

MEMO# 23810

September 22, 2009

Draft FBAR Reporting Submission; Please Comment by September 28

[23810]

September 22, 2009

TO: TAX COMMITTEE No. 25-09

ACCOUNTING/TREASURERS COMMITTEE No. 16-09

INTERNATIONAL COMMITTEE No. 15-09

SEC RULES COMMITTEE No. 56-09 RE: DRAFT FBAR REPORTING SUBMISSION; PLEASE
COMMENT BY SEPTEMBER 28

The attached draft letter to the Internal Revenue Service ("IRS") regarding simplified procedures for reporting foreign accounts on the Foreign Bank and Financial Accounts Report (the "FBAR") is being distributed for your review. This letter was prepared in response to the IRS request for comments in connection with the relief issued in August (Notice 2009-62) [\[1\]](#) that extended [\[2\]](#) until June 30, 2010 any obligation, otherwise imposed on persons having signature authority over (but no financial interest in) a foreign account, to file the FBAR.

This letter first reiterates the ICI's January request [\[3\]](#) for guidance providing that employees of firms that provide services to funds, who have signature or other authority over a fund's foreign accounts, may utilize an FBAR filing requirement exception available to specified employees. If the employee exception is not broadened as we suggest, the letter repeats suggestions that we made in July [\[4\]](#) that: (1) any filing requirement be limited to a statement providing the employee's name and contact information, the employer's name and contact information, and the name of the funds for which the employee has signature authority; and (2) persons who have only signature authority over foreign accounts not be required to include their tax returns with any FBAR filing.

The letter also makes a few additional requests. First, the letter seeks published guidance maintaining the current definition, set forth in the FBAR instructions, of “financial interest.” Under this definition, a person would not have a financial interest in a fund’s financial accounts unless the person owned, directly or indirectly, more than 50 percent of the fund’s shares. Second, the letter urges that the FBAR filing process be simplified by permitting both consolidated filings by service providers with respect to all funds for which they provide services and electronic filings by all persons. Third, the letter urges the IRS to clarify the types of accounts for which FBAR filings are required. One example of a scenario that has created confusion is described in the letter. Finally, the letter urges that revised guidance be issued early in 2010 – and well in advance of the April 15 due date for filing individual income tax returns (on which individuals must indicate any FBAR filing obligation).

Please provide any comments on the draft letter to the undersigned (at lawson@ici.org or 202/326-5832) by Monday, September 28. The letter, which is due on October 6, will be filed by Wednesday, September 30.

Keith Lawson
Senior Counsel - Tax Law

[Attachment](#)

endnotes

[1] See Institute [Memorandum](#) [#23687] to Tax Members No. 16-09, Accounting/Treasurers Members No. 35-09, International Members No. 22-09 and SEC Rules Members No. 87-09, dated August 7, 2009.

[2] This guidance supplements guidance, requested by the ICI, that was issued in June to extend the reporting deadline from June 30, 2009 until September 23, 2009. See Institute [Memorandum](#) [#23583] to Tax Members No. 13-09, Accounting/Treasurers Members No. 29-09, International Members No. 16-09 and SEC Rules Members No. 70-09, dated June 25, 2009.

[3] 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.

[4] See 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 16, 2009.

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