

## Reporting Ownership Of Foreign Financial Assets New Filing Requirements

**The U.S. Department of Treasury and Internal Revenue Service have implemented new filing requirements for certain foreign financial assets owned in 2011. Holders of foreign financial assets are strongly encouraged to discuss this with their personal income tax preparer.**

### Who Must File?

Any U.S. taxpayer who owned or had signature authority over certain foreign financial assets with an aggregate value of at least \$10,000 at any point during the 2011 calendar year may need to file one or both of the forms discussed below.

### What Are the Filings and When Are They Due?

1. The new Form 8938—Statement of Specified Foreign Financial Assets—is due with the Form 1040—personal income tax return—on April 17, 2012, as extended.
  - o Required by FATCA (the Foreign Account Tax Compliance Act)
  - o Discloses any foreign assets which could produce income, gains, losses, deductions, credits, gross proceeds or distributions from holding or disposing of the asset that would be required to be reported, included or otherwise reflected on an individual's U.S. income tax return.
  - o Filing required for persons holding specified foreign financial assets with an aggregate value exceeding \$50,000. Special rules apply to joint filers and U.S. persons residing abroad.
2. The FBAR (Foreign Bank and Financial Account Report) must be received (not mailed) by the Internal Revenue Service no later than June 30.
  - o Discloses most but not all foreign financial accounts.
  - o Has been required for many years by the Bank Secrecy Act rules of the Treasury Department.

The two forms overlap but have different disclosure thresholds and definitions throughout. For example, a trust beneficiary may be required to file an FBAR but not a Form 8938.

## What is a Foreign Financial Asset?

The following list includes some but not all of the reportable assets\*:

- A bank account at any foreign bank (though not a U.S. branch of a foreign bank)
  - A foreign brokerage or other securities account
  - A foreign mutual fund
  - An individual foreign security/stock not owned through a U.S. financial institution
  - A foreign hedge fund or foreign venture capital fund
  - An account with a foreign financial institution where you own non-monetary assets, e.g., gold
  - An offshore (foreign) trust or estate
  - A life insurance/annuity contract with cash value held with a foreign entity
- \* *Note: this is a partial list*

This list may include often forgotten assets:

- An account created and funded by a spouse, where the reporting person has no actual economic interest but has signature authority
- The offshore account owned by a relative where the reporting person has signature authority “just for convenience”
- The European bank account set up for traveling that doesn't earn any interest
- A foreign financial account owned through a U.S. trust

It does NOT include:

- An account in a U.S. banking office of a foreign bank, even if that U.S. branch acts as global custodian
- Foreign securities owned in an account with a U.S. securities RIA/broker/dealer, U.S. bank or U.S. trust company

## What are the Penalties for Non-Filers?

The Form 8938 is new and failure to file will result in penalties. There are severe monetary penalties for FBAR non-filers. The Treasury Department has also pursued criminal penalties against persons who have purposefully not filed the FBAR in previous years.

The Treasury Department has held voluntary disclosure periods intermittently over the past three years. Compliance through these programs can ameliorate some FBAR penalties, but non-disclosure issues warrant attorney counsel.

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