



New IRS Reporting Requirement for US Citizens and Residents

February 13, 2012

This information is being provided to alert US Expatriates that they may be subject to reporting certain Specified Foreign Financial Assets with their US Income Tax Return. A new Form 8938, *Statement of Specified Foreign Financial Assets*, was issued in December 2011 by the IRS. If you have an interest in certain foreign financial assets and that interest is above certain US dollar thresholds, you will be required to include the new form when you file your US Income Tax Return for 2011 (normally due in April 2012). Note, included below is information from the IRS on who is required to file a report and what constitutes a Specified Foreign Financial Asset.

Please note, since the use of a Thai company limited or the acquisition of real property through use of a mortgage note/lease arrangement is common for acquisition of condominiums or land in Thailand, you should be aware that the IRS notice below states that specified foreign assets include stock or securities issued by someone other than a U.S. person, any interest in a foreign entity, and any financial instrument or contract that has as an issuer or counterparty that is other than a U.S. person.

If you think you are subject to the reporting requirement, we suggest you consult with a competent professional tax advisor. If you are required to file the form and do not, the American Institute of CPAs advises that the initial penalty for noncompliance is \$10,000. If a taxpayer fails to file for more than 90 days after the IRS notifies the taxpayer of the failure to comply, a penalty of \$10,000 for each 30-day period (or fraction of) applies, with a maximum of \$50,000. Further, that in all cases, the reporting requirement applies only to taxpayers who are required to file a federal income tax return.

In addition, taxpayers who file Form 8938 still must file Form TD F 90-22.1, Report of Foreign Bank and Financial Accounts (FBAR), because the forms serve different purposes (law enforcement vs. tax administration).

See <http://www.pattayacityexpatsclub.com/expats/bank%20accounts.htm> for information about FBAR.

IRS Form 8938 – click here: <http://www.irs.gov/pub/irs-pdf/f8938.pdf>

IRS Form 8938 Instructions – click here: <http://www.irs.gov/pub/irs-pdf/i8938.pdf>

IRS Guidance on who should file the report on next page

Source: <http://www.irs.gov/businesses/corporations/article/0,,id=251217,00.html>

Do I need to file Form 8938, “Statement of Specified Foreign Financial Assets”?

Certain U.S. taxpayers holding specified foreign financial assets with an aggregate value exceeding \$50,000 will report information about those assets on new Form 8938, which must be attached to the taxpayer’s annual income tax return. Higher asset thresholds apply to U.S. taxpayers who file a joint tax return or who reside abroad (see below).

Form 8938 reporting applies for specified foreign financial assets in which the taxpayer has an interest in taxable years starting after March 18, 2010. For most individual taxpayers, this means they will start filing Form 8938 with their 2011 income tax return to be filed this coming tax filing season.

Upon issuance of regulations, FATCA may require reporting by specified domestic entities. For now, only specified individuals are required to file Form 8938.

- If you do not have to file an income tax return for the tax year, you do not need to file Form 8938, even if the value of your specified foreign assets is more than the appropriate reporting threshold.
- If you are required to file Form 8938, you do not have to report financial accounts maintained by:
 - a U.S. payer (such as a U.S. domestic financial institution),
 - the foreign branch of a U.S. financial institution, or
 - the U.S. branch of a foreign financial institution.

Refer to Form 8938 instructions for more information on assets that do not have to be reported.

You must file Form 8938 if:

1. You are a specified individual.

A specified individual is:

- A U.S. citizen
- A resident alien of the United States for any part of the tax year (see Pub. 519 for more information)
- A nonresident alien who makes an election to be treated as resident alien for purposes of filing a joint income tax return
- A nonresident alien who is a bona fide resident of American Samoa or Puerto Rico (See Pub. 570 for definition of a bona fide resident)

AND

2. You have an interest in specified foreign financial assets required to be reported.

A specified foreign financial asset is:

- Any financial account maintained by a foreign financial institution, except as indicated above
- Other foreign financial assets held for investment that are not in an account maintained by a US or foreign financial institution, namely:
 - Stock or securities issued by someone other than a U.S. person
 - Any interest in a foreign entity, and
 - Any financial instrument or contract that has as an issuer or counterparty that is other than a U.S. person.

Refer to the Form 8938 instructions for more information on the definition of a specified foreign financial assets and when you have an interest in such an asset.

AND

3. The aggregate value of your specified foreign financial assets is more than the reporting thresholds that applies to you:

- **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.
- **Taxpayers living abroad. You are a taxpayer living abroad if:**
 - You are a U.S. citizen whose tax home is in a foreign country and you are either a bona fide resident of a foreign country or countries for an uninterrupted period that includes the entire tax year, or
 - You are a US citizen or resident, who during a period of 12 consecutive months ending in the tax year is physically present in a foreign country or countries at least 330 days.

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.

Refer to the Form 8938 instructions for information on how to determine the total

value of your specified foreign financial assets.

Reporting specified foreign financial assets on other forms filed with the IRS.

If you are required to file a Form 8938 and you have a specified foreign financial asset reported on Form 3520, Form 3520-A, Form 5471, Form 8621, Form 8865, or Form 8891, you do not need to report the asset on Form 8938. However, you must identify on Part IV of your Form 8938 which and how many of these form(s) report the specified foreign financial assets.

Even if a specified foreign financial asset is reported on a form listed above, you must still include the value of the asset in determining whether the aggregate value of your specified foreign financial assets is more than the reporting threshold that applies to you.

Page Last Reviewed or Updated: January 25, 2012
