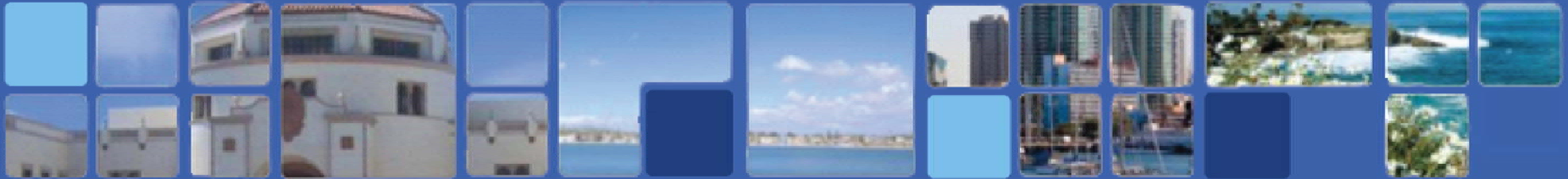




THE USD SCHOOL OF LAW - PROCOPIO INTERNATIONAL TAX INSTITUTE
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Complex FBAR Questions and other Foreign Asset Reporting Pitfalls: Plethora of Forms

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Is FACTA an ISSUE?

- (Different rules for Corporations?)



IS FACTA an ISSUE for CORPORATIONS?

- Currently Form 8938 is only required for individuals.
- The instructions for Form 8938 note that the IRS expects to be issuing regulations for specified domestic corporations
- Stay tuned for future developments in this area!



FBAR – WHAT IS REQUIRED?

FOR THE CORPORATION AND THE OFFICERS/EMPLOYEES OF THE
CORPORATION





- Corporations
- Partnerships
- International Businesses
- Small Businesses & Self Employed**

- Small Business/Self-Employed**
- Industries/Professions
 - International Taxpayers
 - Self-Employed
 - Small Business/Self-Employed Home**

- Small Business/Self-Employed Topics**
- A-Z Index for Business
 - Forms & Pubs
 - Starting a Business
 - Deducting Expenses
 - Businesses with Employees

Report of Foreign Bank and Financial Accounts (FBAR)

If you have a financial interest in or signature authority over a foreign financial account, including a bank account, brokerage account, mutual fund, trust, or other type of foreign financial account, the Bank Secrecy Act may require you to report the account yearly to the Internal Revenue Service by filing Form TD F 90-22.1, Report of Foreign Bank and Financial Accounts (FBAR).

The FBAR is required because foreign financial institutions may not be subject to the same reporting requirements as domestic financial institutions. The FBAR is a tool to help the United States government identify persons who may be using foreign financial accounts to circumvent United States law. Investigators use FBARs to help identify or trace funds used for illicit purposes or to identify unreported income maintained or generated abroad.

Recent FBAR Guidance
On February 24, 2011, the Treasury Department published [final regulations](#) amending the FBAR regulations. These regulations became effective March 28, 2011, and apply to FBARs required to be filed with respect to foreign financial accounts maintained in calendar year 2010 and for FBARs required to be filed with respect to all subsequent calendar years. The [FBAR form and instructions](#) (PDF) have been revised to reflect the amendments made by the final regulations.

On May 31, 2011, the Financial Crimes Enforcement Network (FinCEN) issued [FinCEN Notice 2011-1](#) (PDF), revised June 6, 2011, to provide administrative relief for certain individuals with signature authority over but no financial interest in foreign financial accounts. On February 14, 2012, FinCEN extended this relief by Notice 2012-1. The deadline to report signature authority over certain accounts has been extended to June 30, 2013 per [FinCEN Notice 2012-1](#) (PDF), for the following individuals:

FBAR – WHO MUST FILE?

- Any United States person* is required to file an FBAR if:
 1. The United States person had a financial interest in or signature authority over at least one financial account located outside of the United States; and
 2. The aggregate value of all foreign financial accounts exceeded \$10,000 at any time during the calendar year to be reported.

- *A United States person means United States citizens; United States residents; entities, including but not limited to, corporations, partnerships, or limited liability companies created or organized in the United States or under the laws of the United States; and trusts or estates formed under the laws of the United States.



FBAR – MODIFIED REPORTING FOR EXPATRIATES

- A United States person who
 1. resides outside of the United States,
 2. is an officer or employee of an employer who is physically located outside of the United States, and
 3. has signature authority over a foreign financial account that is owned or maintained by the individual's employer.

• Only complete Part I and Part IV, Items 34-43 of the FBAR. (Part IV, Items 34-43 should only be completed once with information about the employer.)



FBAR – Exceptions to REPORTING

- Exceptions to the filing requirements for the following United States persons or foreign financial accounts:
 - United States persons included in a consolidated FBAR (see slide 9);
 - Correspondent/nostro accounts (only used by banks with each other);
 - Foreign financial accounts owned by a governmental entity;
 - Foreign financial accounts owned by an international financial institution (if the United States Government is a member); and
 - Certain individuals with signature authority over but no financial interest in a foreign financial account (see slides 10-12).



