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IRS EXTENDS DEADLINE FOR FILING FOREIGN BANK ACCOUNT REPORTS (FBAR) FOR CERTAIN TAXPAYERS TO SEPTEMBER 23, 2009

By Richard J. Horne, Esq., Kenneth J. Slutsky, Esq., Michael N. Goen, Esq., Marie T. DeFalco, Esq., Peter D. Greene, Esq., Elaine M. Hughes, Brian A. Silikovitz, Esq. and Isaac Hirsch, Esq.

June 25, 2009

In our June 18th Client Alert¹, we advised that certain personnel from the IRS recently had stated during a teleconference their position that an offshore hedge fund is a foreign financial account for FBAR purposes and that, therefore, every U.S. investor in an offshore hedge fund should file an FBAR. FBARs for 2008 generally must be filed by June 30, 2009. However, the IRS has announced that certain filers may be permitted until September 23, 2009 to file without penalty.

As a result of the confusion caused by the IRS's position, the IRS announced on June 24th that it will allow taxpayers who reported and paid tax on all of their 2008 taxable income, but who only recently learned of their FBAR filing obligation and therefore have insufficient time to gather the necessary information to complete the FBAR and file it by the June 30th

deadline, to file the delinquent FBAR by September 23, 2009. A delinquent FBAR filer should include a copy of the filer's 2008 tax return and a statement explaining why the FBAR is filed late. In this situation, the IRS will not impose a penalty for the failure to file the FBAR. For 2008 tax returns due after **September 23, 2009**, the tax return does not need to accompany the 2008 FBAR.

This guidance was issued by the IRS as part of an update to its frequently asked questions in connection with its voluntary disclosure program with respect to U.S. persons that have previously failed to file required FBARs.

We spoke today with one of the IRS panelists who made the original statement regarding offshore hedge funds being foreign financial accounts. He said that given all of the questions the IRS has been receiving about hedge funds, the IRS understands that certain

taxpayers have only recently been made aware of the requirement to file for hedge funds. Therefore, taxpayers who reported and paid tax on all income from a foreign hedge fund in 2008 and who have insufficient time to gather the necessary information to complete the FBAR and file it by the June 30th deadline will be able to file the FBAR by September 23, 2009 without incurring a penalty for a delinquent FBAR filing.

Delinquent FBAR reports should be filed with the Philadelphia Offshore Identification Unit at the following address:

Internal Revenue Service
11501 Roosevelt Blvd.
South Bldg., Room 2002
Philadelphia, PA 19154
Attn: Charlie Judge, Offshore
Unit, DP S-611

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¹ <http://www.lowenstein.com/files/Publication/6fe65cfc-5e90-495e-87dc-f211e26fa36f/Presentation/PublicationAttachment/3106a185-4b43-4a79-b10e-fef1e52eae72/Foreign%20Bank%20Account%20Reporting%20Requirements%20IM.Tax%20Alert%206.18.09.pdf>

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