

Demystified: How to Report Foreign Financial Assets



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It seems like the crackdown on unreported foreign assets is in the news regularly.

What are foreign assets? To whom should we report? How do we avoid horrific penalties? Can we stay out of jail? It's a quagmire.

Let's start with simple definitions. The "foreign" in foreign financial assets means physically located outside the United States. Financial assets consist of the following:

- Accounts maintained in a financial institution such as bank accounts (checking, savings, CDs, demand), brokerage and securities accounts
- Commodity futures or options accounts
- An insurance policy with cash value
- An annuity policy with cash value
- Shares in a foreign mutual fund
- Interests in a foreign partnership
- Foreign stocks or securities not held in a financial account
- Interests in foreign trusts

This isn't an all-inclusive list, but it contains most common situations.

Who needs to know this information? The U.S. Department of the Treasury is very interested in this information. In fact, it has two branches that take particular interest, FinCEN and the IRS.

FinCEN is the Financial Crimes Enforcement Network. FinCEN's mission is to safeguard the financial system from illicit use, combat money laundering, and promote national security through the collection, analysis and dissemination of financial intelligence and strategic use of financial authorities.

The IRS's stated mission is:

"Provide America's taxpayers top quality service by helping them understand and meet their tax responsibilities and enforce the law with integrity and fairness to all."

This mission statement describes the IRS's role and the public's expectation about how it should perform that role.

- In the United States, the Congress passes tax laws and requires taxpayers to comply.
- The taxpayers' role is to understand and meet tax obligations.
- The IRS's role is to help the large majority of compliant taxpayers with the tax law, while ensuring that the minority who are unwilling to comply pay their fair share.

FinCEN regulates and requires reports from banking institutions, money services businesses, insurance industries, precious metals/jewelry industry, mortgage companies, brokers and everything in between.

FBAR – FinCen Form 114

The form individuals, businesses and trusts need to be concerned about is FinCEN Form 114, Report of Foreign Bank and Financial Accounts (FBAR). This form replaces Form TD F 90-22.1 used in the past. The form must be filed by a "United States person" whose interest in, or signature authority over, aggregate foreign assets exceeds \$10,000 at any time during the year.

The FBAR must be filed electronically by the following June 30. There is no extension.

For these purposes, a "United States person" means an individual U.S. citizen or U.S. resident alien or a corporation, partnership, limited liability company, trust or estate formed under U.S. laws, or created or organized in the U.S.

So what happens if you don't file? The FBAR carries a civil penalty of up to \$10,000 per failure to file. If there is reasonable cause and the balance has been properly reported, the penalty can potentially be waived.

If a person willfully neglects to file or properly report an account, the penalties increase to the greater of \$100,000 or 50 percent of the balance of the account at the time of the violation. Willful noncompliance can also carry criminal penalties.

Other forms

The IRS has a plethora of other forms to complete to provide information about foreign interests:

- Form 3520, Annual Return To Report Transactions With Foreign Trusts and Receipt of Certain Foreign Gifts
- Form 3520-A, Annual Information Return of Foreign Trust With a U.S. Owner (Under Section 6048(b))
- Form 5471, Information Return of U.S. Persons With Respect to Certain Foreign Corporations
- Form 8621, Information Return by a Shareholder of a Passive Foreign Investment Company or Qualified Electing Fund
- Form 8858, Information Return of U.S. Persons With Respect to Foreign Disregarded Entities
- Form 8865, Return of U.S. Persons With Respect to Certain Foreign Partnerships
- Form 8938, Statement of Specified Foreign Financial Assets

Form 8938

Let's focus on Form 8938. Certain people must file this form if they meet the aggregate foreign financial asset values outlined in the table below. They are U.S. citizens, U.S. resident aliens, nonresident aliens who elect to be treated as resident aliens for purposes of filing a joint return and nonresident aliens who are bona fide residents of American Samoa or Puerto Rico.

Aggregate Foreign Financial Asset Values

	Living in the U.S.	Living Abroad
Single and married filing separately	Total specified foreign financial assets of more than \$50,000 on the last day of the tax year or more than \$75,000 at any time during the year	Total specified foreign financial assets of more than \$200,000 on the last day of the tax year or more than \$300,000 at any time during the year

Married filing jointly	jointlyTotal specified foreign financial assets of more than \$100,000 on the last day of the tax year or more than \$150,000 at any time during the year	Total specified foreign financial assets of more than \$400,000 on the last day of the tax year or more than \$600,000 at any time during the year
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By indicating on Form 8938 that you filed one of the other IRS forms listed above, you will not have to duplicate the information. The IRS recently did away with the requirements to complete Form 8891 for people who are beneficiaries of certain Canadian registered retirement plans.

Like FBAR, Form 8938 carries a \$10,000 penalty for not filing. If the IRS sends you notice of your failure to file, you have 90 days to comply or be subject to an additional \$10,000 per month, up to \$50,000, until you do file.

There is a 40 percent penalty for any tax underpaid on foreign financial assets not reported. That penalty jumps to 75 percent if the underpayment is due to fraud.

Failure to file Form 8938 can also carry criminal penalties. These penalties are severe to ensure compliance. The government has procedures in place to help taxpayers become compliant in cases of non -willful failures to file.

You can go to [www.irs.gov/Businesses/ Comparison-of-Form-8938-and-FBAR-Requirements](http://www.irs.gov/Businesses/Comparison-of-Form-8938-and-FBAR-Requirements) to find a chart comparing Form 8938 and Form 114 filing requirements.

The days of the secret foreign account used to squirrel away “tax-free” money is coming to a close. Last October, 51 countries signed the Multilateral Competent Authority Agreement on Automatic Exchange of Financial Account Information.

Know your obligations and make sure to let your accountant know what assets you may have so you can receive professional assistance in meeting your filing requirements.