

Individuals Must Report Specified Foreign Financial Assets on New Form 8938 for 2011 Tax Year



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The IRS released the final Form 8938, Statement of Specified Foreign Financial Assets, which individuals (“specified persons”) must use to report specified foreign financial assets for 2011. Until the IRS issues future regulations, only individuals, and not specified domestic entities, must file Form 8938. The 2010 Tax Act provided that individuals with an interest in a “specified foreign financial asset” during the tax year must attach a disclosure statement to their income tax return for any year in which the aggregate value of all such assets is generally greater than \$50,000 (or a higher dollar amount as the IRS may prescribe, more detail follows below). “Specified foreign financial assets” are: (1) depository or custodial accounts at foreign financial institutions, and (2) to the extent not held in an account at a financial institution, (a) stocks or securities issued by foreign persons, (b) any other financial instrument or contract held for investment that is issued by or has a counterparty that is not a U.S. person, and (c) any interest in a foreign entity. The assets that can be included in these categories are wide and far sweeping including such assets as foreign pension plans and foreign deferred compensation plans.

A specified person who fails to provide required information for any tax year may be subject to a \$10,000 penalty. A failure continuing for more than 90 days after the day on which IRS mails a notice of the failure to the specified person subjects the specified person to an additional penalty of \$10,000 for each 30-day period (or fraction thereof) during which the failure continues after the 90-day period has expired, up to a maximum penalty of \$50,000 for each such failure. No penalty applies if the failure was due to reasonable cause and not willful neglect.

The IRS previously suspended the reporting requirements until it released Form 8938. With the recent release of the Form, the reporting requirements are effective for 2011 individual income tax returns. Unless an exception applies, a taxpayer must file Form 8938 if: (1) they are a specified person that has an interest in specified foreign financial assets; and (2) the value of those assets is more than the applicable reporting threshold.

The following reporting thresholds apply to taxpayers living in the U.S.:

- › An unmarried taxpayer satisfies the reporting threshold only if the total value of his 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 satisfy the reporting threshold only if the total value of their 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.

- › A married taxpayer filing a separate income tax return satisfies the reporting threshold only if the total value of his 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.

The instructions to Form 8938 provides several examples explaining these thresholds.

Please note that the Form 8938 filing requirements do not impact the existing foreign asset reporting requirements with the US Treasury. 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 (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. The FBAR is due by June 30 following the year for which it applies.

Please note that the reporting of foreign financial assets and bank accounts can be complex and, in many cases, overlapping. The importance of timely and accurate filing cannot be minimized as international taxation is a focus of the IRS and the penalties related to non-compliance are severe. We strongly suggest you contact a Keiter tax professional to more fully discuss your specific situation.

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