



Instructions for Form 8938

(November 2012)

Statement of Specified Foreign Financial Assets

Section references are to the Internal Revenue Code unless otherwise noted.

General Instructions

Future developments. The IRS has created a page on IRS.gov for information about Form 8938 and its instructions, at www.irs.gov/form8938. Information about any future developments affecting Form 8938 (such as legislation enacted after we release it) will be posted on that page.

What's New

Type of filer. On page 1 of the form (above Part I), in the *Type of filer* section we added a checkbox for married individuals filing a separate return.

Checkbox for the type of Form 8938 filed. On page 1 of the form (immediately above Part I), we have modified the lead-in text for this checkbox so that filers now only have to check this box if they are filing an amended or supplemental Form 8938 for the tax year.

Part II, line 3. Other foreign assets. For lines 3a and 3b we added an instruction for assets acquired or disposed of during different dates in the year. See the instructions for Part II, line 3 for details.

Part II, line 7. Other foreign assets. We eliminated the checkbox for PFICs in Part II, line 7 because whether a reported specified foreign financial asset is a PFIC is no longer required to be indicated on Form 8938. See *Assets Not Required to be Reported and Duplicative reporting*, regarding PFICs reported on Form 8621, Information Return by a Shareholder of a Passive Foreign Investment Company or Qualified Electing Fund.

Part IV, Form 8891, U.S. Information Return for Beneficiaries of Certain Canadian Registered Retirement Plans. We added a new checkbox for Form 8891 to indicate that you are excepted from reporting a

specified foreign financial asset on Form 8938 because you reported the asset on Form 8891.

Purpose of Form

Use Form 8938 to report your specified foreign financial assets if the total value of all the specified foreign financial assets in which you have an interest is more than the appropriate reporting threshold. See *Determining the Reporting Threshold That Applies to You*, later.



Filing Form 8938 does not relieve you of the requirement to file Form TD F 90-22.1, Report of Foreign Bank and Financial Accounts (FBAR), if you are otherwise required to file the FBAR. See Form TD F 90-22.1 and its instructions for FBAR filing requirements. See Comparison of Form 8938 and FBAR Requirements, available at www.irs.gov/Businesses/Comparison-of-Form-8938-and-FBAR-Requirements, for a chart comparing Form 8938 and FBAR filing requirements.

When and How To File

Attach Form 8938 to your annual return and file by the due date (including extensions) for that return.

An annual return includes the following returns.

- Form 1040.
- Form 1120.
- Form 1065.
- Form 1041.
- Form 1120-S.
- Form 1040NR.

A reference to an “annual return” or “income tax return” in the instructions includes a reference to any return listed here, whether it is an income tax return or an information return.

Transitional rule for individuals.

Your obligation to file Form 8938 in 2011 is deferred to 2012 if you are an individual who satisfies all of the following.

- You had a tax year that began after March 18, 2010, and before January 1, 2011.
- You were required to file Form 8938.
- You filed an annual return for the year before Form 8938 was released.

See Notice 2011-55, 2011-29 I.R.B. 53, available at http://www.irs.gov/irb/2011-29_IRB/ar06.html. File Form 8938 for the prior year with your 2012 annual return. If you are required to complete a Form 8938 for your prior tax year and your 2012 tax year, attach both forms to your income tax return for 2012.

Filing Form 8938 after filing 2011 or 2012 annual returns. If the transitional rule above does not apply to you and you did not file a required Form 8938 with your 2011 or 2012 annual return, file an amended return and attach Form 8938 to that amended return for the appropriate tax year.



Do not send a Form 8938 to the IRS unless it is attached to an annual return or an amended return.

Who Must File

Unless an exception applies, you must file Form 8938 if you are a specified individual that has an interest in specified foreign financial assets and the value of those assets is more than the applicable reporting threshold.

If you are a domestic corporation, partnership, or trust, see the caution under *Specified Domestic Entity* below.

If you are required to file Form 8938, you must report the specified foreign financial assets in which you have an interest even if none of the assets affects your tax liability for the year. See *Specified Individual and Reporting Thresholds Applying to Specified Individuals*, later.



Exception if no income tax return required.

If you do not have to file an income tax return for the tax year, you do not have to file Form 8938, even if the value of your specified foreign financial assets is more than the appropriate reporting threshold.

Specified Individual

You are a specified individual if you are one of the following.

- A U.S. citizen.
- A resident alien of the United States for any part of the tax year (but see *Reporting Period*, later).
- A nonresident alien who makes an election to be treated as a 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, Tax Guide for Individuals With Income From U.S. Possessions, for a definition of bona fide resident.

Special rules for resident aliens.

You are a resident alien if you are treated as a resident alien for U.S. tax purposes under the green card test or the substantial presence test. For more information, see Pub. 519, U.S. Tax Guide for Aliens. If you qualify as a resident alien under either rule, you are a specified individual even if you elect to be taxed as a resident of a foreign country under the provisions of a U.S. income tax treaty. If you have to file Form 8938, attach it to your Form 1040NR.

Specified Domestic Entity



The IRS anticipates issuing regulations that will require a domestic entity to file Form 8938 if the entity is formed or availed of to hold specified foreign financial assets and the value of those assets exceeds the appropriate reporting threshold. Until the IRS issues such regulations, only individuals must file Form 8938.

