



SHEPARD SCHWARTZ & HARRIS LLP

Business Advisors For Privately Owned Companies

TAX ALERT

May 11, 2011

Report of Foreign Bank and Financial Accounts (FBAR)

Each U.S. person who has a financial interest in or signature or other authority over foreign bank accounts, securities accounts or other financial accounts must file a Form TD F 90-22.1 (Report of Foreign Bank and Financial Accounts or FBAR) for each calendar year during any part of which the aggregate value of the accounts exceeds \$10,000. This is true even if the account has not earned any income during the year. For this purpose, a debit card account is a financial account, and a credit card account may be treated as a financial account under certain circumstances. The FBAR is due by June 30th following the year for which it applies.

The penalties for failure to file a FBAR are onerous. The civil penalties for a non-willful violation may not exceed \$10,000 per violation. Civil penalties for a willful violation may not exceed the greater of \$100,000 or 50% of the amount in the account at the time of the violation. The criminal penalty for willful violations is a fine of not more than \$250,000, or imprisonment for not more than five years, or both.

Under a temporary relief provision, taxpayers who failed to file a prior year FBAR report on an account for which they had no tax liability can cure the FBAR delinquency without being subject to civil or criminal penalties. This is accomplished by the taxpayer filing a delinquent FBAR report with an explanatory statement by August 31, 2011. This temporary relief provision benefits: (1) taxpayers who have signature authority over a foreign account but no beneficial interest in that account, (2) taxpayers who reported all income from the foreign account to the IRS, but failed to file a FBAR, or (3) taxpayers who had a non-income producing foreign financial account. However, FBARs for 2010 are due June 30, 2011 and must be filed by that date.

If you want to file a FBAR, or are uncertain whether you are required to file a FBAR for a particular foreign account for the current year or for a past year, please give us a call to discuss your situation and the best way to proceed.