



ADVERT

**FOREIGN INDIVIDUALS
WITH A PHYSICAL PRESENCE IN THE U.S.
MAY HAVE FBAR OBLIGATION**

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The Report of Foreign Bank and Financial Accounts (“FBAR”) filing obligations are currently a focus of the Internal Revenue Service and the scope of these obligations are such that they may apply to unsuspecting individuals.

The FBAR requirements provide that any 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 is required to report such relationship to the IRS if the aggregate value exceeds \$10,000 at any time during a calendar year.¹ The FBAR due date is June 30 after the calendar year in which the relationship exists. Currently, the IRS has extended the 2008 deadline for all persons to September 23, 2009² and has further extended the deadline for certain persons to June 30, 2010.³

The FBAR filing requirements apply equally to U.S. citizens and U.S. residents. A foreign individual can be deemed a U.S. resident for FBAR purposes solely due to his physical presence in the U.S.⁴ For illustration purposes only, if a Turkish citizen is a professor at Cornell University and resided in Ithaca, NY for 200 days in 2008, such professor would be required to file an FBAR for 2008 if his foreign account balances exceeded \$10,000 at any time in 2008. Accordingly, it is imperative that foreign citizens (regardless of industry) be advised on how to comply with the FBAR rules in advance of the filing deadlines. In this example the deadline would be September 23, 2009.

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¹ 31 CFR 103.24. Treasury Dept. Form 90-22.1 is the form used to notify the IRS of foreign financial accounts.

² FAQs on Voluntary Disclosure Process and Undisclosed Offshore Account, Q&A 9, May 6, 2009.

³ IRS Notice 2009-62 (August 7, 2009); See also Brown Rudnick Client Alert dated August 12, 2009 (FBAR – REPORT OF FOREIGN BANK ACCOUNT; IRS Extends 2008 Filing Deadline to June 2010).

⁴ Subject to certain exceptions, an individual meets the substantial presence test for any calendar (current) year if: (1) he was physically present in the U.S. on at least 31 days during the current year, and (2) the sum of the days he was physically present in the U.S. during the current year, plus one-third the number of days he was physically present in the U.S. during the first preceding calendar year, plus one sixth the number of days he was physically present in the U.S. during the second preceding year equals or exceeds 183 days.