

September 22, 2009

MEMORANDUM TO CLIENTS

RE: IRS Extends FBAR Deadline until October 15, 2009, for Certain Filers

Yesterday, the Internal Revenue Service ("IRS") once again extended the deadline for certain U.S. persons to file a Report of Foreign Bank and Financial Accounts, Form TD F 90-22.1 ("FBAR"). The announcement (available at <http://www.irs.gov/newsroom/article/0,,id=213463,00.html> and <http://www.irs.gov/newsroom/article/0,,id=210027,00.html>) provides that those otherwise required to file FBAR by September 23, 2009, are now permitted to file by October 15, 2009, without penalty. This extension is helpful for filers not already eligible for the deadline extension granted by the IRS in Notice 2009-62.

As discussed in our August 11 Memorandum to Clients, Notice 2009-62 extended the FBAR filing deadline until June 30, 2010, for U.S. persons with (i) signature or other authority over a foreign financial account and (ii) a financial interest in a foreign financial account that is a "commingled account." However, trustees, custodians, trusts and plan sponsors – all of which may be deemed to have a financial interest in plan investments – do not appear to be eligible for the June 30, 2010 deadline for their interests in foreign financial accounts that are not "commingled funds." Such accounts may include, among other things, foreign securities accounts. Thus, the October 15 extension may be helpful for trustees, custodians, trusts, and plan sponsors still struggling to submit delinquent FBAR filings within the penalty-free period.

We note that FBAR filings must be received by the IRS by October 15, so those filing by mail should ensure that they allow sufficient time for delivery. According to yesterday's announcement, there will be no further FBAR extensions.

For your reference, the following additional FBAR resources are available on the Groom website:

- *FBAR Filing Deadline Extended Until June 30, 2010, in IRS Notice 2009-62* (Aug. 11, 2009), available at <http://www.groom.com/resources-413.html>
- *Groom Comments on FBAR Filing Requirement for Plans* (July 30, 2009), available at http://www.groom.com/media/publication/518_IRS_%20FBAR%20Filing%20Suspension%20Request%20final.pdf
- *Plans May Be Required to Make FBAR Filing for Offshore Investments by September 23, 2009* (June 25, 2009), available at <http://www.groom.com/resources-404.html>

If you would like to discuss the FBAR filing requirements or are interested in submitting comments, please contact Jennifer Eller ((202) 861-6604, jee@groom.com), Michael Kreps ((202) 861-0182, mkreps@groom.com), or your regular Groom attorney.