

## **Dear U.S. Taxpayers:**

Most of us are already aware of specified foreign financial assets reporting requirements per the U.S. tax regulations. However, we found some of us are still not aware of these requirements. This article is for the U.S. taxpayers who have foreign specified financial assets (including but not limited to: foreign financial accounts, stocks & securities, partnership interest, life insurance with cash value, certain kinds of trusts, hedge and private equity funds etc). If you have real estate under your individual name, you do not need to report its value to the IRS. However, most of the incomes, including that from real estate, you earn worldwide have to be reported on your annual income tax return. This article covers only foreign financial assets reporting requirements not the income you derive in a given tax year.

There are basically two separate filing requirements if you have foreign specified financial assets.

### **1) FBAR Reporting also known as FinCEN 114:**

This reporting is completely different from annual income tax reporting and has a different filing deadline. This reporting is due by June 30 of next year for the recent past calendar year. This filing can be done by yourself online at: <http://bsaefiling.fincen.treas.gov/main.html>

United States persons are required to file an FBAR:

1. If the United States person had a financial interest in or signature authority over at least one financial account located outside of the United States; and
2. the aggregate value of all foreign financial accounts exceeded \$10,000 at any time during the calendar year reported.

#### Penalties if failed to file FBAR reporting:

If non-willful, up to \$10,000; if willful, up to the greater of \$100,000 or 50 percent of account balances; criminal penalties may also apply.

### **2) Form 8938 filing requirement with your annual income tax return**

The reporting requirement for Form 8938 is separate from the reporting requirement for FBAR ( FinCEN Form 114). Form 8938 is filed with annual income tax return.

United States persons are required to file Form 8938 if they hit the following threshold amounts:

Unmarried- \$50,000 on the last day of the tax year or \$75,000 at any time during the tax year

Married- \$100,000 (joint) on the last day of the tax year or \$150,000 (joint) at any time during the tax year (higher threshold amounts apply to individuals living abroad)

Penalties if failed to file Form 8938:

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.

Please note, United States requires most of the foreign financial institutions to report financial assets status of U.S. persons. Therefore, it is likely that the IRS might know your foreign funds position even if you failed to file Form 8938.

**Comparison of Form 8938 and FBAR Requirements**

The Form 8938 filing requirement does not replace or otherwise affect a taxpayer’s obligation to file FinCEN Form 114 (Report of Foreign Bank and Financial Accounts). Individuals must file each form for which they meet the relevant reporting threshold.

|                                                         | <b>Form 8938, Statement of Specified Foreign Financial Assets</b>                                                                                                                                                              | <b>FinCEN Form 114, Report of Foreign Bank and Financial Accounts (FBAR)</b>                                                                                                            |
|---------------------------------------------------------|--------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|-----------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|
| <b>Who Must File?</b>                                   | Specified individuals, which include U.S citizens, resident aliens, and certain non-resident aliens that have an interest in specified foreign financial assets and meet the reporting threshold                               | U.S. persons, which include U.S. citizens, resident aliens, trusts, estates, and domestic entities that have an interest in foreign financial accounts and meet the reporting threshold |
| <b>Does the United States include U.S. territories?</b> | No                                                                                                                                                                                                                             | Yes, resident aliens of U.S territories and U.S. territory entities are subject to FBAR reporting                                                                                       |
| <b>Reporting Threshold (Total Value of Assets)</b>      | Unmarried- \$50,000 on the last day of the tax year or \$75,000 at any time during the tax year<br><br>Married- \$100,000 (joint) on the last day of the tax year or \$150,000 (joint) at any time during the tax year (higher | \$10,000 at any time during the calendar year                                                                                                                                           |

|                                                                         | <b>Form 8938, Statement of Specified Foreign Financial Assets</b>                                                                                                                                                                         | <b>FinCEN Form 114, Report of Foreign Bank and Financial Accounts (FBAR)</b>                                                                                                                                                                                                                                                                                                                                                                                                                          |
|-------------------------------------------------------------------------|-------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|-------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|
|                                                                         | threshold amounts apply to individuals living abroad)                                                                                                                                                                                     |                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                       |
| <b>When do you have an interest in an account or asset?</b>             | If any income, gains, losses, deductions, credits, gross proceeds, or distributions from holding or disposing of the account or asset are or would be required to be reported, included, or otherwise reflected on your income tax return | <p>Financial interest: you are the owner of record or holder of legal title; the owner of record or holder of legal title is your agent or representative; you have a sufficient interest in the entity that is the owner of record or holder of legal title.</p> <p>Signature authority: you have authority to control the disposition of the assets in the account by direct communication with the financial institution maintaining the account.</p> <p>See instructions for further details.</p> |
| <b>What is Reported?</b>                                                | Maximum value of specified foreign financial assets, which include financial accounts with foreign financial institutions and certain other foreign non-account investment assets                                                         | Maximum value of financial accounts maintained by a financial institution physically located in a foreign country                                                                                                                                                                                                                                                                                                                                                                                     |
| <b>How are maximum account or asset values determined and reported?</b> | <p>Fair market value in U.S. dollars in accord with the Form 8938 instructions for each account and asset reported</p> <p>Convert to U.S. dollars using the end of the taxable year exchange rate and report in U.S. dollars.</p>         | <p>Use periodic account statements to determine the maximum value in the currency of the account.</p> <p>Convert to U.S. dollars using the end of the calendar year exchange rate and report in U.S. dollars.</p>                                                                                                                                                                                                                                                                                     |
| <b>When Due?</b>                                                        | By due date, including extension, if any, for income tax return                                                                                                                                                                           | Received by June 30 (no extensions of time granted)                                                                                                                                                                                                                                                                                                                                                                                                                                                   |
| <b>Where to File?</b>                                                   | File with income tax return pursuant to instructions for filing the return                                                                                                                                                                | File electronically through FinCEN's <a href="#">BSA E-Filing System</a> . The FBAR is not filed with a federal tax return.                                                                                                                                                                                                                                                                                                                                                                           |
| <b>Penalties</b>                                                        | 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                                                                       | If non-willful, up to \$10,000; if willful, up to the greater of \$100,000 or 50 percent of account balances; criminal penalties may also apply                                                                                                                                                                                                                                                                                                                                                       |

