



## Comparison of Form 8938 and FBAR Filing Requirements

The new 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.

	Form 8938, Statement of Specified Foreign Financial Assets	FinCEN Form 114, Report of Foreign Bank and Financial Accounts (FBAR)
<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>	\$50,000 on the last day of the tax year or \$75,000 at any time during the tax year (higher threshold amounts apply to married individuals filing jointly and individuals living abroad)	\$10,000 at any time during the calendar year
<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	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.  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.  See instructions for further details.
<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>	Fair market value in U.S. dollars in accord with the Form 8938 instructions for each account and asset reported Convert to U.S. dollars using the end of the taxable year exchange rate and report in U.S. dollars.	Use periodic account statements to determine the maximum value in the currency of the account. Convert to U.S. dollars using the end of the calendar year exchange rate and report in U.S. dollars.
<b>When Due?</b>	By due date, including extension, if any, for income tax return	Received by June 30 (no extensions of time granted)

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<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 penalty of \$60,000; criminal penalties may also apply	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>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 investment assets held by foreign or domestic grantor trust for which you are the grantor</b>	Yes, as to both foreign accounts and foreign non-account investment assets	Yes, as to foreign accounts

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<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

Please be advised that, based on current IRS rules and standards, the advice contained herein is not intended or written by the practitioner to be used and cannot be used by the taxpayer for the purpose of avoiding penalties.

The rules governing FATCA and FBAR filings are complex and the penalties for failing to file are heavy handed. For example, a failure to file a FBAR carries a minimum \$10,000 penalty per year, and a willful failure to report income/foreign assets can carry a penalty which is the greater of \$100,000 or 50% of the foreign asset. A determination of willful failure to file can also lead to criminal prosecution.

Global Tax Solutions CPAs handles US tax compliance and planning matters for U.S. and foreign residents with international assets. Issues in international US tax cases are fact-specific and involve complex rules. We work with our clients to ensure that their IRS compliance including related declarations, are accurate. The IRS and U.S. Treasury Department impose substantial penalties for failure to comply on a timely basis. Our firm will work with you to correct past errors and ensure timely compliance of current statements. We work with US expats located all over the world.

For more advice on which forms to file and how to be in compliance with the federal law, please contact us at (703) 717-5000 or [info@globaltax.solutions](mailto:info@globaltax.solutions)