

# **FBAR**

Report of Foreign Bank and Financial  
Accounts

Form TD F 90-22.1

# **FATCA**

Foreign Account Tax Compliance Act  
Form 8938: Statement of Specified Foreign  
Financial Assets

# WHY WORRY, WHAT'S THE BIG DEAL?

- IRS has collected more than \$5 billion through its offshore voluntary disclosure initiative (OVDI) programs
- Tax treaties allowing more sharing of financial information
- Millions of Americans living abroad
- Millions of resident aliens living in the US
- Penalties, penalties & more penalties



**FBAR**

**TD F 90-22.1**

# General Information:

- FBAR is filed separately with the Department of the Treasury and not filed with the individuals tax return
- IRS and FinCEN (The Financial Crimes Enforcement of the U.S. Treasury Department) provide guidance on filing
- Most current version of Form TD F 90-22.1 must be used or will be rejected (Check [www.fincen.gov](http://www.fincen.gov))
- June 30<sup>th</sup> due date, no extensions
- Voluntary electronic filing available; mandatory July 1, 2013
- Delinquent FBAR must have an attached statement explaining the delay, must be mindful of reasonable cause to avoid penalties



# Who Must File:

- U.S. “person”
- Has a “financial interest in” or “signature or other authority over” a “financial account” and
- The “bank, securities or other financial account” is located in a “foreign country” and
- The account(s) in the aggregate have a “balance in excess of U.S. \$ 10,000 at any time during the calendar year

# Person:

- Individual
- Legal entities – various (corporation, partnership, limited liability company, trust, estate, etc.)
- Legal entities not subject to income tax are considered a separate “person” for FBAR filings
  - Single member LLC’s & Grantor trusts

# Definition of United States:

- 50 states & District of Columbia
- Territories & possessions (American Samoa, Northern Mariana Islands, Commonwealth of Puerto Rico, Guam & U.S. Virgin Islands)



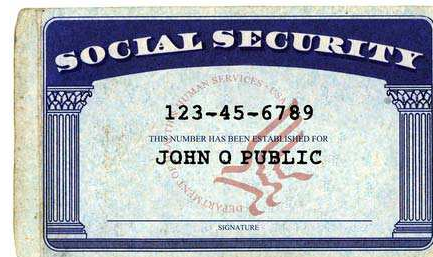
A foreign country is everywhere else





# United States Person:

- U.S. citizen
- U.S. resident alien
  - Permanent Resident – “green card holder”,  
Substantial Presence Test & Treaty election to be  
treated as resident
- An entity (corporation, partnership, et. al.) created ,  
organized or formed under the laws of the United States



# Financial Interest:

- Owner of record or holder of legal title
- Other
  - A person acting as agent, nominee, attorney or in some other capacity on behalf of the U.S. person
  - A corporation, partnership, other entity in which the U.S. person owns directly or indirectly more than 50% of the voting power or value of the entity
  - A trust if the U.S. person is the trust grantor and has an ownership interest in the trust under 26 USC section 671-679
  - A trust in which the U.S. person has either a present beneficial interest in more than 50% of the assets or receives more than 50% of the current income

# Signature or Other Authority:

- Individual who controls the disposition of the assets
  - Control can be in conjunction with others
  - Has direct communications with financial institution
  - Communications can be written or otherwise

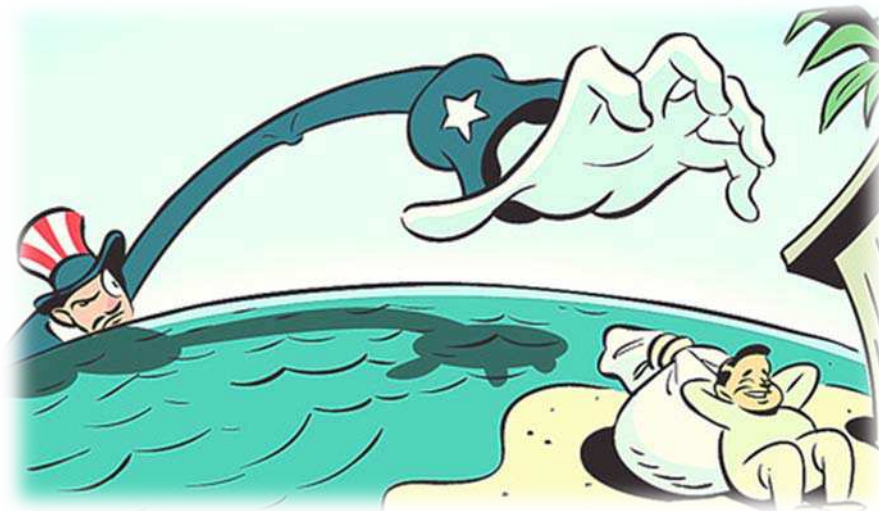
# Definition of Financial Account:

