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Reporting Foreign Assets, Foreign Financial Accounts, and Cash Transactions





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Statement of Specified Foreign Financial Assets (SSFAs), Code §6038D

**Form 8938 attached to and filed
with the income tax return**

**Filed by the due date for the income
tax return, including extension**

**NOT required if no requirement to
file income tax return**





WHO MUST FILE FORM 8938 ?

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- **“SPECIFIED PERSONS”** – Generally U.S. citizens and residents, certain resident aliens and others (Final Regulations to include domestic entities)

- **Having an interest in “SPECIFIED FOREIGN FINANCIAL ASSETS”** – Generally, a Specified Person has such an interest if the income or income items, if any, would be required to be reported on their return

- **If the SSFAs have a value exceeding the “THRESHOLD AMOUNT”**





Specified Foreign Financial Assets – Form 8938

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- **SFFAs include:**
 - **Financial accounts in a foreign financial institution**
 - **Stock or securities issued by a non-U.S. person**
 - **Financial instrument or contract issued by or with a non-U.S. person**
 - **Any interest in any foreign entity**
 - **Any interest in foreign partnerships, trusts, estates, pensions, life insurance with cash surrender value, options, etc.**





Specified Foreign Financial Assets – Form 8938

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- **SFFAs do NOT include:**
 - Foreign personal residence or rental real estate unless held in a foreign entity
 - Foreign currency
 - Shares in a U.S. financial institution or a U.S. mutual fund that owns foreign stocks or securities
 - Financial account at a U.S. branch of a foreign financial institution





Asset Threshold - Form 8938

If Living in the U.S.

- **Single or Married - Separate Return**
 - Value *exceeds* \$50,000 on the last day of the year or \$75,000 at any time during the year
- **Married - Joint Return**
 - Value *exceeds* \$100,000 on the last day of the year or more than \$150,000 at any time during the year

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Asset Threshold - Form 8938

If Living Outside the U.S.

- **Single or Married- Separate Return**
 - Value *exceeds* \$200,000 on the last day of the year or \$300,000 at any time during the year
- **Married - Joint Return**
 - Value *exceeds* \$400,000 on the last day of the year or more than \$600,000 at any time during the year
- **Living Abroad** – Bona fide resident of a foreign country for an entire tax year, or present in a foreign country for at least 330 days during any consecutive 12 month period ending in the reported tax year

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Form 8938, “Statement of Specified Foreign Financial Assets”

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- Form 8938 is filed in addition to TDF 90-22.1 (FBAR) – FBARs are due June 30 of the following year and filed in Detroit
- Form 8938 is **NOT REQUIRED** if the SSFA is otherwise reported on Form 3520, Form 3520-A, Form 5471, Form 8621, Form 8865, or Form 8891





Report of Foreign Bank and Financial Accounts

(FBAR), Form TD F 90-22.1

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- U.S. citizens, residents or a person in and doing business in the U.S. must file an FBAR with the government if they have a financial account in a foreign country with a value exceeding \$10,000 at any time during the calendar year





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FBAR in General

- FBAR is not a tax return – it is an information report filed with the Treasury
- Referenced on Form 1040, Schedule B, Part III
- Deadline for filing FBAR is on or before June 30th the following year
 - NO extensions granted
- FBAR is **NOT** attached to taxpayer's individual income tax return





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Who Must File the FBAR ?

- A United States person must file an FBAR if that person has:
 - A financial interest in;
 - Signature authority over;
 - Or any other authority overany financial account(s) in a foreign country if their aggregate value exceeds \$10,000 at any time during the calendar year





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United States Person

- A United States Person includes:
 - A citizen or resident of the United States
 - A person living in and doing business in the United States
 - Individuals and all forms of domestic business entities, trusts, and estates





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Financial Accounts

- A financial account includes bank and savings accounts, time deposits, securities accounts, mutual funds, brokerage accounts
- Assets held in a commingled fund
- Any other account maintained in a foreign financial institution or with a person doing business as a financial institution
- An insurance policy having a cash surrender value
- NOT individual bonds, notes, or stock certifications held by the filer





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Financial Interest

- “Financial interest” includes accounts for which the United States Person is the owner of record or has legal title, whether the account is maintained for his or her own benefit or for the benefit of others including non-United States persons and:
 - Accounts where the owner of record or holder of legal title is a person acting as an agent, nominee, or in some other capacity on behalf of a U.S. Person
 - A corporation in which a U.S. Person directly or indirectly owns more than 50% of the total value of the shares of stock
 - An account where the owner of record or holder of legal title is a partnership in which the U.S. person owns interest in more than 50% of the profits or a trust in which the U.S. person either has a present beneficial interest in more than 50% of the current income