Reporting Thresholds Applying to Specified Individuals

Taxpayers living in the United States. If you do not live outside the United States, you satisfy the reporting threshold discussed next that applies to you and no exception

applies, file Form 8938 with your income tax return.

Unmarried taxpayers. If you are not married, you satisfy the reporting threshold only if 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. If you are married and you and your spouse file a joint income tax return, you satisfy the reporting threshold only if 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. If you are married and file a separate income tax return from your spouse, you satisfy the reporting threshold only if 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 outside the United States. If your tax home is in a foreign country, you meet one of the presence abroad tests described next, and no exception applies, file Form 8938 with your income tax return if you satisfy the reporting threshold discussed next that applies to you.

Unmarried taxpayers. If you are not married, you satisfy the reporting threshold only if the total value of your specified foreign financial assets is more than \$200,000 on the last day of the tax year or more than \$300,000 at any time during the tax year.

Married taxpayers filing a joint income tax return. If you are married and you and your spouse file a joint income tax return, you satisfy the reporting threshold only if the total value of your specified foreign financial assets is more than \$400,000 on the last day of the tax year or more than \$600,000 at any time during the tax year.

Married taxpayers filing separate income tax returns. If you are married and file a separate income tax return from your spouse, you satisfy the reporting threshold

only if the total value of your specified foreign financial assets is more than \$200,000 on the last day of the tax year or more than \$300,000 at any time during the tax year.

Presence abroad. You satisfy the presence abroad test if you are one of the following.

- A U.S. citizen who has been a bona fide resident of a foreign country or countries for an uninterrupted period that includes an entire tax year.
- A U.S. citizen or resident who is present in a foreign country or countries at least 330 full days during any period of 12 consecutive months that ends in the tax year being reported.

Determining the Total Value of Your Specified Foreign Financial Assets

You must figure the total value of the specified foreign financial assets in which you have an interest to determine if you satisfy the reporting threshold that applies to you. To determine if you have an interest in a specified foreign financial asset, see *Interests in Specified Foreign Financial Assets*, later.

Valuing specified foreign financial assets. The value of a specified foreign financial asset for purposes of determining the total value of specified foreign financial assets in which you have an interest during the tax year or on the last day of the tax year is the asset's fair market value. For purposes of figuring the total value of specified foreign financial assets, the value of a specified foreign financial asset denominated in a foreign currency must be first determined in the foreign currency and then converted to U.S. dollars. See *Foreign currency conversion in Reporting Maximum Value*, later, for rules on determining and applying the appropriate foreign currency exchange rate.

Value of an interest in a foreign trust during the tax year. If you do not know or have reason to know based on readily accessible information the fair market value of your interest in a foreign trust during the tax year, the value to be included in determining the total value of your specified foreign financial assets during the tax year is the maximum

value of your interest in the foreign trust. See *Valuing interests in foreign trusts in Reporting Maximum Value*, later, for rules on determining the maximum value of an interest in a foreign trust.

Value of an interest in a foreign estate, foreign pension plan, and foreign deferred compensation plan.

If you do not know or have reason to know based on readily accessible information the fair market value of your interest in a foreign estate, foreign pension plan, or foreign deferred compensation plan during the tax year, the value to be included in determining the total value of your specified foreign financial assets during the tax year is the fair market value, determined as of the last day of the tax year, of the currency and other property distributed during the tax year to you. If you received no distributions during the tax year and do not know or have reason to know based on readily accessible information the fair market value of your interest, use a value of zero for the interest.

Asset with no positive value. If the maximum value of a specified foreign financial asset is less than zero, use a value of zero for the asset.

Assets reported on another form. If you are a specified individual, include the value of all specified foreign financial assets, even if they are reported on another form listed in Part IV, to determine if you satisfy the reporting threshold that applies to you. See *Part IV, Excepted Specified Foreign Financial Assets*, later.

Joint interests. If you jointly own an asset with someone else, the value that you use to determine the total value of all of your specified foreign financial assets depends on whether the other owner is your spouse and, if so, whether your spouse is a specified individual and whether you file a joint or separate return.

Joint ownership with spouse filing joint income tax return. If you and your spouse file a joint income tax return and, therefore, would file one combined Form 8938 for the tax year, include the value of the asset jointly owned with your spouse only once to determine the total value of all of the specified foreign financial assets you and your spouse own.

Joint ownership with spouse filing separate income tax return.

If you and your spouse are specified individuals and you each file a separate annual return, include one-half of the value of the asset jointly owned with your spouse to determine the total value of all of your specified foreign financial assets.

Joint ownership with a spouse who is not a specified individual or someone other than a spouse.

Each joint owner includes the entire value of the jointly owned asset to determine the total value of all of that joint owner's specified foreign financial assets.

Examples. These examples may help you decide if you have to file Form 8938.

I am not married and do not live abroad. The total value of my specified foreign financial assets does not exceed \$49,000 during the tax year. You do not have to file Form 8938. You do not satisfy the reporting threshold of more than \$50,000 on the last day of the tax year or more than \$75,000 at any time during the tax year.

I am not married and do not live abroad. I sold my only specified foreign financial asset on October 15, when its value was \$125,000. You have to file Form 8938. You satisfy the reporting threshold even though you do not hold any specified foreign financial assets on the last day of the tax year because you did own specified foreign financial assets of more than \$75,000 at any time during the tax year.