- Bank account
- Securities account
- Other financial account
  - Account with person in the business of accepting deposits as a financial agency
  - Insurance or annuity policy with cash surrender value
  - Account with a broker or dealer for futures, options or commodities
  - Mutual funds or other pooled fund
- Exceptions
  - Hedge Funds



# Foreign Financial Account:

- Account must be in a foreign country
  - All geographical areas outside of the “United States” as previously defined



# Aggregate Value:

- If the aggregate of the maximum account values exceeds \$10,000, an FBAR must be filed
- An FBAR is not required to be filed if the person did not have \$10,000 of aggregate value in the foreign accounts and foreign accounts which the U.S. person had signature authority at any time during the calendar year



# Example

- **Q:** A U.S. person owns foreign financial accounts X, Y and Z with maximum account balances during the year of \$100, \$12,000 and \$3,000 respectively. Does the U.S. person have to file an FBAR and if so, which accounts must be listed on the FBAR?
- **A:** The FBAR instructions require the filing of the FBAR form “..If the aggregate value of these financial accounts exceeds \$10,000 at any time during the calendar year...” In this scenario, the U.S. person has an FBAR filing obligation because the aggregate value of foreign financial accounts X, Y and Z is \$15,100. The U.S. person must report foreign financial accounts X, Y and Z on the FBAR even though accounts X and Z have maximum accounts value below \$10,000.

# Example

- **Q:** A U.S. person owns foreign financial accounts A, B and C with maximum account balances during the year of \$3,000, \$1,000 and \$8,000 respectively. Does the U.S. person have to file an FBAR, and if so, which accounts must be listed on the FBAR?
- **A:** Even though no single account is over \$10,000, because the aggregate value of accounts A, B and C is over \$10,000, the U.S. person has to file an FBAR and must report foreign financial accounts A, B and C on the FBAR.



# Form TD F 90-22.1 (Five Parts)

- Part I – Filer Information
- Part II – Information on Financial Account(s) Owned Separately
- Part III – Information on Financial Account(s) Owned Jointly
- Part IV – Information on Financial Account(s) Where Filer has Signature Authority but No Financial Interest in the Account(s)
- Part V – Information on Financial Account(s) Where the Filer is Filing a Consolidated Report

**TD F 90-22.1**

(Rev. March 2011)  
Department of the Treasury

Do not use previous editions of this form

## REPORT OF FOREIGN BANK AND FINANCIAL ACCOUNTS

Do NOT file with your Federal Tax Return

OMB No. 1545-2038

1 This Report is for Calendar Year Ended 12/31

Amended

### Part I Filer Information

2 Type of Filer			
a <input type="checkbox"/> Individual    b <input type="checkbox"/> Partnership    c <input type="checkbox"/> Corporation    d <input type="checkbox"/> Consolidated    e <input type="checkbox"/> Fiduciary or Other—Enter type _____			
3 U.S. Taxpayer Identification Number		4 Foreign Identification (Complete only if Item 3 is not applicable.)	
If filer has no U.S. identification Number complete Item 4.		a Type: <input type="checkbox"/> Passport <input type="checkbox"/> Other _____	
		b Number    c Country of Issue _____	
6 Last Name or Organization Name		7 First Name	8 Middle Initial
9 Address (Number, Street, and Apt. or Suite No.) _____			
10 City	11 State	12 Zip/Postal Code	13 Country
14 Does the filer have a financial interest in 25 or more financial accounts?			
<input type="checkbox"/> Yes    If "Yes" enter total number of accounts _____			
(If "Yes" is checked, do not complete Part II or Part III, but retain records of this information)			
<input type="checkbox"/> No			

### Part II Information on Financial Account(s) Owned Separately

15 Maximum value of account during calendar year reported		16 Type of account    a <input type="checkbox"/> Bank    b <input type="checkbox"/> Securities    c <input type="checkbox"/> Other—Enter type below _____	
17 Name of Financial Institution in which account is held _____			
18 Account number or other designation		19 Mailing Address (Number, Street, Suite Number) of financial institution in which account is held _____	
20 City	21 State, if known	22 Zip/Postal Code, if known	23 Country
<b>Signature</b>			
44 Filer Signature		45 Filer Title, if not reporting a personal account	46 Date (MM/DD/YYYY)