FBAR – Exception FOR CONSOLIDATED FBAR

- An entity that is a United States person that owns directly or indirectly a greater than 50 percent interest in another entity that is required to file an FBAR is permitted to file a consolidated FBAR on behalf of itself and such other entity. (Check box “d” in Part I, Item 2 and complete Part V.)
- If filing a consolidated FBAR and reporting 25 or more foreign financial accounts, complete only Items 34-42 for each entity included in the consolidated FBAR.



FBAR – Exceptions FOR OFFICERS/EMPLOYEES OF CORPORATIONS

- An officer or employee of a bank that is examined by the Office of the Comptroller of the Currency, the Board of Governors of the Federal Reserve System, the Federal Deposit Insurance Corporation, the Office of Thrift Supervision, or the National Credit Union Administration is not required to report signature authority over a foreign financial account owned or maintained by the bank.
- An officer or employee of a financial institution that is registered with and examined by the Securities and Exchange Commission or Commodity Futures Trading Commission is not required to report signature authority over a foreign financial account owned or maintained by the financial institution.



FBAR – Exceptions FOR OFFICERS/EMPLOYEES OF CORPORATIONS (Cont.)

- An officer or employee of an entity that has a class of equity securities listed (or American depository receipts listed) on any United States national securities exchange is not required to report signature authority over a foreign financial account of such entity.
- An officer or employee of a United States subsidiary is not required to report signature authority over a foreign financial account of the subsidiary if its United States parent has a class of equity securities listed on any United States national securities exchange and the subsidiary is included in a consolidated FBAR report of the United States parent.



FBAR – Exceptions FOR OFFICERS/EMPLOYEES OF CORPORATIONS (Cont.)

- An officer or employee of an entity that has a class of equity securities registered (or American depository receipts in respect of equity securities registered) under section 12(g) of the Securities Exchange Act is not required to report signature authority over a foreign financial account of such entity.
- An officer or employee of an Authorized Service Provider* is not required to report signature authority over a foreign financial account that is owned or maintained by an investment company that is registered with the Securities and Exchange Commission.
- *Authorized Service Provider means an entity that is registered with and examined by the Securities and Exchange Commission and provides services to an investment company registered under the Investment Company Act of 1940.



Example

Q: Mr. X secured permanent employment in the U.S. in 2011 and is considered a resident alien of the U.S. for that year under the substantial presence day count test. He rents an apartment in the U.S.; however, his spouse and children remain in Canada. He still maintains a permanent home in Canada. Mr. X files his 2011 U.S. tax return as a treaty nonresident of the U.S. since his primary ties remain in Canada pursuant to paragraph 2 of Article IV of the Canada U.S. Tax Treaty. His 2011 U.S. tax filing is comprised of a Form 1040NR income tax return with a Form 8833 Treaty Statement. Does Mr. X have a 2011 FBAR filing requirement in respect to foreign accounts?

A: Yes.



Example

Q: Mrs. X, a green card holder and long term resident of the U.S., moved back to Canada with her children in 2011, after the passing of her U.S. citizen spouse. Mrs. X purchased a home in Canada and lives and works in Canada. Mrs. X is a resident of Canada for Canadian tax purposes under the domestic day count rules and also the treaty tie breaker rules. She receives substantial allocations annually from her husband's U.S. estate, which she deposits in a Canadian bank account and then contributes to her self-directed Canadian pension plan (RRSP) and children's Canadian education plans (RESP).

Does Mrs. X have an 2011 FBAR filing requirement in respect of foreign accounts?



A: Yes.

Example

Q: Continuing the previous example, does Mrs. X's children, who are U.S. citizens, have an 2011 FBAR filing requirement in respect of foreign accounts?

A: Yes, if their foreign account(s) exceed \$10,000 in value at any point during the year.



Example

Q: When a green card holder leaves the U.S., is the green card holder subject to FBAR reporting requirements?

A: It has become increasingly popular for aliens holding a U.S. green card to move abroad to live or work in a foreign country. Under the green card test of 26 USC § 7701(b), those aliens continue to be classified as resident aliens for U.S. tax purposes. Typically, they are classified as income tax residents of the country where they live and, if they can show that the treaty tiebreaker rules also classify them as resident in the country where they live, the U.S. tax regulations classify them as nonresident aliens for U.S. tax purposes.

See 26 CFR § 301.7701(b)-7(a)(1) and coordination with U.S. income tax treaties.



Example – cont.

Q: Does green card holder living abroad have an FBAR filing requirement in respect of foreign accounts?

A: Yes.





Basic Questions and Answers on Form 8938

Q&A 1-14, posted 02-29-12 Q&A 15-23, posted 06-07-12

1. What are the specified foreign financial assets that I need to report on Form 8938?

If you are required to file Form 8938, you must report your financial accounts maintained by a foreign financial institution. Examples of financial accounts include:

- Savings, deposit, checking, and brokerage accounts held with a bank or broker-dealer.
- And, to the extent held for investment and not held in a financial account, you must report stock or securities issued by someone who is not a U.S. person, any other interest in a foreign entity, and any financial instrument or contract held for investment with an issuer or counterparty that is not a U.S. person. Examples of these assets that must be reported if not held in an account include:
 - Stock or securities issued by a foreign corporation;
 - A note, bond or debenture issued by a foreign person;
 - An interest rate swap, currency swap, basis swap, interest rate cap, interest rate floor, commodity swap, equity swap, equity index swap, credit default swap or similar agreement with a foreign counterparty;
 - An option or other derivative instrument with respect to any of these examples or with respect to any currency or commodity that is entered into with a foreign counterparty or issuer;
 - A partnership interest in a foreign partnership;
 - An interest in a foreign retirement plan or deferred compensation plan;
 - An interest in a foreign estate;
 - Any interest in a foreign-issued insurance contract or annuity with a cash-surrender value.

