



Treasury Issues Proposed Regulations Regarding FBAR Reporting for U.S. Companies and their Employees with Signature Authority

PRACTICE AREAS

International Tax

Proposed 31 CFR 1010.350

Reports of Foreign Financial Accounts

IP&B Client Alert

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On March 1, 2016, the Department of the Treasury ("Treasury") published proposed regulations under Title 31 that modify the rules under which U.S. persons are required to report financial interests in or signature authority over foreign financial accounts. If adopted, the proposed regulations will broaden the filing exemption for officers, employees and agents who have signature authority but no financial interest in foreign financial accounts owned by the employee's U.S. employer or its affiliates. The proposed regulations will remove the current provision that limits the information reported with respect to situations when a filer has financial interest in or signature authority over 25 or more foreign financial accounts. Finally, the proposed regulations change the filing due date for FBARs to be filed with respect to the 2016 calendar year and future years to April 15. Extensions to October 15 of the reporting year will be available upon request.

Background

Regulations Section 1010.350 generally requires each U.S. person having a financial interest in, or signature or other authority over, a bank, securities, or other financial account in a foreign country to report such relationship to the Internal Revenue Service ("IRS") for each calendar year in which such relationship exists, and "provide such information as shall be specified in a reporting form to be filed by such persons." The form to be used is the Report of Foreign Bank and Financial Accounts - FinCEN Form 114 ("FBAR"), which, since July 1,



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2013, must be filed electronically. The FBAR must be filed on or before June 30 for foreign accounts maintained during the previous calendar year if the aggregate value exceeded \$10,000. Related regulations also require records of foreign financial accounts to be maintained for each U.S. person having a financial interest in or signature authority over such accounts for five years.

Current regulations provide an exemption from the FBAR reporting requirement for officers and employees that have signature authority over foreign financial accounts of "covered entities" if the officer or employee has no financial interest in the foreign account. Specifically, employees of certain federally regulated entities and publicly traded companies are exempt from reporting their signature authority over foreign financial accounts owned by their employer or the employer's U.S. subsidiary if the subsidiary is included in a consolidated FBAR filed by the parent. Situations not covered by the employee reporting exemption include (1) foreign accounts owned by *foreign* subsidiaries of covered entities; and (2) employee signature authority over a foreign account owned by an entity other than the person's employer (*i.e.*, signature authority over an account owned by the employer's publicly traded parent or sister entity).

In response to perceived shortcomings in the employee exemption provisions, the IRS issued a series of Notices providing temporary relief addressing the situations described in (1) and (2) above. These provisions covered: (i) employees of a subsidiary (including foreign subsidiaries) of a publicly traded corporation who have signature authority over (and no financial interest in) a foreign financial account of the parent, the subsidiary or another controlled person of the parent, and (ii) employees of a publicly traded parent with respect to signature authority over domestic or foreign subsidiaries (*i.e.*, an employee of the parent where the foreign account is owned by the subsidiary, a person that is not the employee's employer). The most recent of these temporary provisions, FinCEN Notice 2015-1, extended this filing relief until April 15, 2017.

Proposed Regulations

The "signature authority exemption" in the proposed regulations would eliminate the requirement for officers, employees, and agents of any U.S. entity to report foreign financial accounts owned by the entity over which the officer, employee, or agent has signature authority solely due to their employment when those accounts are required to be reported by their employer, or any other U.S. entity within the same corporate or other business structure as their U.S. employer. This change would provide a much broader exemption than current regulations in that the proposed exemption would apply to any type of entity (without regard to whether the entity was publicly traded) and would apply to accounts owned by parties that are related to the employer. Under the revised exemption rules, employers would be required to maintain for a period of five years information identifying all officers, employees, or agents with signature authority over, but no financial interest in the employer's foreign financial accounts.



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The proposed exemption would not extend to U.S. persons in instances in which no entity within the employer's corporate or other business structure has an obligation to report its financial interest in a foreign financial account. For example, if a U.S. citizen is an employee of a non-U.S. entity that has no obligation to file the FBAR, and the foreign entity is not included as a subsidiary of a U.S. entity that is filing a consolidated FBAR, the U.S. employee would have an obligation to report his or her signature authority over the foreign entity's foreign financial accounts.

The proposed regulations would remove the provisions that limit the information reported with respect to situations when a filer has financial interest in, or signature authority over, 25 or more foreign financial accounts. Under the revised rules, all U.S. persons would be required to report detailed account information on all foreign financial accounts in which they hold a financial interest or signature authority (subject to the signature authority exemptions discussed above).

The proposed changes should provide welcome relief for entities that qualify for the signature authority exemption. For example, employees of treasury groups would be relieved of the requirement to file FBARs with respect to accounts over which they hold only signature authority as long as a U.S. entity in the business group has a requirement to report the accounts.

The proposed regulations will not take effect until final regulations are adopted. In the interim, existing procedures for FBAR reporting (including the temporary relief provisions described above) remain in effect. Written comments to the proposed regulations may be submitted on or before May 9, 2016.

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