**File this form with: U.S. Department of the Treasury, P.O. Box 32621, Detroit, MI 48232-0621**

This form should be used to report a financial interest in, signature authority, or other authority over one or more financial accounts in foreign countries, as required by the Department of the Treasury Regulations 31 CFR 1010.350 (formerly 31 CFR 103.24). No report is required if the aggregate value of the accounts did not exceed \$10,000. **See Instructions For Definitions.**

#### PRIVACY ACT AND PAPERWORK REDUCTION ACT NOTICE

Pursuant to the requirements of Public Law 93-579 (Privacy Act of 1974), notice is hereby given that the authority to collect information on TD F 90-22.1 in accordance with 5 USC 552a (e) is Public Law 91-508; 31 USC 5314; 5 USC 301; 31 CFR 1010.350 (formerly 31 CFR 103.24).

The principal purpose for collecting the information is to assure maintenance of reports where such reports or records have a high degree of usefulness in criminal, tax, or regulatory investigations or proceedings. The information collected may be provided to those officers and employees of any constituent unit of the Department of the Treasury who have a need for the records in the performance of their duties. The records may be referred to any other department or agency of the United States upon the request of the head of such department or agency for use in a criminal, tax, or regulatory investigation or proceeding. The information collected may also be provided to appropriate state, local, and foreign law enforcement and regulatory personnel in the performance of their official duties. Disclosure of this information is mandatory. Civil and criminal penalties, including in certain circumstances a fine of not more than \$500,000 and imprisonment of not more than five years, are provided for failure to file a report, supply information, and for filing a false or fraudulent report. Disclosure of the Social Security number is mandatory. The authority to collect is 31 CFR 1010.350 (formerly 31 CFR 103.24). The Social Security number will be used as a means to identify the individual who files the report.

The estimated average burden associated with this collection of information is 20 minutes per respondent or record keeper, depending on individual circumstances. Comments regarding the accuracy of this burden estimate, and suggestions for reducing the burden should be directed to the Internal Revenue Service, Bank Secrecy Act Policy, 5000 Ellin Road C-3-242, Lanham MD 20706.

# Top 12 Reminders for FBARs

1. File in sufficient time in order to be received by Treasury by June 30
2. Use the January 2012 version of Form TD F 90-22.1, for current and all delinquent/ amended filings
3. When in doubt, disclose
4. Don't forget to report joint accounts
5. Applies to individuals (U.S. citizens, green card holders, resident aliens, etc.), trusts, estates, and business entities (C and S corporations, partnerships, exempt organizations, limited liability companies, etc.)

# Top 12 Reminders for FBARs cont'd...

6. Determine if any prior year FBARs should have been (but were not) filed, and if all worldwide income from these accounts was included in the taxpayer's U.S. income tax returns for current and prior years; inspect relevant yes/ no questions regarding foreign accounts on federal income tax return
7. Use Treasury's Financial Management Service rate ([www.fms.treas.gov/intn.html](http://www.fms.treas.gov/intn.html)) from the last day of the calendar year to convert from foreign currency to US\$
8. Remember to include proper accounts over which you have signatory or other authority, but no financial interest
  - For some of these accounts, reporting may be delayed
  - Certain are exempt from filing

## Top 12 Reminds for FBARs cont'd...

9. Applies to direct and indirect financial interests
10. Those that can should consider use of the discrete filer electronic filing on the BSA E-Filing System
11. This is not Form 8938; don't treat it like it is
12. This is not an income tax filing; don't treat it like it is

FATCA

Form 8938

# Who Must File:

- Subject to certain exceptions, you must file Form 8938 if you are a “specified person” that has an interest in “specified foreign financial assets” and the value of those assets is more than the “applicable reporting threshold”
- If you do not have to file an income tax return for the tax year, you do not have to file Form 8938, even if the value of your specified foreign financial assets is more than the appropriate reporting threshold

# Specified Person:

- A specified person includes any “specified individual” or, to the extent provided in future regulation, a “specified domestic entity”



# A specified individual is:



- A U.S. citizen
- A resident alien of the United States for any part of the year (green card test of substantial presence test)
- A nonresident alien who makes an election to be treated as a resident alien for the purposes of filing a joint income tax return
- A nonresident alien who is a bona fide resident of Puerto Rico or a section 931 possession (American Samoa, Northern Mariana Islands, Guam & U.S Virgin Islands)

# A specified domestic entity:

- IRS has issued proposed regulations (See REG-130302-10) that defines a specified domestic entity.

