

# Tax Update

## New Reporting Requirements for Taxpayers with Foreign Assets

*Recently, the Internal Revenue Service introduced a new form for certain taxpayers to disclose foreign financial assets on their 2011 returns. The following questions and answers address the application of this new filing requirement.*

### **What is the purpose of IRS Form 8938 and who must file?**

If applicable, this form reports to the IRS any specified foreign financial assets (SFFAs) owned by U.S. citizens, resident aliens, and certain non-resident aliens. Individuals with foreign assets valued above \$50,000 on December 31, 2011 — or more than \$75,000 at any point in 2011 — must file. Higher asset thresholds are in place for married individuals filing jointly and taxpayers residing abroad. For 2011, only specified individuals are required to file Form 8938. Domestic entities, including trusts, may be required to file in 2012.

### **Is this the same as the FBAR filing requirement?**

No. Form 8938 does not replace the Report of Foreign Bank and Financial Account (FBAR) filing requirements that have existed for years. It is a separate filing requirement. Of note, while the FBAR is a stand-alone form that must be filed with the U.S. Treasury by June 30, Form 8938 is filed with your personal income tax return.

### **What counts as a specified foreign financial asset (SFFA)?**

Any financial account — savings, deposit, checking, and brokerage — maintained by a foreign financial institution, such as a German bank or Swedish brokerage, counts as an SFFA. (This doesn't include U.S. branches of foreign institutions, such as a UBS branch based in Connecticut.)

Other reportable foreign financial assets that are held for investment but not held in a U.S. or foreign financial account include the following:

- Stock or securities issued by a foreign person
- An interest in a foreign entity, such as a partnership or corporation
- An interest in a foreign pension plan or foreign deferred compensation plan
- Loans to a foreign person
- An interest in a foreign estate or trust
- Foreign mutual funds, foreign hedge funds, and foreign private equity funds
- Foreign swaps, options, and derivative contracts

A financial account maintained by a financial institution organized under the laws of U.S. possessions such as Guam, Puerto Rico, and the U.S. Virgin Islands would also be included.

### **What doesn't count as a foreign asset?**

A direct interest in foreign real estate, such as a vacation home in Italy, is exempt, as is personal property such as art, jewelry, or cars. However, if you own an interest in a foreign company that owns foreign real estate, you would need to file Form 8938.

Although trusts are not currently required to file, if you are considered the owner of a grantor trust that owns SFFAs, you may have a filing requirement.

### **If my U.S. brokerage account holds foreign stocks, do they have to be reported?**

No. Mutual fund accounts, IRAs, 401(k) plans, qualified retirement plans, and brokerage accounts maintained by U.S. financial institutions are not required to be reported on Form 8938. This also applies to accounts managed by the foreign branch of a U.S. financial institution.

**Will any of my Bessemer accounts potentially require me to file Form 8938?**

For 2011, if you have a U.S.-based Bessemer account, you shouldn't have to file as a result of any Bessemer portfolio holdings. However, if you file U.S. income tax returns and maintain an account in the Cayman Islands, you'll likely need to report that account on Form 8938 for 2011.

**What are the penalties if I don't comply?**

If you fail to report ownership of SFFAs on Form 8938, you may be subject to a \$10,000 fine, plus \$10,000 for each additional 30-day period you haven't filed. The maximum fine is \$50,000. If you can demonstrate that your failure to report is due to a reasonable cause, your penalty may be waived, but you will be obligated to report the required information.

IRS scrutiny of high-net-worth taxpayers is increasing in intensity, especially for those with foreign financial accounts or assets. As such, taxpayers and their advisors must pay careful attention to these new reporting requirements.

*If you have any questions about the new IRS forms or your particular situation, please contact your Client Account Manager or a Bessemer Senior Tax Consultant.*

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