

Instructions for Form 8938

(Rev. November 2021)

Statement of Specified Foreign Financial Assets

Volume 1 of 2



Department of the Treasury
Internal Revenue Service

Instruction for Form 8938 (Rev 11-2021) Catalog Number 68633F
Department of the Treasury **Internal Revenue Service** www.irs.gov



Visit the Accessibility
Page on IRS.gov

This page intentionally left blank

Contents	Regular Page	Large Print Page
Future Developments	1	5
What's New	1	5
Reminders	1	6
General Instructions	1	8
Purpose of Form	1	8
When and How To File	1	9
Who Must File	1	10
Specified Foreign Financial Assets	7	45
Reporting Period	8	57
Reporting Maximum Value	8	58
Assets Not Required To Be Reported	9	66
Penalties	11	75

Specific Instructions	12	80
Part I. Foreign Deposit and Custodial Accounts Summary	12	84
Part II. Other Foreign Assets Summary	12	85
Part III. Summary of Tax Items Attributable to Specified Foreign Financial Assets	12	86
Part IV. Excepted Specified Foreign Financial Assets	13	87
Part V. Detailed Information for Each Foreign Deposit and Custodial Account Included in the Part I Summary	13	89

Part VI. Detailed Information for Each "Other Foreign Asset" Included in the Part II Summary	14	95
Index	16	106

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

Future Developments

For the latest information about developments related to Form 8938 and its instructions, such as legislation enacted after they were published, go to [IRS.gov/Form8938](https://www.irs.gov/Form8938).

What's New

Continuous-use form and instructions.

Form 8938 and these instructions have been converted from an annual revision to continuous use. Both the form and instructions will be updated as needed. For

the most recent versions, go to [IRS.gov/Form8938](https://www.irs.gov/Form8938).

Reminders

Reporting obligations under section

6038D not affected. Rev. Proc. 2020-17, available at [IRS.gov/IRB/ 2020-12 IRB#REV-PROC-2020-17](https://www.irs.gov/irb/2020-12_IRB#REV-PROC-2020-17), exempts foreign trust information reporting requirements on Forms 3520 and 3520-A, for certain U.S. individuals' transactions with, and ownership of, certain tax-favored foreign trusts that are established and operated exclusively or almost exclusively to provide pension or retirement benefits, or to provide medical disability or educational benefits. This does not affect any reporting obligations under section 6038D.

For more information about section 6038D information reporting, see

[IRS.gov/Businesses/Corporations/ Basic-Questions-and-Answers-onForm-8938](https://www.irs.gov/Businesses/Corporations/Basic-Questions-and-Answers-onForm-8938).

Specified domestic entity reporting.

Certain domestic corporations, partnerships, and trusts that are considered formed or availed of for the purpose of holding, directly or indirectly, specified foreign financial assets (specified domestic entities) must file Form 8938 if the total value of those assets exceeds \$50,000 on the last day of the tax year or \$75,000 at any time during the tax year.

For more information on domestic corporations, partnerships, and trusts that are specified domestic entities and must file Form 8938, and the types of specified foreign financial assets that must be reported, see *Who Must File, Specified Domestic Entity, Specified Foreign Financial Assets, Interests in Specified Foreign Financial Assets, and Assets Not Required To Be Reported*, later.

General Instructions

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 *Types of Reporting Thresholds*, later.



Filing Form 8938 does not relieve you of the requirement to file FinCEN Form 114, Report of Foreign Bank and Financial Accounts (FBAR), if you are otherwise required to file the FBAR. See FinCEN Form 114 and its instructions for FBAR filing requirements. Go to [IRS.gov/Businesses/Comparison-ofForm-8938-and-FBAR-Requirements](https://www.irs.gov/Businesses/Comparison-ofForm-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.



You must specify the applicable calendar year or tax year to which your Form 8938 relates in the appropriate space(s) at the top of the form.

An annual return includes the following returns.

- Form 1040.
- Form 1040-NR.
- Form 1040-SR.
- Form 1041.
- Form 1041-N.
- Form 1065.
- Form 1120.

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



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 person (see *Specified Person*, later) 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 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*, *Specified*

Domestic Entity, and Types of Reporting Thresholds, 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 Person

A specified person is either a specified individual or a specified domestic entity, defined later.

