

INTERNATIONAL TAX

ADVISER

Helping Work Globally

A successful multi-national business or investor must consider the tax consequences of business or investment decisions. We can help you comply with tax reporting requirements that have a significant impact on your bottom line.

FinCEN Proposals on the FBAR

FinCEN, a bureau of the Department of the Treasury, has proposed new regulations regarding the Report of Foreign Bank and Financial Accounts (FBAR). On February 23, 2010, FinCEN issued a Notice of Proposed Rulemaking (NPRM) to amend the Bank Secrecy Act.

The changes, if implemented, fine tune various terms and definitions relating to the application of the FBAR and address concerns regarding various controversial interpretations that seemed to be applicable under the prior regulations.

The following are a few of the major changes proposed:

- The proposed regulation would employ a new term – “U.S. person” – to indicate the class of individuals or entities

that would be required to file the FBAR. The term is not defined for these purposes in the same way as it is defined for other purposes throughout the Code, so taxpayers and tax practitioners must be careful when applying the new term. (Currently, under IRS Announcement 2010-16, the requirement is suspended for persons who are not U.S. citizens U.S. residents, or domestic entities.)

- The proposed regulation clearly defines the types of reportable accounts, such as bank, securities, and other financial accounts. The definition of account would not include interests in private equity funds and hedge funds, putting to rest, for now, a point of controversy in the practitioner community.

- The proposed regulation exempts from the obligation to file an FBAR:

- owners of certain accounts held within retirement plans,
- certain trust beneficiaries, and
- certain individuals who have signature authority and no financial interest.

In addition to the NPRM, provisions within the recently enacted New HIRE Act will require certain individuals to make additional disclosures regarding their foreign financial accounts and other foreign investment interests. For now, the relevant authorities have made clear that individuals must comply with both sets of compliance requirements.

The provisions in the NPRM will make permanent the notices that came out earlier in the year. They have the effect of providing a measure of clarity to some of the ambiguous FBAR filing requirements.

**To view other articles related to international taxation, visit
www.holtzrubenstein.com/ita/ita_newsletter.php**



CERTIFIED PUBLIC ACCOUNTANTS. BUSINESS ADVISERS.

Superior Thinking.
Unmatched Integrity.

Holtz Rubenstein Reminick LLP • www.hrrllp.com

1430 Broadway
New York, NY 10018
212-697-6900

125 Baylis Road
Melville, NY 11747
631-752-7400

To change contact
information, please contact
info@holtznews.com

ARTICLES INCLUDED HEREIN DO NOT CONSTITUTE AN OPINION AND ARE NOT INTENDED OR WRITTEN TO BE USED, AND THEY CANNOT BE USED, BY ANY TAXPAYER FOR THE PURPOSE OF AVOIDING PENALTIES THAT MAY BE IMPOSED ON THE TAXPAYER. This publication is designed to present matters of general interest relating to accounting, taxation and business management. Articles were written by the staff of Holtz Rubenstein Reminick LLP. Please consult your HRR adviser before taking any specific actions.

©2010 Holtz Rubenstein Reminick LLP.