The examples listed above do not comprise an exclusive list of assets required to be reported.

2.1 am a U.S. taxpayer but am not required to file an Income tax return. Do I need to file Form 8938?

Taxpayers who are not required to file an income tax return are not required to file Form 8938.

3. Does foreign real estate need to be reported on Form 8938?

Foreign real estate is not a specified foreign financial asset required to be reported on Form 8938. For example, a personal residence or a rental property does not have to be reported.

If the real estate is held through a foreign entity, such as a corporation, partnership, trust or estate, then the interest in the entity is a specified foreign financial asset that is reported on Form 8938, if the total value of all your specified foreign financial assets is greater than the reporting threshold that applies to you. The value of the real estate held by the entity is taken into account in determining the value of the interest in the entity to be reported on Form 8938, but the real estate itself is not separately reported on Form 8938.

4.1 directly hold foreign currency (that is, the currency isn't in a financial account). Do I need to report this on Form 8938?

Foreign currency is not a specified foreign financial asset and is not reportable on Form 8938.

5. I am a beneficiary of a foreign estate. Do I need to report my interest in a foreign estate on Form 8938?

Generally, an interest in a foreign estate is a specified foreign financial asset that is reportable on Form 8938 if the total value of all of your specified foreign financial assets is greater than the reporting threshold that applies to you.

6.1 acquired or inherited foreign stock or securities, such as bonds. Do I need to report these on Form 8938?

Foreign stock or securities, if you hold them outside of a financial account, must be reported on Form 8938, provided the value of your specified foreign financial assets is greater than the reporting threshold that applies to you. If you hold foreign stock or securities inside of a financial account, you do not report the stock or securities on Form 8938. For more information regarding the reporting of the holdings of financial accounts, see FAQs 8 and 9.

7.1 directly hold shares of a U.S. mutual fund that owns foreign stocks and securities. Do I need to report the shares of the U.S.

mutual fund or the stocks and securities held by the mutual fund on Form 8938?

If you directly hold shares of a U.S. mutual fund you do not need to report the mutual fund or the holdings of the mutual fund.

8. I have a financial account maintained by a U.S. financial institution that holds foreign stocks and securities. Do I need to report the financial account or its holdings?

You do not need to report a financial account maintained by a U.S. financial institution or its holdings. Examples of financial accounts maintained by U.S. financial institutions include:



http://www.irs.gov/businesses/corporations/article_0,id=255061,00.html

Basic Questions and Answers on Form 8938

18. I have numerous specified foreign financial assets to report on Form 8938. Is there a continuation sheet for the Form 8938?
If you have more than one account or asset to report in Part I or Part II of Form 8938, or more than one issuer or counterparty to report in Part II of Form 8938, copy as many blank Parts I and/or II as you need to complete, and attach them to Form 8938. Check the "if you have attached additional sheets, check here" box at the top of Form 8938.
19. I directly hold tangible assets for investment, such as art, antiques, Jewelry, cars and other collectibles, In a foreign country. Do I need to report these assets on Form 8938?
No. Directly held tangible assets, such as art, antiques, jewelry, cars and other collectibles, are not specified foreign financial assets.
20. I directly hold precious metals for Investment, such as gold, In a foreign country. Do I need to report these assets on Form 8938?
No. Directly held precious metals, such as gold, are not specified foreign financial assets. Note, however, that gold certificates issued by a foreign person may be a specified foreign financial asset that you would have to report on Form 8938, if the total value of all your specified foreign financial assets is greater than the reporting threshold that applies to you.
21. This tax year I sold precious metals that I held for investment to a foreign person. Do I have to report the sales contract on Form 8938?
The contract with the foreign person to sell assets held for investment is a specified foreign financial asset investment asset that you have to report on Form 8938, if the total value of all your specified foreign financial assets is greater than the reporting threshold that applies to you.
22. I have a safe deposit box at a foreign financial Institution. Is the safe deposit box itself considered to a financial account?
No, a safe deposit box is not a financial account.
23. Am I required to hire a certified appraiser or actuary to determine the fair market value of a specified foreign financial asset? For example, If I have a foreign defined benefit plan, am I required to obtain the services of an actuary?
You may determine the fair market value of a foreign financial account for the purpose of reporting its maximum value based on periodic account statements unless you have reason to know that the statements do not reflect a reasonable estimate of the maximum value of the account during the tax year. For a specified foreign financial asset not held in a financial account, you may determine the fair market value of the asset for the purpose of reporting its maximum value based on information publicly available from reliable financial information sources or from other verifiable sources. Even if there is no information from a reliable financial information source or other verifiable source, you do not need to obtain an appraisal by a third party in order to reasonably estimate the asset's maximum value during the tax year.