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.

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.

Special rule for dual resident taxpayers. If you are a dual resident taxpayer (within the meaning of Regulations section 301.7701(b)-7(a) (1)), who determines his or her income tax liability for all or a part of the tax year as

if he or she were a nonresident alien as provided by Regulations section 301.7701(b)-7, file Form 8938 as follows.

Specified individual filing as a nonresident alien at the end of his or her tax year. You are not required to report specified foreign financial assets on Form 8938 for the part of your tax year covered by Form 1040-NR, provided you comply with the filing requirements of Regulations section 301.7701(b)-7(b) and (c), including the requirement to timely file Form 1040-NR, as applicable, and attach Form 8833, Treaty-Based Return Position Disclosure Under Section 6114 or 7701(b).

Specified individual filing as a resident alien at the end of his or her tax year. You are not required to report specified foreign financial assets on Form 8938 for the part of your tax year reflected on the schedule to Form 1040 or 1040-SR required by Regulations section 1.6012-1(b)(2)(ii)(a),

provided you comply with the filing requirements of Regulations section 1.6012-1(b)(2)(ii) (a), including the requirement to timely file Form 1040 or 1040-SR and attach a properly completed Form 8833.

Specified Domestic Entity

You are a specified domestic entity if you are one of the following.

- A closely held domestic corporation that has at least 50% of its gross income from passive income.
- A closely held domestic corporation if at least 50% of its assets produce or are held for the production of passive income (see Passive income and Percentage of passive assets held by a corporation or partnership, later).
- A closely held domestic partnership that has at least 50% of its gross income from passive income.

- A closely held domestic partnership if at least 50% of its assets produce or are held for the production of passive income (see Passive income and Percentage of passive assets held by a corporation or partnership, later).
- A domestic trust described in section 7701(a)(30)(E) that has one or more specified persons (a specified individual or a specified domestic entity) as a current beneficiary.

Closely held domestic corporation. A domestic corporation is closely held if, on the last day of the corporation's tax year, a specified individual directly, indirectly, or constructively owns at least 80% of the total combined voting power of all classes of stock of the corporation entitled to vote or at least 80% of the total value of the stock of the corporation.

Closely held domestic partnership. A domestic partnership is closely held if, on the last day of the partnership's tax year, a specified individual directly, indirectly, or constructively holds at least 80% of the capital or profits interest in the partnership.

Constructive ownership. Sections 267(c) and (e)(3) apply for purposes of determining a specified individual's constructive ownership in a domestic corporation or partnership, except that section 267(c)(4) is applied as if the family of an individual includes the spouses of the specified individual's family members.

Passive income. Passive income means the part of gross income that consists of:

- Dividends, including substitute dividends;
- Interest;
- Income equivalent to interest, including substitute interest;

- Rents and royalties, other than rents and royalties derived in the active conduct of a trade or business conducted, at least in part, by employees of the corporation or partnership;
- Annuities;
- The excess of gains over losses from the sale or exchange of property described in Regulations section 1.6038D-6(b)(3)(i)(F) and that gives rise to the types of passive income listed above;
- The excess of gains over losses from transactions (including futures, forwards, and similar transactions) in any commodity, but not including:
 1. Any commodity hedging transaction described in section 954(c)(5)(A), or
 2. Active business gains or losses from the sale of commodities, but only if substantially all the corporation's or partnership's commodities are

property described in paragraph (1), (2), or (8) of section 1221(a);

- The excess of foreign currency gains over foreign currency losses (as defined in section 988(b)) attributable to any section 988 transaction; and
- Net income from notional principal contracts.

Exception from passive income treatment for dealers. In the case of a domestic corporation or partnership regularly acting as a dealer in property described in Regulations section 1.6038D-6(b)(3)(i)(F), forward contracts, options contracts, or similar financial instruments (including notional principal contracts and all instruments referenced to commodities), passive income does not include the following.

1. Any item of income or gain (other than any dividends or interest) from any

transaction (including hedging transactions and transactions involving physical settlement) entered into in the ordinary course of such dealer's trade or business as such a dealer.

2. In the case of a corporation or partnership that is a dealer in securities (within the meaning of section 475(c)(2)), any income from any transaction entered into in the ordinary course of the corporation's or partnership's trade or business as a dealer in securities.

