

## Reporting Foreign Accounts

Nowadays, it is not uncommon for taxpayers to have bank accounts and investments held in different countries. While there is nothing wrong with this, it is important to make sure you are in compliance with US tax filings with respect to foreign accounts and investments in order to avoid getting hit with penalties.

There are 2 forms which report foreign accounts and investments: the FBAR and Form 8938.

The FBAR (Foreign Bank Account Reporting), is filed on form 114 and is required to be filed by a United States person who has:

1. A financial interest in or signature authority over one or more financial accounts located outside the United States AND
2. The aggregate value of ALL financial accounts exceeds \$10,000 at ANY time during the calendar year

**NOTE:** There is a misconception that each account has to have a balance of \$10,000 but that is not correct. For example, if you have two accounts in the UK with the highest balance at \$9,000 in each account, the aggregate value is \$18,000, and therefore, there is an FBAR filing requirement.

A United States person is defined as:

1. US Citizen
2. US resident
3. Entities formed in the United States (corporations, partnerships, s corporations, LLCs, etc.)
4. Trusts & Estates formed under the laws of the United States

**Due date for 2017 FBAR:** April 17, 2018 with an automatic 6-month extension if Form 1040 is extended to October 15, 2018.

### **PENALTY:**

The penalty for not timely filing the FBAR is:

1. \$10,000 for non-willful violations
2. The greater of \$100,000 or 50% of the balance in the account at the time of violation, for willful violations.

In addition to the FBAR, form 8938 "Statement of Specified Foreign Financial Assets" may also be required. Form 8938 is a result of the Foreign Account Tax Compliance Act (FATCA). This form requires that all "specified foreign financial assets" be reported if a threshold is met. Specified foreign financial assets are defined as:

1. A financial account maintained by a foreign institution
2. Stock or securities issued by someone other than a US person
3. Any interest in a foreign entity, and
4. Any financial instrument or contract that has an issuer or counterparty that is other than a US person.

The threshold is higher for this form as compared to the FBAR. Thresholds are:

- **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.

**Due date for 2018 Form 8938:** The form is filed with the 2017 tax return and therefore, has the same due dates as the income tax returns.

**NOTE:** Specified Domestic Entities are now required to file Form 8938. A specified domestic entity is one of the following

- A closely held domestic corporation or partnership that has at least 50% of its gross income from passive income
- A closely held domestic corporation or partnership if at least 50% of its assets produce or are held to produce passive income
- A domestic trust described in Section 7701(a)(30)(E) that has one or more specified person as a current beneficiary.

**PENALTY:**

The penalty for not timely filing Form 8938 is \$10,000.

The IRS is cracking down on international disclosures and the penalties can add up quickly. We can help with delinquency and current filings of these forms.

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