Page Last Reviewed or Updated: June 07, 2012





Treasury and IRS Issue Guidance Outlining Phased Implementation of FATCA Beginning in 2013

IR-2011-76, July 14, 2011

WASHINGTON — The Treasury Department and the Internal Revenue Service today issued a notice announcing plans to phase in the requirements of the Foreign Account Tax Compliance Act (FATCA). The new law targets noncompliance by U.S. taxpayers through foreign accounts. Under the notice's phased implementation approach, foreign financial institutions (FFIs) and U.S. withholding agents are given adequate time to build the systems needed to fully comply with FATCA.

"FATCA is an important development in U.S. efforts to combat offshore noncompliance. At the same time, the IRS recognizes that implementing FATCA is a major undertaking for financial institutions," said IRS Commissioner Douglas Shulman. Today's notice is a reflection of our serious commitment to implementation of the statute, but also a serious commitment to listen to the implementation challenges of affected financial institutions and make appropriate adjustments to ensure a smooth and timely roll-out."

FATCA was enacted in 2010 as part of the Hiring Incentives to Restore Employment (HIRE) Act. FATCA requires FFIs to report to the IRS information about financial accounts held by U.S. taxpayers, or by foreign entities in which U.S. taxpayers hold a substantial ownership interest. In order to avoid being withheld upon under FATCA, a participating FFI will have to enter into an agreement with the IRS to:

- Identify U.S. accounts,
- Report certain information to the IRS regarding U.S. accounts, and
- Withhold a 30-percent tax on certain payments to non-participating FFIs and account holders who are unwilling to provide the required information.

FFIs that do not enter into an agreement with the IRS will be subject to withholding on certain types of payments, including U.S. source interest and dividends, gross proceeds from the disposition of U.S. securities, and passthrough payments.

Notice 2011-53, issued today by Treasury and the IRS, provides a workable timeline for FFIs and U.S. withholding agents to implement the various requirements of FATCA. Specifically, the notice phases in the implementation of FATCA in the following manner:

- An FFI must enter an agreement with the IRS by June 30, 2013, to ensure that it will be identified as a participating FFI in sufficient time to allow withholding agents to refrain from withholding beginning on January 1, 2014.
- Withholding on U.S. source dividends and interest paid to non-participating FFIs will begin on Jan. 1, 2014, and withholding on all withholdable payments (including on gross proceeds) will be fully phased in on Jan. 1, 2015.
- Due diligence requirements for identifying new and pre-existing U.S. accounts (including certain high-risk accounts) will begin in 2013. Reporting requirements will begin in 2014.
- For purposes of the Notice, high risk accounts include private banking accounts with a balance that is equal to or greater than \$500,000.

Treasury and IRS will continue to work closely with businesses and foreign governments to implement FATCA effectively.

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Page Last Reviewed or Updated: July 14, 2011





Do I need to file Form 8938, "Statement of Specified Foreign Financial Assets"?

Certain U.S. taxpayers holding specified foreign financial assets with an aggregate value exceeding 550,000 will report information about those assets on new Form 8938, which must be attached to the taxpayer's annual income tax return. Higher asset thresholds apply to US taxpayers who file a joint tax return or who reside abroad (see below)

Form 8938 reporting applies for specified foreign financial assets in which the taxpayer has an interest in taxable years starting after March 18, 2010. For most individual taxpayers, this means they will start filing Form 8938 with their 2011 income tax return to be filed this coming tax filing season.

Upon issuance of regulations, FATCA may require reporting by specified domestic entities. For now, only specified individuals are required to file Form 8938.

- If you do not have to file an income tax return for the tax year, you do not need to file Form 8938, even if the value of your specified foreign assets is more than the appropriate reporting threshold.
- If you are required to file Form 8938, you do not have to report financial accounts maintained by:
 - o a U.S. payer (such as a U.S. domestic financial institution),
 - o the foreign branch of a U.S. financial institution, or
 - o the U.S. branch of a foreign financial institution.

Refer to Form 8938 instructions for more information on assets that do not have to be reported

You must file Form 8938 if:

1. You are a specified individual.

A specified individual is:

- A US citizen
- A resident alien of the United States for any part of the tax year (see Pub. 519 for more information)
- A nonresident alien who makes an election to be treated as resident alien for purposes of filing a joint income tax return
- A nonresident alien who is a bona fide resident of American Samoa or Puerto Rico (See Pub 570 for definition of a bona fide resident)

AND

2. You have an interest in specified foreign financial assets required to be reported.

A specified foreign financial asset is:

- Any financial account maintained by a foreign financial institution, except as indicated above
- Other foreign financial assets held for investment that are not in an account maintained by a US or foreign financial institution, namely:
 - o Stock or securities issued by someone other than a US person
 - o Any interest in a foreign entity, and
 - o Any financial instrument or contract that has as an issuer or counterparty that is other than a U.S. person

Refer to the Form 8938 instructions for more information on the definition of a specified foreign financial assets and when you have an interest in such an asset.