Passive income or assets of related corporations and partnerships. For purposes of determining whether a domestic corporation or partnership meets the passive income or asset test, domestic corporations and domestic partnerships that are closely held by the same specified individual and that are connected through stock or partnership ownership with a common parent corporation

or partnership are treated as owning the combined assets and receiving the combined income of all members of that group. For this purpose, any contract, equity, or debt existing between members of the group, as well as any items of gross income arising from that contract, equity, or debt, is eliminated.

Connected stock or partnership ownership. A domestic corporation or partnership is considered connected through stock or partnership interest ownership with a common parent corporation or partnership in the following circumstances.

1. Stock representing at least 80% of the total combined voting power of all classes of stock of the corporation entitled to vote or of the value of such corporation, other than stock of the common parent, is owned by one or more of the other connected

corporations, connected partnerships, or the common parent.

2. Partnership interests representing at least 80% of the profits interests or capital interests of the partnership, other than partnership interests in the common parent, is owned by one or more of the other connected corporations, connected partnerships, or the common parent.

Percentage of passive assets held by a corporation or partnership. For purposes of determining whether at least 50% of your assets produce or are held for the production of passive income, the percentage of passive assets held by the corporation or partnership for a tax year is the weighted average percentage of passive assets (weighted by total assets and measured quarterly). The value of assets of the corporation or partnership is the fair market value or the book value. The book value of assets is the

amount reflected on the corporation's or partnership's balance sheet and may be determined under either a U.S. or an international financial accounting standard. See *Example 1* below, which illustrates the application of this weighted average asset rule.

Example 1. Application of the weighted average asset rule. The following example illustrates the application of the weighted average asset rule.

DC is a domestic corporation, the total value of the stock of which is owned by L, a specified individual. DC is a calendar year taxpayer. Less than 50% of DC's gross income for its tax year beginning January 1, 2021, is passive income.

DC has the following assets in 2021,
measured quarterly:

	Passive Assets	Total Assets
Q1	\$150	\$200
Q2	\$150	\$300
Q3	\$300	\$500
Q4	\$200	\$1,000
Tax Year Totals	\$800	\$2,000

DC's weighted passive asset percentage for tax year 2021 is 40%, that is, DC's total passive assets divided by its total assets ($\$800 / \$2,000 = 40\%$). Because fewer than 50% of DC's assets produce or are held for the production of passive income and less than 50% of DC's gross income for its tax year is passive income, DC does not meet the

passive asset or passive income threshold and would not be a specified domestic entity.

Domestic trusts. A trust described in section 7701(a)(30)(E) is considered a specified domestic entity if and only if the trust has one or more specified persons (a specified individual or a specified domestic entity) as a current beneficiary for the tax year.

Current beneficiary. With respect to a tax year, a current beneficiary is any person who at any time during the tax year is entitled to, or at the discretion of any person may receive, a distribution from the principal or income of the trust (determined without regard to any power of appointment to the extent that such power remains unexercised at the end of the tax year).

Special rule for general powers of appointment. A current beneficiary also includes any holder of a general power of appointment, whether or not exercised, that was exercisable at any time during the tax

year. A holder of a general power of appointment that is exercisable only on the death of the holder is not a current beneficiary.

Excepted Specified Domestic Entities

Entities described in section 1473(3). An entity described in section 1473(3) and the regulations thereunder, with the exception of a trust that is exempt from tax under section 664(c), is not a specified domestic entity.

Certain domestic trust. A trust described in section 7701(a)(30)(E) is not considered a specified domestic entity, provided that all of the following apply.

1. The trustee is:
 - a. A bank that is examined by the Office of the Comptroller of the Currency, the Board of Governors of the Federal Reserve System, the Federal Deposit Insurance

Corporation, or the National Credit Union Administration;

- b. A financial institution that is registered with and regulated or examined by the Securities and Exchange Commission; or
 - c. A domestic corporation described in section 1473(3)(A) or (B), and the regulations issued with respect to those provisions.
- 2. The trustee has supervisory authority over or fiduciary obligations with regard to the specified foreign financial assets held by the trust.
 - 3. The trustee files annual returns and information returns by the due date (including any applicable extensions) on behalf of the trust.