I am not married and do not live abroad. An unrelated U.S. resident and I jointly own a specified foreign financial asset valued at \$60,000. You each have to file Form 8938. You each satisfy the reporting threshold of more than \$50,000 on the last day of the tax year.

I am not married and do not live abroad. I own an entity disregarded for tax purposes, which owns one specified foreign financial asset valued at \$30,000. In addition, I own a specified foreign financial asset valued at \$25,000. You have to file Form 8938. You own both the specified foreign financial asset owned by the disregarded entity and the specified

foreign financial asset you own directly, for a total value of \$55,000. You satisfy the reporting threshold of more than \$50,000 on the last day of the tax year.

My spouse and I do not live abroad and file a joint income tax return. We jointly own a single specified foreign financial asset valued at \$60,000. You and your spouse do not have to file Form 8938. You do not satisfy the reporting threshold of more than \$100,000 on the last day of the tax year or more than \$150,000 at any time during the tax year.

My spouse and I do not live abroad, file a joint income tax return, and jointly and individually own specified foreign financial assets. On the last day of the tax year, my spouse and I jointly own a specified foreign financial asset with a value of \$90,000. My spouse has a separate interest in a specified foreign financial asset with a value of \$10,000. I have a separate interest in a specified foreign financial asset with a value of \$1,000. You and your spouse have to file a combined Form 8938. You and your spouse have an interest in specified foreign financial assets in the amount of \$101,000 on the last day of the tax year. This is the entire value of the specified foreign financial asset that you jointly own, \$90,000, plus the value of the asset that your spouse separately owns, \$10,000, plus the value of the asset that you separately own, \$1,000. You and your spouse satisfy the reporting threshold of more than \$100,000 on the last day of the tax year.

My spouse and I do not live abroad, file separate income tax returns, and jointly own a specified foreign financial asset valued at \$60,000 for the entire year. Neither you nor your spouse has to file Form 8938. You each use one-half of the value of the asset, \$30,000, to determine the total value of specified foreign financial assets that you each own. Neither of you satisfies the reporting threshold of more than \$50,000 on the last day of the tax year or more than \$75,000 at any time during the tax year.

My spouse and I file separate income tax returns, jointly and individually own specified foreign

financial assets, and do not live abroad. On the last day of the tax year, my spouse and I jointly own a specified foreign financial asset with a value of \$90,000. My spouse has a separate interest in a specified foreign financial asset with a value of \$10,000. I have a separate interest in a specified foreign financial asset with a value of \$1,000. You do not have to file Form 8938 but your spouse does. Your spouse has an interest in specified foreign financial assets in the amount of \$55,000 on the last day of the tax year. This is one-half of the value of the asset that you jointly own, \$45,000, plus the entire value of the asset that your spouse separately owns, \$10,000. You have an interest in specified foreign financial assets in the amount of \$46,000 on the last day of the tax year. This is one-half of the value of the asset that you jointly own, \$45,000, plus the entire value of the asset that you separately own, \$1,000. Your spouse satisfies the reporting threshold of more than \$50,000 on the last day of the tax year. You do not satisfy the reporting threshold of more than \$50,000 on the last day of the tax year or more than \$75,000 at any time during the tax year.

My spouse and I are U.S. citizens but live abroad for the entire tax year and file a joint income tax return. The total value of our combined specified foreign financial assets on any day of the tax year is \$150,000. You and your spouse do not have to file Form 8938. You do not satisfy the reporting threshold of more than \$400,000 on the last day of the tax year or more than \$600,000 at any time during the tax year for married individuals who live abroad and file a joint income tax return.

My spouse and I live abroad and file separate income tax returns. My spouse is not a specified individual. On the last day of the tax year, my spouse and I jointly own a specified foreign financial asset with a value of \$150,000. My spouse has a separate interest in a specified foreign financial asset with a value of \$10,000. I have a separate interest in a specified foreign financial asset with a value of \$60,000. You have to file Form 8938 but your spouse, who is not a

specified individual, does not. You have an interest in specified foreign financial assets in the amount of \$210,000 on the last day of the tax year. This is the entire value of the asset that you jointly own, \$150,000, plus the entire value of the asset that you separately own, \$60,000. You satisfy the reporting threshold for a married individual living abroad and filing a separate return of more than \$200,000 on the last day of the tax year.

Specified Foreign Financial Assets

Specified foreign financial assets include the following assets.

1. Financial accounts maintained by a foreign financial institution.
2. The following foreign financial assets if they are held for investment and not held in an account maintained by a financial institution:
 - a. Stock or securities issued by someone that is not a U.S. person,
 - b. Any interest in a foreign entity, and
 - c. Any financial instrument or contract that has an issuer or counterparty that is not a U.S. person.

For foreign financial assets excepted from reporting, see *Assets Not Required to be Reported*, later.

Foreign social security. An interest in a social security, social insurance, or other similar program of a foreign government is not a specified foreign financial asset.

Financial account. A financial account is any depository or custodial account maintained by a foreign financial institution as well as any equity or debt interest in a foreign financial institution (other than interests that are regularly traded on an established securities market). A specified foreign financial asset includes a financial account maintained by a financial institution that is organized under the laws of a U.S. possession (American Samoa, Guam, the Northern Mariana Islands, Puerto Rico, or the U.S. Virgin Islands).

Foreign financial institution. In most cases, a foreign financial institution is any financial institution that is not a U.S. entity and satisfies one or more of the following.

