

MEMO# 24256

April 21, 2010

Draft ICI Comment Letter on FBAR Proposed Regulations; Please Provide Comments by Monday, April 26

[24256]

April 21, 2010

TO: TAX COMMITTEE No. 10-10
ACCOUNTING/TREASURERS COMMITTEE No. 4-10
INTERNATIONAL COMMITTEE No. 5-10
SEC RULES COMMITTEE No. 18-10
PENSION COMMITTEE No. 10-10 RE: DRAFT ICI COMMENT LETTER ON FBAR PROPOSED
REGULATIONS; PLEASE PROVIDE COMMENTS BY MONDAY, APRIL 26

The ICI has prepared the attached draft letter commenting on the Treasury Department's Financial Crimes Enforcement Network ("FinCEN") notice of proposed rulemaking regarding the filing requirements for Form TD F 90-22.1, the Foreign Bank and Financial Accounts Report ("FBAR"). [1] The proposed regulations address, in part, the Institute's request for an FBAR filing exception. [2] Specifically, the proposed regulations provide that an employee of an "Authorized Service Provider" who has signature or other authority over a foreign financial account owned or maintained by an SEC-registered investment company need not file the FBAR so long as the person has no financial interest in the account. Because the definition of "Authorized Service Provider" is limited to "an entity that is registered with and examined by the [SEC] and that provides services to an investment company registered under the Investment Company Act of 1940," employees of a service company that itself is not registered with the SEC would not be covered by the reporting exception.

The draft comment letter, based upon comments received during the March 10 conference call to discuss the industry's issues, [3] first commends FinCEN for the steps taken in the

proposed regulations to reduce the burdens otherwise imposed on employees of fund service providers to make FBAR filings that would duplicate the FBAR filings made by the funds themselves. The letter then urges the following changes to the regulations.

First, the letter urges that filing relief be extended to employees of service providers to regulated funds, with respect to accounts owned or maintained by the funds, whether or not the service providers are regulated by the SEC. The specific suggestion made in the letter is that the term “authorized service provider” be defined, as we suggested in our 2009 letter, as “an entity that provides services to an investment company registered under the Investment Company Act of 1940 and for which one or more employees of the service provider have signature or other authority for one or more such investment companies.” This change to the definition would provide the industry with the relief contemplated by the proposed regulations.

Second, the letter urges that simplified reporting procedures provided by the proposed regulations – for persons with signature authority over (but no financial interest in) 25 or more foreign financial accounts – be extended to cover all persons with signature authority over (but no financial interest in) the foreign financial accounts of an SEC-registered fund irrespective of the number of accounts for which such authority is provided. In all such cases, the Secretary or his delegate could request detailed additional information.

Third, the letter urges that additional consolidated reporting relief be provided to funds organized by the same fund manager. Specifically, all foreign financial account information for all funds in this same fund “family” should be reportable in a single consolidated FBAR filing. Detailed information regarding the accounts of each fund in the fund family would be provided, upon request, to the Treasury Secretary or his delegate.

Please provide any comments on the draft comment letter to the undersigned, at lawson@ici.org or 202/326-5832, by Monday, April 26. The letter will be filed with FinCEN on Tuesday, April 27. Thank you.

Keith Lawson
Senior Counsel - Tax Law

[Attachment](#)

endnotes

[1] See Institute [Memorandum](#) [#24156] to Tax Members No. 5-10, Accounting/Treasurers Members No. 10-10, International Members No. 4-10, SEC Rules Members No. 21-10, and Pension Members No. 6-10, dated February 26, 2010.

[2] See Institute [Memorandum](#) [#23182] to Tax Members No. 3-09, Accounting/Treasurers

Members No. 5-09, International Members No. 1-09 and SEC Rules Members No. 4-09, dated January 15, 2009. See also, Institute [Memorandum](#) [#23556] to Tax Members No. 12-09, Accounting/Treasurers Members No. 28-09, International Members No. 12-09 and SEC Rules Members No. 62-09, dated June 17, 2009; Institute [Memorandum](#) [#23634] to Tax Members No. 15-09, Accounting/Treasurers Members No. 32-09, International Members No. 17-09 and SEC Rules Members No. 76-09, dated July 17, 2009; and Institute [Memorandum](#) [#23857] to Tax Members No. 25-09, Accounting/Treasurers Members No. 42-09, International Members No. 25-09 and SEC Rules Members No. 106-09, dated October 8, 2009.

[3] See Institute [Memorandum](#) [#24165] to Tax Committee No. 6-10, Accounting/Treasurers Committee No. 2-10, International Committee No. 2-10, SEC Rules Committee No. 11-10, and Pension Committee No. 5-10, dated March 2, 2010.

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