Domestic trusts owned by one or more specified persons. A trust described in section 7701(a)(30)(E) to the extent the trust

or any part of the trust is treated as owned by one or more specified persons under sections 671 through 678 and the regulations.

Types of Reporting Thresholds

Reporting Thresholds Applying to Specified Individuals

If you are a specified individual, your applicable reporting threshold depends upon whether you are married, file a joint federal income tax return, and live inside (or outside) the United States.

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.

Reporting Thresholds Applying to Specified Domestic Entities

If you are a specified domestic entity, 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.

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 first be determined in the foreign currency and then converted to U.S. dollars. See *Foreign Currency Conversion*, 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*, 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.

Joint Interest Valuation

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.

Special Rules

Assets Reported on Another Form

Specified individual. 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.

Specified domestic entity. If you are a specified domestic entity, exclude the value of any specified foreign financial asset reported on another form listed in *Part IV* to determine if you satisfy the applicable reporting threshold.

Bona Fide Resident of a U.S. Possession

Do not include the value of specified foreign financial assets you are not required to report because you are a bona fide resident of a U.S. possession. See Bona Fide Resident of a U.S. Possession under *Assets Not Required To Be Reported*, later.

Owners of Certain Domestic Trusts

Do not include the value of specified foreign financial assets you are not required to report because you are an owner of a domestic widely held fixed investment trust or a

domestic liquidating trust created under chapter 7 or chapter 11 of the Bankruptcy Code. See Domestic Investment Trusts and Domestic Bankruptcy Trusts, later.

Related Domestic Corporations and Partnerships

To determine if you satisfy the applicable reporting threshold, a specified domestic entity that is a corporation or partnership and that has an interest in any specified foreign financial asset is treated as owning all specified foreign financial assets held by all related corporations or partnerships that are closely held by the same specified individual (excluding specified foreign financial assets that are excluded from reporting under *Part IV* of Form 8938 or because you are the owner of a domestic widely held fixed investment trust or a domestic liquidating trust created under chapter 7 or chapter 11 of the Bankruptcy Code).

Examples 2 through 11 may help you decide if you have to file Form 8938.

Example 2. 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.

Example 3. 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.

Example 4. 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.

Example 5. 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.

Example 6. My spouse and I do not live abroad. We file a joint income tax return and 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.

Example 7. My spouse and I do not live abroad. We 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.

Example 8. My spouse and I do not live abroad. We 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.

Example 9. 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.

Example 10. 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.

Example 11. 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

Types of 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 (including stock or securities issued by a person organized under the laws of a U.S. possession).

- b. Any interest in a foreign entity.
- c. Any financial instrument or contract that has an issuer or counterparty that is not a U.S. person (including a financial contract issued by, or with a counterparty that is, a person organized under the laws of a U.S. possession).

For foreign financial assets excepted from reporting, see Assets Not Required To Be Reported, later.

Financial Account

A financial account is any depository or custodial account (under Regulations section 1.1471-5(b)(1)(i) or (ii)) 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) or any cash value life insurance or

annuity contract maintained by an insurance company or other foreign financial institution. 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 Commonwealth of 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.

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. *If you are required to file Form 8938, in addition to reporting retirement and pension accounts and nonretirement savings accounts described in Regulations section 1.1471-5(b)(2)(i), you must report retirement and pension accounts, nonretirement savings accounts, and*

accounts satisfying conditions similar to those described in Regulations section 1.1471-5(b)(2)(i) that are otherwise excluded from the definition of a financial account by an applicable Model 1 IGA or Model 2 IGA. Thus, such accounts are subject to uniform reporting rules and must be reported without regard to whether the account is maintained in a jurisdiction with an IGA.

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 no income, gains, losses, deductions, credits, gross proceeds, or distributions from holding or disposing of the

asset are included or reflected on your income tax return for this tax year.

Interests in Property Transferred in Connection With the Performance of Services

You are first considered to have an interest in property transferred in connection with the performance of services on the first date that the property is substantially vested (within the meaning of Regulations section 1.83-3(b)) or, if you have made a valid section 83(b) election with respect to the property, on the date of transfer of the property.

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 Interest Valuation*, earlier, and *Reporting the Value of Jointly Owned Assets*, 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.