

# Reporting Obligations for Taxpayers with Offshore Accounts

U.S. citizens, resident aliens and certain nonresident aliens are required to report worldwide income from all sources including foreign accounts, and pay taxes on income from those accounts at their individual rates.

There are many legitimate reasons for holding offshore accounts, including convenience, investing and to facilitate international transactions. By law, U.S. taxpayers are not permitted to use offshore accounts, such as foreign bank and securities accounts as well as trusts, to avoid paying tax.

In most cases, affected taxpayers need to fill out and attach Schedule B to their tax returns. Part III of Schedule B asks about the existence of foreign accounts and usually requires U.S. citizens to report the country in which each account is located. Certain taxpayers may also have to file Form 8938, *Statement of Foreign Financial Assets*, if the aggregate value of those assets exceeds certain thresholds that vary depending on filing status and whether the taxpayer lives abroad. Additional filing requirements apply to those with foreign trusts.

The aggregate value of specified foreign financial assets reporting thresholds for Form 8938 are as follows:

*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.

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.

In addition to Schedule B and Form 8938, taxpayers with foreign accounts whose aggregate value exceeds \$10,000 any time during the year must file a Form 114, *Report of Foreign Bank and Financial Accounts (FBAR)*.



The reporting requirements of the Form 8938 and FBAR differ. Form 8938 is attached to the taxpayer's income tax return. The FBAR is not filed with a federal tax return. It is filed electronically through FinCEN's BSA E-Filing System by April 15, with a maximum extension of six months ending on October 15.

Failure to report the existence of offshore accounts or pay taxes on these accounts can lead to civil and criminal penalties.

For the Form 8938, the penalty may be 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.

For the FBAR, the penalty may be up to \$10,000, if the failure to file is non-willful; if willful, however, the penalty is up to the greater of \$100,000 or 50 percent of account balances; criminal penalties may also apply.

However, taxpayers with undisclosed accounts have options available to them. The implementation of FATCA and the ongoing efforts of the IRS and the Department of Justice to ensure compliance by those with U.S. tax obligations have raised awareness of U.S. tax and information reporting obligations with respect to non-U.S. investments. Because the circumstances of taxpayers with non-U.S. investments vary widely, the IRS offers the following for addressing previous failures to comply with U.S. tax and information return obligations with respect to those investments:

1. Offshore Voluntary Disclosure Program;
2. Streamlined Filing Compliance Procedures;
3. Delinquent FBAR submission procedures; and
4. Delinquent international information return submission procedures.

We encourage you to report your foreign accounts and foreign financial assets as required. If you have any questions please call our office, we can discuss the details of your available options for compliance.