- It accepts deposits in the ordinary course of a banking or similar business.
- It holds financial assets for the account of others as a substantial part of its business.
- It is engaged (or holds itself out as being engaged) primarily in the business of investing, reinvesting, or trading in securities, partnership interests, commodities, or any interest (including a futures or forward contract or option) in such securities, partnership interests, or commodities.

A foreign financial institution includes investment vehicles such as foreign mutual funds, foreign hedge funds, and foreign private equity funds.

Other specified foreign financial assets. Examples of other specified foreign financial assets include the following, if they are held for investment and not held in a financial account.

- Stock issued by a foreign corporation.
- A capital or profits interest in a foreign partnership.
- A note, bond, debenture, or other form of indebtedness issued by a foreign person.
- An interest in a foreign trust or foreign estate.
- An interest rate swap, currency swap, basis swap, interest rate cap, interest rate floor, commodity swap, equity swap, equity index swap, credit default swap, or similar agreement with a foreign counterparty.
- An option or other derivative instrument with respect to any of these examples or with respect to any currency or commodity that is entered into with a foreign counterparty or issuer.

Assets held for investment. You hold an asset, including a partnership interest, for investment if you do not use it in, or hold it for use in, the conduct of any trade or business.

Stock is not considered used or held for use in the conduct of a trade or business.

Interests in Specified Foreign Financial Assets

You have an interest in a specified foreign financial asset if any income, gains, losses, deductions, credits, gross proceeds, or distributions from

holding or disposing of the asset are or would be required to be reported, included, or otherwise reflected on your income tax return.

You have an interest in a specified foreign financial asset even if there are no income, gains, losses, deductions, credits, gross proceeds, or distributions from holding or disposing of the asset included or reflected on your income tax return for this tax year.

Interests in assets held by disregarded entities. If you are the owner of a disregarded entity, you have an interest in any specified foreign financial assets owned by the disregarded entity.

Interests in jointly owned assets. A joint owner of an asset has an interest in the entire asset. For special rules for interests in assets jointly owned by spouses, see *Joint interests in Determining the Total Value of Your Specified Foreign Financial Assets*, earlier, and *Reporting the value of jointly owned assets*, in *Reporting Maximum Value*, later.

Interests in assets held in financial accounts. If you have an interest in a financial account that holds specified foreign financial assets, you do not have to report the assets held in the account.

Interests in assets generating certain unearned income of children. If you file Form 8814, Parents' Election To Report Child's Interest and Dividends, with your income tax return to elect to include in your gross income certain unearned income of your child (the "kiddie tax" election), you have an interest in any specified foreign financial asset held by the child.

Interests in assets held by entities that are not disregarded entities. In most cases, you do not own an interest in any specified foreign financial asset held by a partnership, corporation, trust, or estate solely as a result of your status as a partner, shareholder, or beneficiary.

Interests in assets held by grantor trust. If you are considered the owner under the grantor trust rules of any part of a trust, you have an interest in any specified foreign financial asset held by that part of the trust you are considered to own. For

exceptions from reporting for owners of certain domestic investment or bankruptcy trusts, see *Domestic investment trusts* and *Domestic bankruptcy trusts* in *Assets Not Required to be Reported*, later.

Interests in foreign estates and foreign trusts. An interest in a foreign trust or a foreign estate is not a specified foreign financial asset unless you know or have reason to know based on readily accessible information of the interest. If you receive a distribution from the foreign trust or foreign estate, you are considered to know of the interest.

Interests in foreign pension plans and foreign deferred compensation plans. Report in Part II your interest in the foreign pension plan or foreign deferred compensation plan. Do not separately report the assets held by the plan. See *Valuing interests in foreign estates, foreign pension plans, and foreign deferred compensation plans* in *Reporting Maximum Value*, later.

Reporting Period

Unless an exception applies, the reporting period for Form 8938 is your tax year.

Exception for partial tax years of specified individuals. If you are a specified individual for less than the entire tax year, the reporting period is the part of the year that you are a specified individual.

Example 1. John is a calendar year taxpayer. The Form 8938 reporting period begins on January 1 and ends on December 31.

Example 2. Agnes was a single, calendar year taxpayer who died on March 6. The Form 8938 reporting period begins on January 1 and ends on March 6.

Example 3. George, a calendar year taxpayer, is not a U.S. citizen or married. George arrived in the United States on February 1 and satisfied the substantial presence test for the tax year. The Form 8938 reporting period begins on George's U.S. residency starting date, February 1, and ends on December 31.

Reporting Maximum Value

You must report the maximum value during the tax year of each specified

foreign financial asset reported on Form 8938. In most cases, the value of a specified foreign financial asset is its fair market value. An appraisal by a third party is not necessary to estimate the maximum fair market value during the year. See *Valuing financial accounts* and *Valuing other specified foreign financial assets*, later.

Assets with no positive value. If the maximum value of a specified foreign financial asset is less than zero, use a value of zero as the maximum value of the asset.

Foreign currency conversion. If your specified foreign financial asset is denominated in a foreign currency during the tax year, the maximum value of the asset must be determined in the foreign currency and then converted to U.S. dollars.

In most cases, you must use the U.S. Treasury Department's Financial Management Service foreign currency exchange rate for purchasing U.S. dollars. You can find this rate on www.fms.treas.gov/intn.html. If no Financial Management Service exchange rate is available, you must use another publicly available foreign currency exchange rate for purchasing U.S. dollars and disclose the rate on Form 8938.

