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Update—Investments in Private Investment Funds: Subject to FBAR Reporting by June 30, 2009 or Not?

As discussed in our [June 2009 Tax Bulletin on this issue](#), the IRS took the position in mid-June, 2009 that an investment in an offshore hedge fund or private equity fund (each an "OPF") constitutes an interest in an offshore financial account and thus is subject to reporting on the U.S. Treasury Form 90-22.1 ("FBAR"). This recent position was viewed by some as being inconsistent with previous guidance by the IRS on this issue. As a result, the IRS received a large number of letters from attorneys, accountants and industry groups protesting the June 2009 position.

In Notice 2009-62 ("Notice"), a copy of which was released by the IRS on Friday August 7, 2009, the IRS announced that in light of the time needed by the Department of the Treasury to address various issues related to the FBAR filing, the time for filing the 2008, 2009 and prior years to report a financial interest in or signature authority over a foreign commingled account has been postponed until June 30, 2010. The Notice will appear in IRB 2009-35, dated August 31, 2009.

The Notice does not specifically define the term "commingled fund" other than to state that it is a financial account in which the assets are held in a commingled fund. Arguably, investments in an OPF should constitute an investment in a "commingled fund", so that investors in an OPF who have not yet filed FBARs to report that investment can now wait until the IRS or the Department of the Treasury issue additional guidance on this issue.

If you have any questions, please feel free to contact any member of our [Tax Controversies](#) or [Investment Management](#) practice groups.

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