AND

3. The aggregate value of your specified foreign financial assets is more than the reporting thresholds

that applies to you:

- **Unmarried taxpayers living in the US:** The total value of your specified foreign financial assets is more than \$50,000 on the last day of the tax year or more than \$75,000 at any time during the tax year
- **Married taxpayers filing a joint income tax return and living in the US:** The total value of your specified foreign financial assets is more than \$100,000 on the last day of the tax year or more than \$150,000 at any time during the tax year
- **Married taxpayers filing separate income tax returns and living in the US:** The total value of your specified foreign financial assets is more than \$50,000 on the last day of the tax year or more than \$75,000 at any time during the tax year.
- **Taxpayers living abroad. You are a taxpayer living abroad if:**
 - o You are a U.S. citizen whose tax home is in a foreign country and you are either a bona fide resident of a foreign country or countries for an uninterrupted period that includes the entire tax year, or
 - o You are a US citizen or resident, who during a period of 12 consecutive months ending in the tax year is physically present in a foreign country or countries at least 330 days.

If you are a taxpayer living abroad you must file if:

- You are filing a return other than a joint return and the total value of your specified foreign assets is more than \$200,000 on the last day of the tax year or more than \$300,000 at any time during the year; or
- You are filing a joint return and the value of your specified foreign asset is more than \$400,000 on the last day of the tax year or more than \$600,000 at any time during the year.

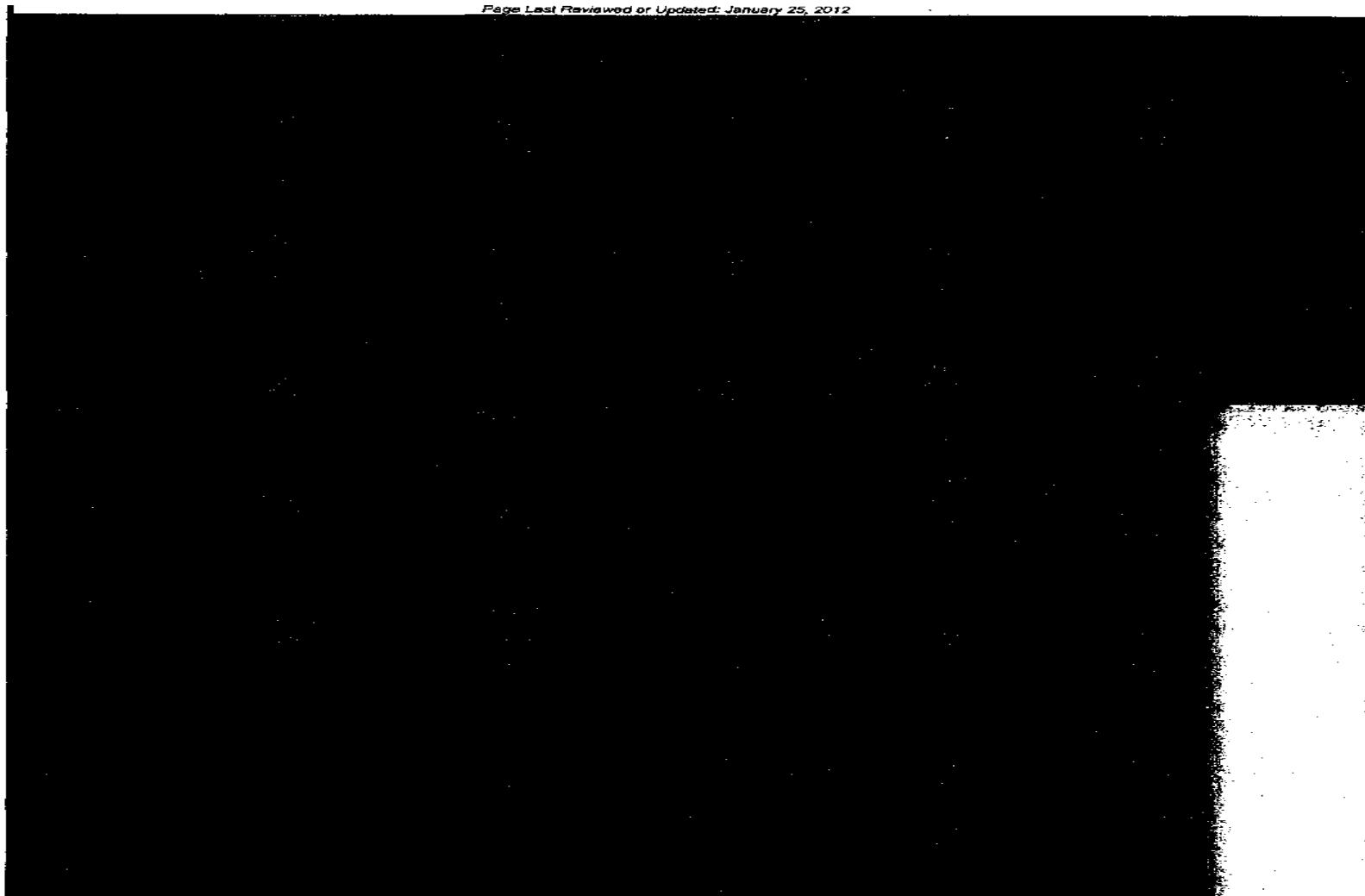
Refer to the Form 8938 instructions for information on how to determine the total value of your specified foreign financial assets.



