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**American Tax Laws
Applicable to NRI and 2013
Changes
IACCGH and GOPIO**

Form TD F 90-22.1(FBAR) and Form 8938

Foreign Bank Account Reporting: Form TD F 90-22.1

- Who should file:
 - U.S. citizens and residents
- Persons with financial interest in or signature authority over foreign financial account(s)
- Aggregate value exceeding \$10,000 at any time during the year
- Deadline is June 30 of the following year
 - (No extensions)
- Not filed with tax return
 - Schedule B question

IRS' Offshore Voluntary Disclosure Program

- Partial amnesty program
- FBAR and certain international tax reporting
- Pay all taxes and interest for past 8 years
- Accuracy or delinquency penalty
- Waiver of penalties for informational forms
- Penalty: 27.5% of the highest account balance
- Penalty: 12.5% if unreported foreign account < \$75K
- Currently no deadline; subject to change

New Form 8938

Form 8938 <small>November 2012</small> Department of the Treasury Internal Revenue Service	Statement of Specified Foreign Financial Assets <small>Information about Form 8938 and its separate instructions is at www.irs.gov/form8938. Attach to your tax return.</small>	<small>OMB No. 1545-0046</small> Attachment Sequence No. 175
If you have attached additional sheets, check here <input type="checkbox"/>		
Name(s) shown on return		Identifying number
Number, street, and room or suite no. (if a P.O. box, see instructions)		
City or town, province or state, and country (including postal code)		
For tax year beginning ., 20 ., and ending ., 20 .		
<small>Note. All information must be in English. Show all amounts in U.S. dollars. Show currency conversion rates in Part I, line e(2), or Part II, line e(2).</small>		
Type of filer		
a <input type="checkbox"/> Specified individual <input type="checkbox"/> Married filing a joint return <input type="checkbox"/> Married filing a separate return <input type="checkbox"/> Other individual b <input type="checkbox"/> Specified domestic entity <input type="checkbox"/> Partnership <input type="checkbox"/> Corporation <input type="checkbox"/> Trust		
Check this box if this is an amended or supplemental Form 8938 for the tax year <input type="checkbox"/>		
Part I Foreign Deposit and Custodial Accounts (see instructions)		
If you have more than one account to report, attach a continuation sheet with the same information for each additional account (see instructions).		
1	Type of account <input type="checkbox"/> Deposit <input type="checkbox"/> Custodial	2 Account number or other designation
3	Check all that apply: a <input type="checkbox"/> Account opened during tax year b <input type="checkbox"/> Account closed during tax year c <input type="checkbox"/> Account jointly owned with spouse d <input type="checkbox"/> No tax item reported in Part III with respect to this account	
4	Maximum value of account during tax year \$	
5	Did you use a foreign currency exchange rate to convert the value of the account into U.S. dollars? <input type="checkbox"/> Yes <input type="checkbox"/> No	
6	If you answered "Yes" to line 5, complete all that apply.	
	(1) Foreign currency in which account is maintained	(2) Foreign currency exchange rate used to convert to U.S. dollars
		(3) Source of exchange rate used if not from U.S. Treasury Financial Management Service
7	Name of financial institution in which account is maintained	
8	Mailing address of financial institution in which account is maintained. Number, street, and room or suite no.	
9	City or town, province or state, and country (including postal code)	
Part II Other Foreign Assets (see instructions)		
<small>Note. If you reported specified foreign financial assets on Forms 5020, 5020-A, 5471, 5671, 5672, or 5673 you do not have to include the assets on Form 8938. You must complete Part IV. See instructions.</small>		
If you have more than one asset to report, attach a continuation sheet with the same information for each additional asset (see instructions).		
1	Description of asset	2 Identifying number or other designation
3	Complete all that apply. See instructions for reporting of multiple acquisition or disposition dates.	
	a Date asset acquired during tax year, if applicable	
	b Date asset disposed of during tax year, if applicable	
	c <input type="checkbox"/> Check if asset jointly owned with spouse d <input type="checkbox"/> Check if no tax item reported in Part III with respect to this asset	
4	Maximum value of asset during tax year (check box that applies)	
	a <input type="checkbox"/> \$0 - \$50,000 b <input type="checkbox"/> \$50,001 - \$100,000 c <input type="checkbox"/> \$100,001 - \$150,000 d <input type="checkbox"/> \$150,001 - \$200,000	
	e If more than \$200,000, list value \$	
5	Did you use a foreign currency exchange rate to convert the value of the asset into U.S. dollars? <input type="checkbox"/> Yes <input type="checkbox"/> No	
<small>For Paperwork Reduction Act Notice, see the separate instructions. Cat. No. 37753A Form 8938 (11-2012)</small>		

New Specified Foreign Financial Assets Report – Form 8938

- Effective for individuals for tax year 2011
- If filed your 2011 tax return before form 8938 was released, and you are required to file form 8938 for 2011 you can file it with your 2012 tax return this year when you file your tax return.
- Interest in “Specified Foreign Financial Assets” with an aggregate value exceeding \$50,000
- Information statement attached to the individual's U.S. income tax return
- This reporting requirement is in addition to FBAR!