Currency determination date. Use the currency exchange rate on the last day of the tax year to figure the maximum value of a specified foreign financial asset or the value of a specified foreign financial asset for the purpose of determining the total value of your specified foreign financial assets to see whether you have met the reporting threshold. Use this rate even if you sold or otherwise disposed of the specified foreign financial asset before the last day of the tax year.

Reporting the value of jointly owned assets. If you own an asset jointly with one or more persons, you must report the asset's maximum value as follows.

Married specified individuals filing a joint income tax return. If you are married and you and your spouse file a joint income tax return, report any specified foreign financial asset that you jointly own only once and include the maximum value of the

entire asset (and not just the maximum value of your interest in the asset). Also, you must report any specified foreign financial asset that you or your spouse separately own and include the maximum value of the entire asset. If you and your spouse file a joint income tax return that includes Form 8814, you must report any specified foreign financial asset your child owns only once and include the maximum value of the entire asset.

Married specified individuals filing separate income tax returns.

If you are married and you and your spouse are specified individuals who file separate income tax returns, both you and your spouse report any specified foreign financial asset that you jointly own on your separate Forms 8938, and both you and your spouse must include the maximum value of the entire asset on your separate Forms 8938. You also must report any specified foreign financial asset that you own individually on your separate Form 8938 and include the maximum value of the entire asset. If you file Form 8814, you must report any specified foreign financial asset your child owns and include the maximum value of the entire asset.

Other joint ownership. If you are a joint owner of a specified foreign financial asset and you cannot use one of the special rules for married individuals who file a joint tax return, you must report the specified foreign financial asset and include the maximum value of the entire asset.

Valuing financial accounts. You may rely on periodic account statements for the tax year to report a financial account's maximum value unless you know or have reason to know based on readily accessible information that the statements do not reflect a reasonable estimate of the maximum account value during the tax year.

Valuing other specified foreign financial assets. In most cases, you may use the value of a specified foreign financial asset, other than a financial account, as of the last day of the tax year, unless you know or have reason to know based on readily accessible information that the value does not reflect a reasonable estimate

of the maximum value of the asset during the tax year.

Example. *I have publicly-traded foreign stock not held in a financial account that has a fair market value as of the last day of the tax year of \$100,000, although, based on daily price information that is readily available, the 52-week high trading price for the stock results in a maximum value of the stock during the tax year of \$150,000.* If you are required to file Form 8938, the maximum value of the foreign stock to be reported is \$150,000, based on readily available information of the stock's maximum value during the tax year.

Valuing interests in foreign trusts.

If you are a beneficiary of a foreign trust, the maximum value of your interest in the trust is the sum of the following amounts.

- The value of all of the cash or other property distributed during the tax year from the trust to you as a beneficiary, and
- The value using the valuation tables under section 7520 of your right as a beneficiary to receive mandatory distributions as of the last day of the tax year.

Valuing interests in foreign estates, foreign pension plans, and foreign deferred compensation plans. If you have an interest in a foreign estate, foreign pension plan, or foreign deferred compensation plan, the maximum value of your interest is the fair market value of your beneficial interest in the assets of the estate, pension plan, or deferred compensation plan as of the last day of the tax year. If you do not know or have reason to know based on readily accessible information the fair market value as of the last day of the tax year, the maximum value is the fair market value, determined as of the last day of the tax year, of the cash and other property distributed during the tax year to you as a beneficiary or participant. If you received no distributions during the tax year and do not know or have reason to know based on readily accessible information the fair market value of your interest as of the last day of the tax year, use a value of zero as the maximum value of the asset.

Assets Not Required to be Reported

You are not required to report the following assets.

Certain financial accounts. The following financial accounts and the assets held in such accounts are not specified foreign financial assets and do not have to be reported on Form 8938.

1. A financial account that is maintained by a U.S. payer, such as a domestic financial institution. In general, a U.S. payer also includes a domestic branch of a foreign bank or foreign insurance company and a foreign branch or foreign subsidiary of a U.S. financial institution.

Examples of financial accounts maintained by U.S. financial institutions include:

- U.S. mutual funds accounts;
- IRAs (traditional or Roth);
- Section 401(k) retirement accounts;
- Qualified U.S. retirement plans;
- Brokerage accounts maintained by U.S. financial institutions.

2. A financial account that is maintained by a dealer or trader in securities or commodities if all of the holdings in the account are subject to the mark-to-market accounting rules for dealers in securities or an election under section 475(e) or (f) is made for all of the holdings in the account.

Certain financial assets. You do not have to report any asset that is not held in a financial account if the asset is subject to the mark-to-market accounting rules for dealers in securities or commodities or an election under section 475(e) or (f) is made for the asset.

Exceptions to Reporting.

Duplicative reporting. You do not have to report any asset on Form 8938 if you report it on one or more of the following forms that you timely file with the IRS for the same tax year.

- Form 3520, Annual Return To Report Transactions With Foreign Trusts and Receipt of Certain Foreign Gifts.
- Form 5471, Information Return of U.S. Persons With Respect To Certain Foreign Corporations.
- Form 8621, Information Return by a Shareholder of a Passive Foreign

Investment Company or Qualified Electing Fund.