|                                                                                                   | <b>Form 8938, Statement of Specified Foreign Financial Assets</b>                                                 | <b>FinCEN Form 114, Report of Foreign Bank and Financial Accounts (FBAR)</b>                                                                       |
|---------------------------------------------------------------------------------------------------|-------------------------------------------------------------------------------------------------------------------|----------------------------------------------------------------------------------------------------------------------------------------------------|
|                                                                                                   | penalty of \$60,000; criminal penalties may also apply                                                            |                                                                                                                                                    |
| <b>Types of Foreign Assets and Whether They are Reportable</b>                                    |                                                                                                                   |                                                                                                                                                    |
| <b>Financial (deposit and custodial) accounts held at foreign financial institutions</b>          | Yes                                                                                                               | Yes                                                                                                                                                |
| <b>Financial account held at a foreign branch of a U.S. financial institution</b>                 | No                                                                                                                | Yes                                                                                                                                                |
| <b>Financial account held at a U.S. branch of a foreign financial institution</b>                 | No                                                                                                                | No                                                                                                                                                 |
| <b>Foreign financial account for which you have signature authority</b>                           | No, unless you otherwise have an interest in the account as described above                                       | Yes, subject to exceptions                                                                                                                         |
| <b>Foreign stock or securities held in a financial account at a foreign financial institution</b> | The account itself is subject to reporting, but the contents of the account do not have to be separately reported | The account itself is subject to reporting, but the contents of the account do not have to be separately reported                                  |
| <b>Foreign stock or securities not held in a financial account</b>                                | Yes                                                                                                               | No                                                                                                                                                 |
| <b>Foreign partnership interests</b>                                                              | Yes                                                                                                               | No                                                                                                                                                 |
| <b>Indirect interests in foreign financial assets through an entity</b>                           | No                                                                                                                | Yes, if sufficient ownership or beneficial interest (i.e., a greater than 50 percent interest) in the entity. See instructions for further detail. |
| <b>Foreign mutual funds</b>                                                                       | Yes                                                                                                               | Yes                                                                                                                                                |
| <b>Domestic mutual fund investing in foreign stocks and securities</b>                            | No                                                                                                                | No                                                                                                                                                 |
| <b>Foreign accounts and foreign non-account</b>                                                   | Yes, as to both foreign accounts and foreign non-account                                                          | Yes, as to foreign accounts                                                                                                                        |

|                                                                                                      | <b>Form 8938, Statement of Specified Foreign Financial Assets</b>                                                                    | <b>FinCEN Form 114, Report of Foreign Bank and Financial Accounts (FBAR)</b> |
|------------------------------------------------------------------------------------------------------|--------------------------------------------------------------------------------------------------------------------------------------|------------------------------------------------------------------------------|
| <b>investment assets held by foreign or domestic grantor trust for which you are the grantor</b>     | investment assets                                                                                                                    |                                                                              |
| <b>Foreign-issued life insurance or annuity contract with a cash-value</b>                           | Yes                                                                                                                                  | Yes                                                                          |
| <b>Foreign hedge funds and foreign private equity funds</b>                                          | Yes                                                                                                                                  | No                                                                           |
| <b>Foreign real estate held directly</b>                                                             | No                                                                                                                                   | No                                                                           |
| <b>Foreign real estate held through a foreign entity</b>                                             | No, but the foreign entity itself is a specified foreign financial asset and its maximum value includes the value of the real estate | No                                                                           |
| <b>Foreign currency held directly</b>                                                                | No                                                                                                                                   | No                                                                           |
| <b>Precious Metals held directly</b>                                                                 | No                                                                                                                                   | No                                                                           |
| <b>Personal property, held directly, such as art, antiques, jewelry, cars and other collectibles</b> | No                                                                                                                                   | No                                                                           |
| <b>'Social Security'- type program benefits provided by a foreign government</b>                     | No                                                                                                                                   | No                                                                           |

*Disclaimer: This article is not fully comprehensive on all the relevant topics. This should not be construed as any sort of tax or legal advice. For advice, please consult your tax advisor.*

Reference:

<https://www.irs.gov/pub/irs-pdf/i8938.pdf>

<https://www.irs.gov/Businesses/Comparison-of-Form-8938-and-FBAR-Requirements>

[http://bfr.nrb.org.np/circular/2070-71/2070\\_71\\_%28For\\_A\\_,\\_B\\_&\\_C\\_Class%29--Circular\\_25-Regulations%20related%20to%20FATCA.pdf](http://bfr.nrb.org.np/circular/2070-71/2070_71_%28For_A_,_B_&_C_Class%29--Circular_25-Regulations%20related%20to%20FATCA.pdf)

<https://www.treasury.gov/resource-center/tax-policy/treaties/Documents/FATCA-Agreement-India-7-9-2015.pdf>