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THE TAX LAWYER

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Happy FATCA Filing Season

The IRS can seem Scrooge-like this time of year, but not when it comes to copious guidance on FATCA—the foreign account disclosure law everyone loves to hate. See [FATCA Carries Fat Price Tag](#). Just in time for Christmas, the IRS released temporary and proposed regulations. See [T.D. 9567](#). When you start doing your 2011 tax return in early 2012 you'll need to pay attention.



New Form? Soon, the IRS will release the final version of [Form 8938](#) (Statement of Specified Foreign Financial Assets). Use it to report specified foreign financial assets for 2011.

Assets? What's "Specified foreign financial assets?" They include:

1. Depository or custodial accounts at foreign financial institutions; and
2. If not held in an account at a financial institution:
 - stock or securities issued by foreign persons;
 - any other financial instrument or contract held for investment issued by any non-U.S. person; and

- any interest in a foreign entity. IRC Sec. 6038D(b).

Who? U.S. citizens, U.S. resident aliens, or nonresident aliens who have elected to be taxed as U.S. residents.

How Much? You must file Form 8938 if you have an interest in any specified foreign financial assets with an aggregate fair market value exceeding **either** \$50,000 on the last day of the tax year **or** \$75,000 at any time during the year. For married couples filing jointly, its \$100,000 and \$150,000, respectively.

This threshold is increased to \$200,000 and \$300,000 (or \$400,000 and \$600,000 for married joint filers) if you are either:

1. A U.S. citizen qualifying with a tax home in a foreign country and establish to IRS's satisfaction you've been a bona fide foreign resident for an entire tax year;
2. A U.S. citizen or resident physically present in a foreign country for at least 330 full days during any period of 12 consecutive months.

Various Assets? Each joint owner reports and includes the **full value** of jointly owned assets.

Married Joint. Married individuals filing jointly file a single Form 8938 that reports all specified foreign financial assets in which either spouse has an interest.

Married Separate. A person filing married separate files a separate Form 8938 reporting all interests in specified foreign financial assets, including any jointly owned with his spouse. But if the spouse is also filing, only list **one-half the value** on your form.

No Annual Return? If you don't have to file a tax return, you don't have to file a Form 8938 either.

What's an Interest? You have an "interest" if any income, gains, losses, deductions, credits, gross proceeds, or distributions from an asset should be reflected on your tax return.

Penalties. If you fail to file, you face a \$10,000 penalty. If you get an IRS notice and still fail to file for another 90 days, you face another \$10,000 for each 30-days up to a maximum penalty of \$50,000 for each such failure. There's no penalty if your failure was due to reasonable cause and not willful neglect. If you are married filing jointly, each of you is jointly and severally liable for the full amount of the penalties.

For more, see:

[IRS Exempts Many Expats From FATCA](#)

[Please Sir, Can I Have Some More FATCA?](#)

[Oh Canada! Hating FBARS And FATCA](#)

[Expats Call For FATCA Repeal](#)

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