

News from our Tax and Venture Capital groups

Foreign Account Disclosure— Extension of Filing Deadline for Certain FBARs

The Treasury Department recently extended the deadline for certain required filings of Form TD F 90-22.1 (Report of Foreign Bank and Financial Accounts), commonly referred to as the “FBAR”. It appears that this extension should apply to most FBAR filings required with respect to foreign venture capital and private equity funds. See our June 24 *Cooley Alert!* at www.cooley.com/62717 for background and more details on TD F 90-22.1 (commonly).

In general, the FBAR was required to be filed for the 2008 calendar year by June 30, 2009, with an allowable extension to September 23, 2009, if certain additional requirements are satisfied. This extension applied to both 2008 and earlier calendar years.

Extended deadline for certain FBARs

In response to public comments, Treasury issued Notice 2009-62, further extending the deadline for certain FBARs. This extension applies to both the calendar year 2008 FBAR and to earlier calendar years. The extended deadline for eligible FBARs is June 30, 2010.

The FBARs eligible for the June 30, 2010 filing deadline are:

- ▶ FBARs required solely by virtue of a person’s signature (or similar) authority over the foreign financial account (i.e., where the person has no financial interest in the account), and
- ▶ all FBARs required with respect to foreign financial accounts in which the assets are held in a commingled fund.

There is currently no extension applicable to FBARs for calendar year 2009. Accordingly, all 2009 FBAR filings also will be required by June 30, 2010.

Implications for limited partners and general partners of foreign funds

As noted in our June 24 *Cooley Alert!*, the application of the FBAR filing to venture capital and private equity funds is unclear. However, in light of Treasury’s apparently broad interpretation and the potential for penalties, U.S. LPs and GPs with ownership interests in, or signature authority over, a non-U.S. venture capital or private equity fund account exceeding \$10,000 in value should consider filing the FBAR.

Based on Notice 2009-62, it appears that the extended June 30, 2010, deadline should apply to all 2008 and prior-year FBARs required to be filed solely because an LP or GP has an ownership interest in a foreign venture capital or private equity fund. Furthermore, the deferred deadline also should apply to any GP having an FBAR filing obligation solely because the GP has signature authority over a foreign fund. Thus, the extended deadline should apply to most FBARs required to be filed with respect to foreign venture capital and private equity funds.

Other FBAR filings not affected

The extension provided by Notice 2009-62 is limited to the FBAR categories described above. The extended deadline does not apply to FBARs required with respect to a financial interest in a foreign bank or similar

financial account. Filers having financial interests in such accounts should have filed for calendar year 2008 (and prior years) by June 30, 2009, unless they take advantage of the special September 23, 2009 deadline under the procedure described in our previous *Cooley Alert!*.

* * *

For more information on the FBAR, please feel free to call or email your regular Cooley contact. ■

CIRCULAR 230 DISCLOSURE

The foregoing discussion is not intended to be used, and may not be used by any taxpayer, for the purpose of avoiding penalties that may be imposed on the taxpayer. This discussion was not written to support the promotion or marketing of any transaction. Taxpayers should seek tax advice based on their particular circumstances from an independent tax advisor.

KEY ATTORNEY CONTACTS

For more information, please call your regular Cooley Fund or Tax Group contact, or feel free to contact:

Dan Meehan.....720/566-4061
dmeehan@cooley.com

Bill Morrow.....858/550-6075
bmorrow@cooley.com

This information is a general description of the law; it is not intended to provide specific legal advice nor is it intended to create an attorney-client relationship with Cooley Godward Kronish LLP. Before taking any action on this information you should seek professional counsel.

Copyright © 2009 Cooley Godward Kronish LLP, 3000 El Camino Real, Palo Alto, CA 94306. Permission is granted to make and redistribute, without charge, copies of this entire document provided that such copies are complete and unaltered and identify Cooley Godward Kronish LLP as the author. All other rights reserved.