

Foreign Financial Asset Reporting Guidance Matrix

Form 8938 and/or FBAR for Filings

Published February 11, 2013 by G.F. Joey Musmar, Managing Partner MillerMusmar CPAs/ AICPA

This table can help you identify which foreign financial assets and accounts must be disclosed for 2011 on:

1. Form 8938, Statement of Specified Foreign Financial Assets;
2. Form TD F 90-22.1, Report of Foreign Bank and Financial Accounts (commonly referred to as FBAR); or,
3. Both Form 8938 and Form TD F 90-22.1.

The table is based on information and FACTA guidance available as of January 19, 2013.

	<u>On Form 8938</u> ^{1, 3}	<u>On Form TD F 90-22.1 (FBAR)</u> ^{2, 3}
	(Required by Title 26 - Internal Revenue Code)	(Required by Title 31 - Bank Secrecy Act)
Where and when to file?	Filed with Form 1040 (by April 15th, or extended due date) to IRS	Received by FinCEN (a separate agency under the Department of the Treasury) no later than June 30th
Who must file?	Individuals ⁴	Individuals, estates, trusts, U.S. business entities of all types, including disregarded entities
Minimum filing threshold	\$50,000 ⁵	\$10,000
Penalty for not filing	Civil: Up to \$10,000 for each 30 days of non-filing, plus others; criminal penalties may also apply	Civil: Up to the greater of \$100,000 or 50% of account balance in year of violation, plus others; criminal penalties may also apply

Examples of types of financial accounts and assets to be disclosed:

Financial accounts <u>owned</u> by the individual and maintained at a foreign financial institution, including deposit accounts and mutual funds	Yes	Yes
Financial accounts maintained at a foreign financial institution over which the individual has <u>signature authority or control</u> , but no financial interest	No	Yes
Foreign retirement accounts, such as a pension or IRA equivalent	Yes	Yes, for some
Direct ownership of stock in a foreign corporation (not held in an account maintained by a financial institution)	Yes	No
Foreign partnership interests, such as foreign hedge funds and foreign private equity funds	Yes	No*

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Foreign-issued life insurance products with a cash value	Yes	Yes
Foreign-issued annuity contracts	Yes	Yes
Interests in foreign financial assets with joint ownership	Yes, each joint owner must report separately	Yes, each joint owner must report separately
Undeveloped land - direct interest; indirect interest	Unclear	No
Real estate-Rental	Yes	No
Personal property such as art, jewelry or car	No	No
Gold and other precious metals - bullion, certificates, ETF	Yes	Yes
Interests in foreign financial assets through constructive ownership situations:		
Reportable assets and accounts of a disregarded entity	Yes	Yes
Reportable assets and accounts of a foreign corporation or foreign partnership	Partly No ⁶	Yes, if own more than 50% of the entity

Footnotes:

¹ The data presented in this table is based on statutory language and final instructions to final Form 8938 for 2011, as well as temporary regulations currently in effect under Internal Revenue Code section 6038D.

² Form TD F 90-22.1 is required of U.S. persons who have ownership, signature authority (alone or in conjunction with another individual) to control the disposition of assets.

³ Accounts and assets in possessions and territories such as Puerto Rico and U.S. Virgin Islands are deemed foreign for purposes of Form 8938, but are not considered foreign for purposes of FBAR. However, if you live in the possession as a bona fide resident, the account there is not foreign.

⁴ For 2011, Form 8938 is only required to be filed by individuals. Per Prop. Reg. § 1.6038D-6, the reporting of specified foreign financial assets will also be required of specified domestic entities in future years.

⁵ The threshold applies to the aggregate value of all affected assets, as of December 31. It ranges from \$50,000 for a single taxpayer living in the U.S. to \$400,000 for couples filing jointly who live abroad. There are higher thresholds for maximum asset values during the year. Therefore, even though aggregate account(s) may be below the filing threshold at year end (or even closed by year end), a high value in the account(s) at any point during the year could potentially require the filing of the Form 8938.

⁶ See Form 8938, Part IV for excepted assets, you still need to identify cross reference the form(s) where you reported the assets. . However, include net asset value of constructively owned reportable foreign assets and accounts of a foreign corporation or foreign partnership when determining filing threshold for Form 8938. Directly owned stock of publically traded companies require you to report the highest market value in the reportable year.

Please be advised that, based on current IRS rules and standards, the advice contained herein is not intended or written by the practitioner to be used and cannot be used by the taxpayer for the purpose of avoiding penalties. This is general guidance and is to be used for informational purposes only. The law is always changing, we highly recommend you speak to a CPA regarding how the law applies to you.

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