect, inconsistent with an important fact or factual assumption, or incomplete.

If a client fails to answer a question regarding foreign account ownership or control, we must inquire further; we cannot accept an incomplete or nonexistent response. We must request and document in our files the client representations as support for the answers to the applicable tax return questions on the applicable IRS tax reporting form.

We will update our disclosure checklists to reflect client representations in our work papers regarding foreign accounts. You will see additional questions pertaining to this item on the Tax Return/WTA

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 matters addressed herein.

Disclosure and List Maintenance Questionnaire that is required to be included in every tax return work paper file for tax returns we prepare.

Form TD F 90-22.1, Report of Foreign Bank and Financial Accounts, is the reporting form for the existence of ownership, control, or signature authority of a foreign bank or financial account. The due date is June 30, and there are no extensions available. If such form is required, you should discuss preparation arrangements and responsibilities regarding the preparation of this form, as many engagement letters may not contemplate or specifically include the preparation of this form is part of the scope of services covered.

The Treasury Department revised Form TD F 90-22.1 in October 2008, and the information required to be included on the form may be different than in prior years. Please take the time to review the new form. The revised form and instructions do have the following items of note:

Extends the reporting obligations to certain foreign entities doing business in the United States

Clarifies the definition of a financial interest in a foreign account

Expands the circumstances in which a United States person must report accounts by a foreign subsidiary

Extends the relief previously granted to officers and employees of United States-controlled groups that are publicly traded, are widely held, or have substantial assets.

Confirms that married couples can file joint reports.

Expands reporting to interests in foreign “mutual funds”

Clarifies that debit cards and prepaid credit cards are foreign financial accounts. Clarifies the treatment of persons and accounts in United States possessions.

Significant civil and criminal penalties may be imposed for the failure to file Form TD F 90-22.1 by a taxpayer or person required to file such form. A client’s legal counsel may need to be involved with the client in some situations, inasmuch as there are significant penalties that may be imposed for the failure to file Form TD F 90-22.1. Counsel may also be involved in order to maintain attorney-client protected communications.

Penalty Enforcement

The Internal Revenue Service has announced that it intends to enforce penalties for foreign bank account reporting noncompliance-as far back as six years, the statute of limitations under the *Bank Secrecy Act*, Title 31 USC. It might be possible to negotiate a reduction of these penalties if the required filer has begun compliance with these requirements. Effective March 24, 2008, the Service has delegated the authority ([Delegation Order 4-35](#)) to handle such enforcement to various government officials.

Resources

The Reporting Requirements Task Force of the AICPA Tax Division’s International Tax Resource Panel has developed two guides on foreign income reporting and the Form TD F 90-22.1 ([guide 1](#) and [guide 2](#)).

The Service has several resources on its Web site (www.irs.gov) including questions and answers to commonly asked questions.

We will be hosting an upcoming internal webinar to discuss in more detail the types of accounts which may be captured under the foreign bank and financial account reporting rules.

For further information regarding the foreign bank account reporting rules, please contact our Senior Tax Manager Leonard Trester at 703-437-8877 ext. 122