However, for 2011 tax year, only individuals must file Form 8938

# Reporting Period:

- Unless an exception applies, the reporting period for Form 8938 is your tax year
  - If you are a specified individual for less than the entire tax year, the reporting period is the part of the year that you are a specified individual

# Applicable Threshold Amounts

- Living in the U.S.  
(Unmarried, married & separate)
- Living abroad  
(Unmarried, married & separate)
- You satisfy the presence abroad the same as you would to claim the Foreign Earned Income Exclusion (Form 2555)
- Threshold comparison chart

# Threshold Comparison Chart

The individual is required to file Form 8938 if he/she holds any specified foreign financial asset(s) with an aggregate value, either on the last day of the tax year or at any time during the year, exceeding the following thresholds:

Filing status	Value on the last day of the tax year is at least	Or, at any time during the tax year, the value is greater than
Unmarried Taxpayers or Married Taxpayers filing separately, and living in the United States	\$50,000	\$75,000
Married Taxpayers filing jointly living in the United States	\$100,000	\$150,000
Taxpayers not filing a joint return who are living abroad and otherwise qualify for the foreign earned income exclusion	\$200,000	\$300,000
Married Taxpayers filing jointly who are living abroad and otherwise qualify for the foreign earned income exclusion	\$400,000	\$600,000

# Specified Foreign Financial Assets include:

- Financial accounts maintained by a foreign financial institution
- The following foreign financial assets if they are held for investment and not held in an account maintained by a financial institution:
  - Stock of securities issued by someone that is not a U.S. person
  - Any interest in a foreign entity, and
  - Any financial instrument or contract that has an issuer or counterparty that is not a U.S. person

# Specified Foreign Financial Assets cont'd...

- Comparison with FBAR (Form TD F 90-22.1)
  - Accounts with signature authority only are excluded
  - Foreign stock or securities not held in a financial account are included
  - Foreign partnership interests are included
  - Indirect interests in foreign financial assets through an entity are excluded
  - Foreign hedge funds and foreign private equity funds are included

# Exceptions to Reporting:

- A financial account that is maintained by a U.S. payer, such as a domestic financial institution
- Various accounts subject to mark-to-market accounting rules under section 475(e) or (f)
- Financial assets reported during the same year on the following forms
  - Forms 3520 and 3520-A, relating to foreign trust and gift reporting
  - Form 5471, relating to certain foreign corporation reporting
  - Form 8621, relating to passive foreign investment company or qualified electing fund reporting
  - Form 8865, relating to certain foreign partnership reporting
  - Form 8891, relating to Canadian registered retirement account reporting
  - The number of these forms filed must be reported on the FACTA Form 8938



# Exceptions to Reporting cont'd...

- Special rules apply to bona fide residents of a U.S. possession (American Samoa, Guam, the Northern Mariana Islands, Puerto Rico, or the U.S. Virgin Islands)

# Total Value of Specified Foreign Financial Assets

- Total value includes any specified foreign financial asset owned during the year at its maximum fair market value and then converted to U.S. dollars, if not valued in U.S. dollars
- The reporting threshold is determined based upon the value of all specified financial assets, even if reported on another form
- Special reporting rules relate to jointly owned assets



# Reporting Maximum Value

- Use the currency exchange rate on the last day of the tax year to figure the maximum value of the specified foreign financial asset
- May rely on periodic account statements to report maximum value, unless you know them not to represent maximum value
- In most cases, you may use the value of a specified foreign financial asset, other than a financial account, as of the last day of the year, unless you know that it is not a reasonable estimate
- Various valuation rules apply to ownership interests in foreign trusts, estates, pension plans and deferred compensation plans

# Penalties

- \$10,000 up to \$50,000 failure-to-file penalty
- 40% of underpaid tax relating to specified foreign financial assets
- 75% of underpaid tax due to fraud
- Possible criminal penalties under certain circumstances



# Statute of Limitations

- Failing to file Form 8938 results in all or part of your tax return to remain open until three years after the date you file Form 8938
- If you omit more than \$5,000 income from specified foreign financial assets, any tax you owe for the tax year can be assessed at any time within six years after you have filed your return