



## News From Giordani, Swanger, Ripp & Phillips, LLP

### **Reminder - Filing Deadline for FBAR Approaching**

#### **For Clients and Friends of GSRP, LLP**

GSRP would like to remind you that the due date for filing your 2010 Treasury Report of Foreign Bank and Financial Accounts ("FBAR") is June 30, 2011. The report cannot be extended, and the "timely mailed is timely filed" rule that applies for income tax returns does not apply to FBARs. Therefore, the FBAR must be delivered to Treasury on or before June 30.

#### **Background**

The FBAR is one tool used by the IRS to monitor U.S. persons' foreign holdings and improve tax compliance generally. United States citizens and residents, and entities organized in the U.S., having a financial interest in a foreign account are required to file the FBAR annually disclosing identifying information and the maximum value of each foreign account held during the year. In addition, U.S. persons with signature authority over foreign accounts are required to file the FBAR, even if they have no ownership interest in the account. Failure to file the FBAR can result in substantial civil and criminal penalties.

#### **Filing Requirements**

For purposes of FBAR filing, a United States person is a citizen or resident of the United States (determined using the same guidelines as those under the Internal Revenue Code), or an entity created under the laws of the U.S. or any state.

A U.S. person has a reportable financial interest if that person is the owner of record or has legal title to a foreign account, even if the account is held for the benefit of others. In addition, a U.S. person will need to report foreign accounts owned by an entity if that person's ownership of that entity exceeds 50%.

Reportable accounts include the obvious, such as foreign bank and securities accounts. Mutual funds or similar pooled funds which issue shares available to the general public are also included. A life insurance policy issued by a foreign carrier is also reportable if the

policy has a cash value. Participants and beneficiaries of retirement plans (including IRAs) are not required to file an FBAR to report foreign financial accounts owned by the plan.

Individuals with signature or other authority over a foreign financial account are also required to file an annual FBAR, even if they do not have an ownership interest in the account. The regulations provide a bright line test for determining whether an individual has such authority. If the foreign financial institution will act upon a direct communication from that individual regarding the disposition of assets in the account, the person is required to report the account on an annual FBAR. There are some exceptions to this rule, including officers and employees of banks subject to examination by federal agencies.

### **More Compliance Required for Individuals Next Year**

A new disclosure requirement applies to U.S. individuals for tax years beginning after March 18, 2010 (and, therefore, for calendar years beginning with 2011). Individuals who hold any interest in "specified foreign financial assets" must attach to their tax returns information with respect to each asset if the aggregate value of all such assets exceeds \$50,000. (The IRS is currently developing Form 8938, "Statement of Foreign Financial Assets" for the required reporting.) Specified foreign financial assets include bank and financial accounts, stock and securities issued by a non-U.S. person and not maintained by a financial institution, and any interest in a foreign entity. A foreign entity is defined as any entity which is not a U.S. person.

The new law will require an additional filing by individuals already reporting financial account information on the annual FBAR, and will subject many more individuals to foreign asset disclosure filing requirements. We will keep you apprised as more information becomes available.

### **GSRP Can Help**

GSRP has extensive experience representing U.S. persons with foreign accounts and assets, and is ready to assist you or your clients in determining requirements for the FBAR and other U.S. information returns.

For further information regarding FBAR and foreign financial asset filing requirements, please contact:

Michael Ripp  
512.370.2735  
[mripp@gsrp.com](mailto:mripp@gsrp.com)

Peggy Ugent  
512.370.2756  
[pugent@gsrp.com](mailto:pugent@gsrp.com)



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