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THE TAX LAWYER

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### IRS Exempts Many Expats From FATCA



Image via caribarena.com

No one likes FATCA, least of all U.S. persons living abroad—see [Expats Call For FATCA Repeal](#)—and financial institutions that will bear the brunt of the work tooling up to comply with this massive U.S. financial reporting law starting soon. [FATCA Carries Fat Price Tag](#). However, the IRS has just announced it will make FATCA easier for many.

In [IR-2011-117](#), the IRS revealed it will shortly be releasing a new information reporting form that taxpayers will use starting this coming tax filing season to report specified foreign financial assets for 2011. [Form 8938](#) (Statement of Specified Foreign Financial Assets) will be filed by taxpayers with specific types and amounts of foreign financial assets or foreign accounts. The IRS stresses that you need to pay attention to these filing requirements. If you don't, the penalties are quite high.

Individuals who may have to file Form 8938 are U.S. citizens and residents, nonresidents who elect to file a joint income tax return and certain nonresidents who live in a U.S. territory. We all knew that, but the thresholds were key. We thought the rule would be \$50,000 plus, but for certain types of taxpayers only higher numbers will trigger these rules.

Form 8938 is required when the total value of specified foreign assets exceeds certain thresholds. For example, a married couple living in the U.S. and filing a joint tax return would not file Form 8938 unless their total specified foreign assets exceed \$100,000 on the last day of the tax year or more than \$150,000 at any time during the tax year.

**Living Abroad?** The thresholds for taxpayers who reside abroad are higher. A married couple residing abroad and filing a joint return do not need to file Form 8938 unless the value of their specified foreign assets exceeds \$400,000 on the last day of the tax year or exceeds \$600,000 at any time during the year.

Instructions for Form 8938 explain the thresholds for reporting, what constitutes a specified foreign financial asset, how to determine the total value of relevant assets, what assets are exempted, and what information must be provided.

**No tax return? No 8938.** Form 8938 is not required of individuals who do not have an income tax return filing requirement.

**Don't Forget FBARs.** The new Form 8938 filing requirement does not replace or affect a taxpayer's obligation to file an [FBAR](#) (Report of Foreign Bank and Financial Accounts). See [Got FBARs? But Which One?](#) For more, see [Primer For First Time FBAR Filers](#).

**Big Penalties!** Failing to file a required Form 8938 carries a \$10,000 penalty. What's more, if the IRS notifies you and asks for one, you can get slapped with up to \$50,000 for continued failure to file. A 40% penalty on any understatement of tax attributable to non-disclosed assets can also be imposed. Special statute of limitation rules apply to Form 8938, which are also explained in the instructions.

Form 8938, the form's instructions, regulations implementing this new foreign asset reporting, and other information to help taxpayers determine if they are required to file Form 8938 can be found on the [FATCA page of irs.gov](#).

For more, see:

[IRS FATCA Guidance, Round 3](#)

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

[Get Ready For More FBAR Rules](#)

[IRS Relief To Canadian Dual Citizens](#)

[Dual Citizen Tax Relief From IRS](#)

[New FBAR Filing Deadline Approaching](#)

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

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