> Do I need to file Form 8938, "Statement of Specified Foreign Financial Assets"?

Reporting specified foreign financial assets on other forms filed with the IRS.
If you are required to file a Form 8938 and you have a specified foreign financial asset reported on Form 3520, Form 3520-A, Form 5471, Form 8621, Form 8865, or Form 8891, you do not need to report the asset on Form 8938. However, you must identify on Part IV of your Form 8938 which and how many of these form(s) report the specified foreign financial assets.
Even if a specified foreign financial asset is reported on a form listed above, you must still include the value of the asset in determining whether the aggregate value of your specified foreign financial assets is more than the reporting threshold that applies to you.

Page Last Reviewed or Updated: January 25, 2012





Comparison of Form 8938 and FBAR Requirements

The new Form 8938 filing requirement does not replace or otherwise affect a taxpayer's obligation to file Form TD F 90-22.1 (Report of Foreign Bank and Financial Accounts). Individuals must file each form for which they meet the relevant reporting threshold.

	Form 8938, Statement of Specified Foreign Financial Assets	Form TD F 90-22.1, Report of Foreign Bank and Financial Accounts (FBAR)
Who Must File?	Specified individuals, which include U.S. citizens, resident aliens, and certain non-resident aliens that have an interest in specified foreign financial assets and meet the reporting threshold	U.S. persons, which include U.S. citizens, resident aliens, trusts, estates, and domestic entities that have an interest in foreign financial accounts and meet the reporting threshold
Does the United States include U.S. territories?	No	Yes, resident aliens of U.S. territories and U.S. territory entities are subject to FBAR reporting
Reporting Threshold (Total Value of Assets)	\$50,000 on the last day of the tax year or \$75,000 at any time during the tax year. (higher threshold amounts apply to married individuals filing jointly and individuals living abroad)	\$10,000 at any time during the calendar year
When do you have an interest in an account or asset?	If any income, gains, losses, deductions, credits, gross proceeds, or distributions from holding or disposing of the account or asset are or would be required to be reported, included, or otherwise reflected on your income tax return	Financial interest: you are the owner of record or holder of legal title; the owner of record or holder of legal title is your agent or representative; you have a sufficient interest in the entity that is the owner of record or holder of legal title. Signature authority: you have authority to control the disposition of the assets in the account by direct communication with the financial institution maintaining the account. See instructions for further details.
What is Reported?	Maximum value of specified foreign financial assets, which include financial accounts with foreign financial institutions and certain other foreign non-account investment assets	Maximum value of financial accounts maintained by a financial institution physically located in a foreign country
How are maximum account or asset values determined and reported?	Fair market value in U.S. dollars in accord with the Form 8938 instructions for each account and asset reported Convert to U.S. dollars using the end of the taxable year exchange rate and report in U.S. dollars.	Use periodic account statements to determine the maximum value in the currency of the account. Convert to U.S. dollars using the end of the calendar year exchange rate and report in U.S. dollars.
When Due?	By due date, including extension, if any, for income tax return	Received by June 30 (no extensions of time granted)
Where to File?	File with income tax return pursuant to instructions for filing the return	Mail to: Department of the Treasury Post Office Box 32621 Detroit, MI 48232-0621 For express mail to: IRS Enterprise Computing Center ATTN: CTR Operations Mailroom, 4th Floor 985 Michigan Avenue Detroit, MI 48226 Certain individuals may file electronically at BSA E-File System
Penalties	Up to \$10,000 for failure to disclose and an additional \$10,000 for each 30 days of non-filing after IRS notice of a failure to disclose, for a potential maximum penalty of \$60,000; criminal penalties may also apply	If non-willful, up to \$10,000; if willful, up to the greater of \$100,000 or 50 percent of account balances; criminal penalties may also apply



Types of Foreign Assets and Whether They are Reportable		
Financial (deposit and custodial) accounts held at foreign financial institutions	Yes	Yes
Financial account held at a foreign branch of a U.S. financial institution	No	Yes
Financial account held at a U.S. branch of a foreign financial institution	No	No
Foreign financial account for which you have signature authority	No, unless you otherwise have an interest in the account as described above	Yes, subject to exceptions
Foreign stock or securities held in a financial account at a foreign financial institution	The account itself is subject to reporting, but the contents of the account do not have to be separately reported	The account itself is subject to reporting, but the contents of the account do not have to be separately reported
Foreign stock or securities not held in a financial account	Yes	No
Foreign partnership interests	Yes	No
Indirect interests in foreign financial assets through an entity	No	Yes, if sufficient ownership or beneficial interest (i.e., a greater than 50 percent interest) in the entity. See instructions for further detail.
Foreign mutual funds	Yes	Yes
Domestic mutual fund investing in foreign stocks and securities	No	No
Foreign accounts and foreign non-account investment assets held by foreign or domestic grantor trust for which you are the grantor	Yes, as to both foreign accounts and foreign non-account investment assets	Yes, as to foreign accounts
Foreign-issued life insurance or annuity contract with a cash value	Yes	Yes
Foreign hedge funds and foreign private equity funds	Yes	No
Foreign real estate held directly	No	No
Foreign real estate held through a foreign entity	No, but the foreign entity itself is a specified foreign financial asset and its maximum value includes the value of the real estate	No
Foreign currency held directly	No	No
Precious Metals held directly	No	No
Personal property, held directly, such as art, antiques, jewelry, cars and other collectibles	No	No
'Social Security'-type program benefits provided by a foreign government	No	No