Signature or Other Authority

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- A U.S. person has account signature authority if that person can control the disposition of money or other property in the account by delivery of a document containing his signature to the bank or other person with whom the account is maintained
- A person with other authority over an account is one who can exercise power that is comparable to signature authority over an account by direct communication, either orally or by some other means, to the bank or other person with whom the account is maintained





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Account Value

- The FBAR is required for each calendar year during which the aggregate amount(s) in the account(s) exceeded \$10,000 valued in U.S. dollars at any time during the calendar year
- If the periodic account statement is not issued, the maximum is the largest amount of currency and/or monetary instruments in the account at any time during the year
- Convert foreign currency by using the official exchange rate in effect at the end of the year in question for converting foreign currency into U.S. dollars





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Penalties for Non-Compliance

- Potential civil penalties of:
 - \$10,000 per year for non-willful violations
 - Up to 50% of the aggregate account value, per year, for willful violations
- Criminal sanctions





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Focus on Undeclared Foreign Financial Accounts

“If you are a US individual holding overseas assets, you must report and pay your taxes or we will be increasingly focused on finding you”

Douglas H. Shulman, IRS Commissioner
Washington, DC October 26, 2009





Offshore Voluntary Disclosure Program (OVDP)

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- Terms of the 2012 OVDP are identified in IR-2012-5 (January 9, 2012), requires filing of corrected returns and FBARS for a 8-year period
- IRS Criminal Investigation pre-clearance and optional voluntary disclosures letter initiation process
- No express expiration date but can be terminated at any time





Offshore Voluntary Disclosure Program (OVDP)

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- Income taxes, interest and accuracy-related/delinquency penalties and an offshore-related penalty of 27.5% of the highest aggregate balance in each foreign account (and, in certain situations, foreign asset valuations), except:
 - A 12.5% offshore penalty if the highest aggregate balance in all foreign accounts is less than \$75,000 in relevant each year
 - A 5% FBAR-related penalty if –
 - Taxpayers are foreign residents and were unaware they were U.S. citizens, or
 - Taxpayer did not open the account, had infrequent contact, minimal withdrawals and funds on deposit were previously taxed





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Form 8300 - Reporting Cash Payments Over \$10,000 in a Trade or Business

- Reportable transactions include, but are not limited to:
 - Escrow arrangements
 - Debt payments
 - Expense reimbursements
 - Sale of goods/services, real estate, tangibles and intangibles
 - Rent receipts
 - Exchange of cash for other cash





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Form 8300 - Reporting Cash Payments Over \$10,000

- Report payments if all of the following criteria are met:
 - Amount of cash exceeds \$10,000
 - Received in the ordinary course of a trade or business
 - Received in a single transaction or in related transactions as:
 - Lump sum exceeding \$10,000, or
 - Installment payments exceeding \$10,000 within 12 months of the initial payment





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Form 8300 - Reporting Cash Payments Over \$10,000

- “Cash” includes:
 - Coins and currency of the U.S. or a foreign country
 - Cashiers checks, travelers checks, bank drafts and money orders if:
 - Customer is trying to avoid filing of Form 8300,
 - Involves retail sale of consumer durable for personal use expected to last more than one year and has a sales price exceeding \$10,000
 - Collectibles such as artwork, rug, stamp or coin, or
 - Travel or entertainment if total sales price of all items (airfare, hotel, etc.) exceeds \$10,000





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Form 8300 - Reporting Cash Payments Over \$10,000

- “Cash” does not include:
 - Personal checks drawn on the account of the writer
 - Cashiers checks, travelers checks, bank drafts and money orders with a face value exceeding \$10,000
 - If the customer uses currency to purchase a monetary instrument the financial institution is required to report the transaction on FinCEN Form 104 – Currency Transaction Report





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Form 8300 - Reporting Cash Payments Over \$10,000

- **“Related transactions”** –
 - Occur within 24-hour period
 - Or if business knows, or has reason to know, that each is a series of connected transactions
- **File Form 8300 within 15 days after payment received**
 - If the initial payment is less than \$10,000 the Form 8300 is due 15 days after receipt of later payment made within one year which causes all related payments to exceed \$10,000





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Form 8300 - Reporting Cash Payments Over \$10,000

- **Written statement required to be provided to the customer by January 31 of next calendar year indicating –**
 - Name, address and contact person for seller's business
 - Amount of reportable cash received within 12-month period
 - Seller is reporting the information to the IRS
- **Form 8300 and the written statement are required to be retained for 5 years**
- **Potential civil penalties and criminal sanctions for noncompliance**