- Form 8865, Return of U.S. Persons With Respect to Certain Foreign Partnerships.
- Form 8891, U.S. Information Return for Beneficiaries of Certain Canadian Registered Retirement Plans.

Instead, you must identify on Form 8938 the form(s) on which you report the specified foreign financial asset and how many of these forms you file. See *Part IV. Excepted Specified Foreign Financial Assets*, later.

Foreign grantor trusts. If you are considered the owner under the grantor trust rules of any part of a foreign trust, you do not have to report any of the specified foreign financial assets held by the part of the trust you are considered to own if you satisfy the following conditions.

- You report the trust on a Form 3520 that you timely file with the IRS for the same tax year.
- The trust timely files Form 3520-A, Annual Information Return of Foreign Trust With a U.S. Owner, with the IRS for the same tax year.

Instead, you must identify on Form 8938 how many of these forms you file. See *Part IV. Excepted Specified Foreign Financial Assets*, later.



If you are a specified individual, you must include the value of the assets reported on Forms 3520, 3520-A, 5471, 8621, 8865, and 8891 in determining whether you satisfy the reporting threshold that applies to you. See Reporting Thresholds Applying to Specified Individuals, earlier.

Domestic investment trusts. If you are considered the owner under the grantor trust rules of any part of a domestic widely-held fixed investment trust under Regulations section 1.671-5, you do not have to report any specified foreign financial asset held by the part of the trust you are considered to own.

Domestic bankruptcy trusts. If you are considered the owner under the grantor trust rules of any part of a domestic liquidating trust under Regulations section 301.7701-4(d) that is created under chapter 7 or chapter 11 of the Bankruptcy Code, you do not have to report any

specified foreign financial asset held by the part of the trust you are considered to own.

Bona fide resident of a U.S. possession. If you are a bona fide resident of a U.S. possession (American Samoa, Guam, the Northern Mariana Islands, Puerto Rico, or the U.S. Virgin Islands) who is required to file Form 8938, you do not have to report the following specified foreign financial assets on Form 8938.

- A financial account maintained by a financial institution organized under the laws of the U.S. possession of which you are a bona fide resident.
- A financial account maintained by a branch of a financial institution not organized under the laws of the U.S. possession of which you are a bona fide resident, if the branch is subject to the same tax and information reporting requirements that apply to a financial institution organized under the laws of the U.S. possession of which you are a bona fide resident.
- Stock or securities issued by an entity organized under the laws of the U.S. possession of which you are a bona fide resident.
- An interest in an entity organized under the laws of the U.S. possession of which you are a bona fide resident.
- A financial instrument or contract held for investment, provided each issuer or counterparty that is not a U.S. person is either an entity organized under the laws of the U.S. possession of which you are a bona fide resident or a bona fide resident of the U.S. possession of which you are a bona fide resident.

Penalties

You may be subject to penalties if you fail to timely file a correct Form 8938 or if you have an understatement of tax relating to an undisclosed specified foreign financial asset.

Failure-to-File Penalty

If you are required to file Form 8938 but do not file a complete and correct Form 8938 by the due date (including extensions), you may be subject to a penalty of \$10,000.

Continuing failure to file. If you do not file a correct and complete Form 8938 within 90 days after the IRS mails you a notice of the failure to file, you may be subject to an additional penalty of \$10,000 for each 30-day

period (or part of a period) during which you continue to fail to file Form 8938 after the 90-day period has expired. The maximum additional penalty for a continuing failure to file Form 8938 is \$50,000.

Married taxpayers filing a joint income tax return. If you are married and you and your spouse file a joint income tax return, the failure to file penalties apply as if you and your spouse were a single person. You and your spouse's liability for all penalties is joint and several.

Presumption of maximum value. If the IRS determines that you have an interest in one or more specified foreign financial assets and asks you for information about the value of any asset, but you do not provide enough information for the IRS to determine the value of the asset, you are presumed to own specified foreign financial assets with a value of more than the reporting threshold that applies to you. See *Determining the Reporting Threshold That Applies to You*, earlier. In such case you are subject to the failure-to-file penalties if you do not file Form 8938.

Reasonable cause exception. No penalty will be imposed if you fail to file Form 8938 or to disclose one or more specified foreign financial assets on Form 8938 and the failure is due to reasonable cause and not to willful neglect. You must affirmatively show the facts that support a reasonable cause claim.

The determination of whether a failure to disclose a specified foreign financial asset on Form 8938 was due to reasonable cause and not due to willful neglect will be determined on a case-by-case basis, taking into account all pertinent facts and circumstances.

Effect of foreign jurisdiction laws. The fact that a foreign jurisdiction would impose a civil or criminal penalty on you if you disclose the required information is not reasonable cause.

Accuracy-Related Penalty

If you underpay your tax as a result of a transaction involving an undisclosed specified foreign financial asset, you may have to pay a penalty equal to 40 percent of that underpayment.

Examples. Examples of underpayments due to transactions involving an undisclosed specified foreign financial asset include the following.

- You do not report ownership of shares in a foreign corporation on Form 8938 and you received tax distributions from the company that you did not report on your income tax return.
- You do not report ownership of shares in a foreign company on Form 8938 and you sold the shares in the company for a gain and did not report the gain on your income tax return.
- You do not report a foreign pension on Form 8938 and you received a taxable distribution from the pension plan that you did not report on your income tax return.