Page Last Reviewed or Updated: March 26, 2012





Basic Questions and Answers on Form 8938

Q&A 1-14, posted 02-29-12 □ Q&A 15-23, posted 06-07-12

1. What are the specified foreign financial assets that I need to report on Form 8938?

If you are required to file Form 8938, you must report your financial accounts maintained by a foreign financial institution. Examples of financial accounts include:

- Savings, deposit, checking, and brokerage accounts held with a bank or broker-dealer.
- And, to the extent held for investment and not held in a financial account, you must report stock or securities issued by someone who is not a U.S. person, any other interest in a foreign entity, and any financial instrument or contract held for investment with an issuer or counterparty that is not a U.S. person. Examples of these assets that must be reported if not held in an account include:
- Stock or securities issued by a foreign corporation;
 - A note, bond or debenture issued by a foreign person;
 - An interest rate swap, currency swap, basis swap, interest rate cap, interest rate floor, commodity swap, equity swap, equity index swap, credit default swap or similar agreement with a foreign counterparty;
 - An option or other derivative instrument with respect to any of these examples or with respect to any currency or commodity that is entered into with a foreign counterparty or issuer;
 - A partnership interest in a foreign partnership;
 - An interest in a foreign retirement plan or deferred compensation plan;
 - An interest in a foreign estate;
 - Any interest in a foreign-issued insurance contract or annuity with a cash-surrender value.

The examples listed above do not comprise an exclusive list of assets required to be reported.

2.1 am a U.S. taxpayer but am not required to file an income tax return. Do I need to file Form 8938?

Taxpayers who are not required to file an income tax return are not required to file Form 8938.

3. Does foreign real estate need to be reported on Form 8938?

Foreign real estate is not a specified foreign financial asset required to be reported on Form 8938. For example, a personal residence or a rental property does not have to be reported.

If the real estate is held through a foreign entity, such as a corporation, partnership, trust or estate, then the interest in the entity is a specified foreign financial asset that is reported on Form 8938, if the total value of all your specified foreign financial assets is greater than the reporting threshold that applies to you. The value of the real estate held by the entity is taken into account in determining the value of the interest in the entity to be reported on Form 8938, but the real estate itself is not separately reported on Form 8938.

4.1 directly hold foreign currency (that is, the currency isn't in a financial account). Do I need to report this on Form 8938?

Foreign currency is not a specified foreign financial asset and is not reportable on Form 8938.

5. I am a beneficiary of a foreign estate. Do I need to report my interest in a foreign estate on Form 8938?

Generally, an interest in a foreign estate is a specified foreign financial asset that is reportable on Form 8938 if the total value of all of your specified foreign financial assets is greater than the reporting threshold that applies to you.

6.1 acquired or inherited foreign stock or securities, such as bonds. Do I need to report these on Form 8938?

Foreign stock or securities, if you hold them outside of a financial account, must be reported on Form 8938, provided the value of your specified foreign financial assets is greater than the reporting threshold that applies to you. If you hold foreign stock or securities inside of a financial account, you do not report the stock or securities on Form 8938. For more information regarding the reporting of the holdings of financial accounts, see FAQs 8 and 9.

7.1 directly hold shares of a U.S. mutual fund that owns foreign stocks and securities. Do I need to report the shares of the U.S. mutual fund or the stocks and securities held by the mutual fund on Form 8938?

If you directly hold shares of a U.S. mutual fund you do not need to report the mutual fund or the holdings of the mutual fund.

8. I have a financial account maintained by a U.S. financial institution that holds foreign stocks and securities. Do I need to report the financial account or its holdings?

You do not need to report a financial account maintained by a U.S. financial institution or its holdings. Examples of financial accounts maintained by U.S. financial institutions include:



Basic Questions and Answers on Form 8938

- U.S. Mutual fund accounts
 - IRAs (traditional or Roth)
 - 401 (k) retirement plans
 - Qualified U.S. retirement plans
 - Brokerage accounts maintained by U.S. financial institutions
9. I have a financial account maintained by a foreign financial institution that holds Investment assets. Do I need to report the financial account if all or any of the Investment assets in the account are stock, securities, or mutual funds issued by a U.S. person?
If you have a financial account maintained by a foreign financial institution and the value of your specified foreign financial assets is greater than the reporting threshold that applies to you, you need to report the account on Form 8938. A foreign account is a specified foreign financial asset even if its contents include, in whole or in part, investment assets issued by a U.S. person. You do not need to separately report the assets of a financial account on Form 8938, whether or not the assets are issued by a U.S. person or non-U.S. person.
10. I have a financial account with a U.S. branch of a foreign financial Institution. Do I need to report this account on Form 8938?
A financial account, such as a depository, custodial or retirement account, at a U.S. branch of a foreign financial institution is an exception to the general rule that a financial account maintained by a foreign financial institution is specified foreign financial asset. A financial account maintained by a U.S. branch or U.S. affiliate of a foreign financial institution does not have to be reported on Form 8938 and any specified foreign financial assets in that account also do not have to be reported.
11. I own foreign stocks and securities through a foreign branch of a U.S.-based financial institution. Do I need to report these on Form 8938?
If a financial account, such as a depository, custodial or retirement account, is held through a foreign branch or foreign affiliate of a U.S.-based financial institution, the foreign account is not a specified foreign financial asset and is not required to be reported on Form 8938.
12. I have an interest in a foreign pension or deferred compensation plan. Do I need to report it on Form 8938?
If you have an interest in a foreign pension or deferred compensation plan, you have to report this interest on Form 8938 if the value of your specified foreign financial assets is greater than the reporting threshold that applies to you.
13. How do I value my interest in a foreign pension or deferred compensation plan for purposes of reporting this on Form 8938?
In general, the value of your interest in the foreign pension plan or deferred compensation plan is the fair market value of your beneficial interest in the plan on the last day of the year. However, if you do not know or have reason to know based on readily accessible information the fair market value of your beneficial interest in the pension or deferred compensation plan on the last day of the year, the maximum value is the value of the cash and/or other property distributed to you during the year. This same value is used in determining whether you have met your reporting threshold.
If you do not know or have reason to know based on readily accessible information the fair market value of your beneficial interest in the pension plan or deferred compensation plan on the last day of the year and you did not receive any distributions from the plan, the value of your interest in the plan is zero. In this circumstance, you should also use a value of zero for the plan in determining whether you have met your reporting threshold. If you have met the reporting threshold and are required to file Form 8938, you should report the plan and indicate that its maximum is zero.
14. I am a U.S. taxpayer and have earned a right to foreign social security. Do I need to report this on Form 8938?
Payments or the rights to receive the foreign equivalent of social security, social insurance benefits or another similar program of a foreign government are not specified foreign financial assets and are not reportable.
15. If I have to file Form 8938, am I required to report all of my specified foreign financial assets regardless of whether the assets have a de minimis maximum value during the tax year?
If you meet the applicable reporting threshold, you must report all of your specified foreign financial assets, including the specified foreign financial assets that have a de minimis maximum value during the tax year. For exceptions to reporting, see Exceptions to Reporting on page 6 of the instructions for Form 8938.
16. I filed my income tax return but now realize that I should have filed Form 8938 with my return, what should I do?
If you omitted Form 8938 when you filed your income tax return, you should file Form 1040X, Amended U.S. Individual Income Tax Return, with your Form 8938 attached.
17. Do I have to file both Form 8938 and Form TD F 90-22.1, Report of Foreign Bank and Financial Accounts (FBAR)?
The filing of Form 8938 does not relieve you of the separate requirement to file the FBAR if you are otherwise required to do so and vice-versa. Depending on your situation, you may be required to file Form 8938 or the FBAR or both forms, and certain foreign accounts may be required to be reported on both forms.



<http://www.irs.gov/businesses/corporations/article/0,15566,1001,00.html>

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18. I have numerous specified foreign financial assets to report on Form 8938. Is there a continuation sheet for the Form 8938?
If you have more than one account or asset to report in Part I or Part II of Form 8938, or more than one issuer or counterparty to report in Part II of Form 8938, copy as many blank Parts I and/or II as you need to complete, and attach them to Form 8938. Check the "If you have attached additional sheets, check here" box at the top of Form 8938.
19. I directly hold tangible assets for investment, such as art, antiques, Jewelry, cars and other collectibles, in a foreign country. Do I need to report these assets on Form 8938?
No. Directly held tangible assets, such as art, antiques, jewelry, cars and other collectibles, are not specified foreign financial assets.
20. I directly hold precious metals for investment, such as gold, in a foreign country. Do I need to report these assets on Form 8938?
No. Directly held precious metals, such as gold, are not specified foreign financial assets. Note, however, that gold certificates issued by a foreign person may be a specified foreign financial asset that you would have to report on Form 8938, if the total value of all your specified foreign financial assets is greater than the reporting threshold that applies to you.
21. This tax year I sold precious metals that I held for investment to a foreign person. Do I have to report the sales contract on Form 8938?
The contract with the foreign person to sell assets held for investment is a specified foreign financial asset investment asset that you have to report on Form 8938, if the total value of all your specified foreign financial assets is greater than the reporting threshold that applies to you.
22. I have a safe deposit box at a foreign financial Institution. Is the safe deposit box itself considered to a financial account?
No, a safe deposit box is not a financial account.
23. Am I required to hire a certified appraiser or actuary to determine the fair market value of a specified foreign financial asset? For example, if I have a foreign defined benefit plan, am I required to obtain the services of an actuary?
You may determine the fair market value of a foreign financial account for the purpose of reporting its maximum value based on periodic account statements unless you have reason to know that the statements do not reflect a reasonable estimate of the maximum value of the account during the tax year. For a specified foreign financial asset not held in a financial account, you may determine the fair market value of the asset for the purpose of reporting its maximum value based on information publicly available from reliable financial information sources or from other verifiable sources. Even if there is no information from a reliable financial information source or other verifiable source, you do not need to obtain an appraisal by a third party in order to reasonably estimate the asset's maximum value during the tax year.

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Questions?



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