New Specified Foreign Financial Assets Report – Form 8938

- “Specified foreign financial asset”
 - Any financial account maintained by a foreign financial institution including Bank savings, checking and fixed deposits accounts
 - Securities accounts such as mutual funds and brokerage accounts, foreign annuity or insurance policy with a cash surrender value
 - Any stock or security issued by a foreign person
 - Any financial instrument/contract – foreign issuer
 - Any interest in a foreign entity
- Information statement - Maximum value of assets, account numbers, names and addresses of foreign financial institutions, etc.

Do I need to file Form 8938, “Statement of Specified Foreign Financial Assets”? With my Tax Return?

You must file Form 8938 if:

1. You are a specified individual.

A specified individual is:

- A U.S. citizen.
- A resident alien of the United States for any part of the tax year.

AND

2. You have an interest in specified foreign financial assets required to be reported.

A specified foreign financial asset is:

- Any financial account maintained by a foreign financial institution.
- Other foreign financial assets held for investment, namely:
 - Stock or securities issued by someone other than a U.S. person
 - Any interest in a foreign entity, and
 - Any financial instrument or contract that has as an issuer or counterparty that is other than a U.S. person.

AND

3. The aggregate value of your specified foreign financial assets is more than the reporting thresholds that applies to you.

Form 8938 Filing Thresholds

Marital Status	Year-End Aggregate Value of All Specified Foreign Financial Assets Exceeds:	Any time during the year Balance Exceeds:
Single or MFS living in the U.S.	\$50,000	\$75,000
MFJ, living in the U.S.	\$100,000	\$150,000
Single or MFS living outside the U.S.	\$200,000	\$300,000
MFJ, living outside the U.S.	\$400,000	\$600,000

Jointly Owned Assets with relative

- Joint Ownership – each specified person must report
 - Spouse, MFJ – file a joint 8938; include asset value once
 - Non-Specified Individual Spouse, or Non-Spouse – each joint owner includes entire value of asset- If relative in India/outside USA – You include your share

Form 8938 What Values?

- Accounts: Values stated on periodic statements from financial institutions
- Other assets: may rely on year-end value, don't need appraisal
- Convert foreign currency to USD at December 31 spot rate

Comparison of Form 8938 and FBAR Requirements

	Form 8938, Statement of Specified Foreign Financial Assets	Form TD F 90-22.1, Report of Foreign Bank and Financial Accounts (FBAR)
Reporting Threshold (Total Value of Assets)	\$50,000 on the last day of the tax year or \$75,000 at any time during the tax year (higher threshold amounts apply to married individuals filing jointly and individuals living abroad)	\$10,000 at any time during the calendar year
What is Reported?	Maximum value of specified foreign financial assets, which include financial accounts with foreign financial institutions and certain other foreign non-account investment assets	Maximum value of financial accounts maintained by a financial institution physically located in a foreign country
When Due?	By due date, including extension, if any, for income tax return	Received by June 30 (no extensions of time granted)
Where to File?	File with income tax return pursuant to instructions for filing the return	Mail To: Department of the Treasury Post Office Box 32621 Detroit, MI 48232-0621. Certain individuals may file electronically at BSA E-Filing System.

Comparison of Form 8938 and FBAR Requirements (Continued..)

	Form 8938, Statement of Specified Foreign Financial Assets	Form TD F 90-22.1, Report of Foreign Bank and Financial Accounts (FBAR)
Foreign mutual funds	Yes	Yes
Foreign-issued life insurance or annuity contract with a cash-value	Yes	Yes
Foreign hedge funds and foreign private equity funds	Yes	No
Foreign real estate held directly	No	No
Foreign currency held directly	No	No
Precious Metals held directly	No	No
Personal property, held directly, such as art, antiques, jewelry, cars and other collectibles	No	No

FBAR vs. 8938

	FBAR (TD F 90-22.1)	Form 8938
Who Must File	U.S. Persons	“Specified Persons”
What is Reported?	Foreign financial accounts	SFFAs
Signature Authority?	Yes	No
Filing Threshold	\$10,000	\$50,000 - \$600,000
Minimum Penalties	No minimum	\$10,000
Due Date	6/30, no extensions	4/15, plus extensions
Statute of Limitations	6 years from filing date	3 years from filing date

Other International Filing Requirements

- Form 8621 – Passive Foreign Investment
- Form 3520 – U.S. owner of a foreign trust
- Form 5471 – U.S. owner of a foreign corporation

Form 8938 Penalties

- \$10,000 penalty for failing to file Form 8938
- Additional penalties following notification
- 40% underpayment penalty

Form TD F 90-22.1 Penalties

- Non-willful failure penalty
 - \$10,000
 - May be waived due to “reasonable cause”
- Willful failure penalty
 - Greater of \$100,000 or 50% of account balance
- Criminal penalties
- 6 year statute of limitations