Fraud

If you underpay your tax due to fraud, you must pay a penalty of 75 percent of the underpayment due to fraud.

Criminal Penalties

In addition to the penalties already discussed, if you fail to file Form 8938, fail to report an asset, or have an underpayment of tax, you may be subject to criminal penalties.

Statute of Limitations

If you fail to file Form 8938 or fail to report a specified foreign financial asset that you are required to report, the statute of limitations for the tax year may remain open for all or a part of your income tax return until 3 years after the date on which you file Form 8938.

Extended statute of limitations for failure to include income. If you do not include in your gross income an amount relating to one or more specified foreign financial assets, and the amount you omit is more than \$5,000, any tax you owe for the tax year can be assessed at any time within 6 years after you filed your return.

For this purpose, specified foreign financial assets include any specified foreign financial assets in which you have an interest without regard to the reporting threshold that applies to you and regardless of any exception from reporting a specified foreign financial asset on Form 8938.

Specific Instructions

Before you begin. If you are a specified individual and report all of your specified foreign financial assets on timely-filed Forms 3520, 3520-A, 5471, 8621, 8865, or 8891, you do not have to report them on Form 8938. Instead, enter your name(s), identifying number, address and tax year at the top of the form, and complete Part IV only. Complete Part IV in addition to reporting your other specified foreign financial assets if you report only a part of your specified foreign financial assets on one or more of these forms.

Additional sheets. If you have more than one account or asset to report in Part I or II, or more than one issuer or counterparty to report in Part II, copy as many blank Parts I and/or II as you need to complete, and attach them to Form 8938 following page 2. Check the “If you have attached additional sheets, check here” box at the top of the form.

Identifying Information

Enter your name(s), identifying number, address, and tax year as shown on the annual return you are filing with Form 8938.



If you are a specified individual (see Specified individual, earlier) for less than the entire tax year, you only have to report the information for the part of the year that you are a specified individual.

Identifying number. Enter the first social security number (SSN) or individual taxpayer identification number (ITIN) on your income tax return.

Type of filer. Check the box that shows the type of filer you are.

Form 8938 for previously filed annual return. Check this box if this Form 8938 is an amended or supplemental Form 8938 that relates to a previously filed return.

If you are filing two Forms 8938 for 2012 because you are eligible for the transitional rule for tax years beginning after March 18, 2010, check this box on the Form 8938 you are filing for the prior tax year. See

2011 transitional rule for individual taxpayers, earlier, for more details.

Part I. Foreign Deposit and Custodial Accounts

Use Part I to report information for foreign deposit and custodial accounts. If you have more than one account, attach a continuation sheet with the required information for each additional account and check the “If you have attached additional sheets, check here” box at the top of the form.

Lines 1 through 9. Enter the following information for each foreign deposit or custodial account.

Line 1. Check the box to indicate if this is a depository or a custodial account.

Line 2. Enter the account number of the account or other specific identifying information for the account if there is no account number.

Line 3. Check one or more boxes to indicate if any of the following applies.

- The account was opened during the tax year.
- The account was closed during the tax year.
- The account was jointly owned with your spouse.
- You did not report any tax item in Part III for this asset.

Line 4. Enter the maximum value of the account for the tax year.



Maximum value. See Reporting Maximum Value, earlier, for information on determining the maximum value of the account.

Joint interests. Use the following rules to determine the maximum value to report.

Spouses filing a joint return. You and your spouse report the maximum value of an account held jointly by you and your spouse only once on the single Form 8938 filed with your joint income tax return.

Spouses filing separate returns. You and your spouse each report the maximum value of an account held jointly by you and your spouse on your separate Forms 8938 filed with your separate income tax returns.

Other joint owners. Report the maximum value of the entire jointly

held account on your Form 8938 filed with your income tax return, regardless of the value of your separate interest in the account.

Lines 5 and 6. If you used a foreign currency exchange rate to convert the value of the account into U.S. dollars, check the “Yes,” box on line 5 and go to line 6. Otherwise, check the “No,” box and go to line 7.

Line 6. If you answered “Yes,” on line 5, enter the following information.

1. The foreign currency in which the account is denominated.
2. The foreign currency exchange rate used to convert the value of the account into U.S. dollars.
3. If the U.S. Treasury Financial Management Service did not provide an exchange rate, the source of the foreign currency exchange rate that you used.



You must use the foreign currency exchange rate on the last day of the tax year, even if you closed or disposed of the account before the last day of the tax year.

Lines 7 through 9. Enter the name and mailing address of the financial institution in which you maintain this account.

Part II. Other Foreign Assets

Use Part II to report information for specified foreign financial assets not held in a financial account. If you have more than one asset, attach a continuation sheet with the required information for each additional asset and check the “If you have attached additional sheets, check here” box at the top of the form.

Lines 1 through 8. Enter the following information for each specified foreign financial asset not held in a financial account. For examples of these foreign assets, see *Other specified foreign financial assets*, earlier.

Line 1. Enter a description of the asset. If the asset is stock or securities, include the class or issue of the stock or securities.

Example 1. You own 100 shares of XYZ Company, an Italian S.A. A sufficient description is “100 Class A shares of XYZ Company, S.A.”

Example 2. You own a bond issued by AB GmbH, a German GmbH. A sufficient description is “Bond of AB GmbH, maturing on December 31, 2015.”

Line 2. Enter the identifying number or other information identifying the asset.

