

May 13, 2015

FOREIGN ACCOUNTS REPORTING

Dear Clients and Friends:

Individual taxpayers may be aware that they must report foreign financial accounts on their income tax returns if they have a financial interest in those accounts and their reported interest and dividend income exceeds \$1,500. Reporting is required even if the taxpayer does not own a financial account but has signature authority over that account. Taxpayers owning or having signature authority over foreign accounts may also need to file FinCEN Report 114 (*FBAR*) by June 30. The filing of the *FBAR* is separate from any individual or corporate tax return.

An *FBAR* is due if a taxpayer's foreign financial accounts have an aggregate value in excess of \$10,000 at any time during the calendar year. The *FBAR* due June 30, 2015 would report the status of foreign accounts in calendar year 2014. Because account balances fluctuate and exchange rates may vary in the course of a year, a taxpayer should monitor foreign financial accounts to determine if the total balance in all accounts exceeds the filing threshold at any time.

This threshold is based on the balance of the account as whole, not the taxpayer's proportionate interest. A taxpayer who owns a one-half interest in a foreign financial account with a balance of \$15,000 still has a reporting requirement even though the taxpayer's interest in that account is only \$7,500.

A trustee has a duty to file an *FBAR* if the trust assets include foreign financial accounts whose aggregate balance exceeds the filing threshold. A grantor of a trust or a trust beneficiary may have to file an *FBAR* for the trust accounts if the trustee is not a United States person or fails to file an *FBAR*. A prudent beneficiary should seek confirmation of the *FBAR* filing, because the beneficiary may be subject to the filing requirement if the trustee fails to file.

A fiduciary of a decedent's estate or revocable trust should confirm proper reporting of foreign financial accounts on the decedent's final income tax return and on the fiduciary income tax returns of the estate or trust. The failure to report the financial accounts on those returns prevents the statute of limitations from ever running with respect to any item on those returns and on any related return. The

Internal Revenue Service takes the position that related returns include the estate tax return. Failure to comply with the reporting requirement may leave the fiduciary and beneficiaries subject to assessment of additional estate tax for an unlimited period.

Financial accounts for these purposes include securities, brokerage, banking, futures or options accounts, an insurance policy with a cash value, an annuity policy, and shares in a mutual fund. Any account maintained outside the United States would be a foreign account. Generally, an account in the United States branch of a foreign bank is not a foreign financial account for purposes of the FBAR.

The FBAR is due by **June 30. No extensions are available.** An extension of time to file an individual's federal income tax return **does not** extend the FBAR filing deadline.

The FBAR is a report. No tax is due with the report. A person who fails to file a required FBAR is subject to a \$10,000 penalty per violation. The penalty may be waived for reasonable cause if the taxpayer discloses the foreign financial accounts on a late filed report. Willful violations may subject to the taxpayer to criminal prosecution and increase potential penalties to \$100,000 or 50% of the account balance, whichever is greater.

The FBAR is filed electronically. A taxpayer may authorize an accountant, attorney, or other professional to file the FBAR on his or her behalf. We would be pleased to address additional questions you may have regarding the tax reporting requirements for foreign financial accounts.

Kind regards.

Very truly yours,

HARTOG & BAER
A Professional Corporation



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