Line 3. Enter the following information about the asset, if required.

1. If the asset was acquired or disposed of during the year, enter the date of acquisition and/or disposition. If the assets were acquired or disposed during different dates in the year, enter the *latest* date of acquisition or disposition.
2. If you own the asset jointly with your spouse, check the box on line 3c.
3. If you did not report any income, gain, loss, deduction, or credit for this asset on your tax return or any schedule or form attached to your income tax return filed for the tax year, check the box on line 3d.

Line 4. Check the box for the value range that represents the maximum value of the asset during the tax year. If the maximum value is more than \$200,000, enter the maximum value on line 4e.



Maximum value. See Reporting Maximum Value, earlier, for information on determining the maximum value of the asset.

Joint interests. Use the following rules to figure the maximum value to report.

Spouses filing a joint return. You and your spouse report the maximum value of an asset held jointly by you and your spouse only once on the single Form 8938 filed with your joint income tax return.

Spouses filing separate returns. You and your spouse each report the maximum value of an asset held jointly by you and your spouse on your separate Forms 8938 filed with your separate income tax returns.

Other joint owners. Report the maximum value of the entire jointly held asset on your Form 8938 filed with your income tax return, regardless of the value of your separate interest in the asset.

Lines 5 and 6. If you used a foreign currency exchange rate to convert the value of the asset into U.S. dollars, check the “Yes,” box on line 5 and go to line 6. Otherwise, check the “No,” box and go to line 7.

Line 6. If you answered “Yes,” to line 5, enter the following information.

1. The foreign currency in which the asset is denominated.
2. The foreign currency exchange rate used to convert the value of the asset into U.S. dollars.
3. If the U.S. Treasury Financial Management Service did not provide an exchange rate, the source of the foreign currency exchange rate that you used.



You must use the foreign currency exchange rate on the last day of the tax year, even if you sold or disposed of the asset before the last day of the tax year.

Lines 7a through 7d. If the asset you reported on line 1 is stock of a foreign entity or an interest in a foreign entity, complete lines 7a through 7d.

Line 7a. Enter the name of the foreign entity.

Line 7b. Check the box on line 7b to indicate the type of foreign entity.

Lines 7c and 7d. Enter the mailing address of the foreign entity.

Lines 8a through 8e. If the asset you reported on line 1 is not stock of a foreign entity or an interest in a foreign entity, complete lines 8a through 8e.

Note. If this asset has more than one issuer or counterparty, copy page 2 as many times as you need to and complete a separate line 8 for each issuer or counterparty. Check the “If you have attached additional sheets, check here” box at the top of the form.

Line 8a. Enter the name of the issuer or counterparty and check the appropriate box to indicate if you are reporting for an issuer or a counterparty.

Line 8b. Check the appropriate box to indicate the type of issuer or counterparty.

Line 8c. Check the box to indicate if the issuer or counterparty is a U.S. person or a foreign person.

Lines 8d and 8e. Enter the mailing address of the issuer or counterparty. If the issuer or counterparty has a mailing address in the United States, you can enter the U.S. mailing address.

Part III. Summary of Tax Items Attributable to Specified Foreign Financial Assets

Enter the following items for your total assets reported in Part I or Part II and the schedule, form, or return on which you reported the items.

- Interest.
- Dividends.
- Royalties.
- Gains or (losses).
- Deductions.
- Credits.

If you did not report any tax item for a specified foreign financial asset on any form or schedule for the tax year, check the box in line 3d of Part I or Part II for the account or asset.

Part IV. Excepted Specified Foreign Financial Assets

If you reported a specified foreign financial asset on certain other forms listed below for the same tax year, you may not have to report it on Form 8938. However, you must identify the form where you reported the asset

and indicate how many forms you filed.

For more information, see *Duplicative reporting*, earlier. If you reported a specified foreign financial asset on one or more of the following forms, check the box(es) to identify the form(s) where you reported the asset and enter the number of forms filed.

- Form 3520.
- Form 3520-A.
- Form 5471.
- Form 8621.
- Form 8865.
- Form 8891.

Foreign grantor trusts. If you are treated as an owner of any part of a foreign grantor trust, you may have to file Form 8938 to report specified foreign financial assets held by the trust. If you are a beneficiary of the foreign trust, you may have to file Form 8938 to report your interest in the trust. You do not have to report on Form 8938 any specified foreign financial asset held by the trust or your interest in the trust if you report the trust on a Form 3520 you timely file for the tax year and the trust timely files Form 3520-A for the tax year.

Paperwork Reduction Act Notice

We ask for the information on this form to carry out the Internal Revenue

laws of the United States. Section 6038D requires specified individuals and, upon issuance of regulations, specified domestic entities to report specified foreign financial assets in which they have an interest. Form 8938 is used to comply with this reporting requirement.

You are not required to provide the information requested on a form that is subject to the Paperwork Reduction Act unless the form displays a valid OMB control number. Books or records relating to a form or its instructions must be retained as long as their contents may become material in the administration of any Internal Revenue law. Generally, tax returns and return information are confidential, as required by section 6103.

The time needed to complete and file the form will vary depending on individual circumstances. The estimated average time is: 1 hour and 5 minutes.

If you have comments concerning the accuracy of this time estimate or suggestions for making this form simpler, we would be happy to hear from you. See the instructions for the tax return with which this form is filed.



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