

BROCK, SCHECHTER & POLAKOFF, LLP

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FORM 8938 STATEMENT OF SPECIFIED FOREIGN FINANCIAL ASSETS

Form 8938 was enacted in 2010 to improve tax compliance by U.S. taxpayers with offshore financial accounts. Effective for tax years beginning after March 18, 2010 (for most individuals this means they will start filing Form 8938 with their 2011 income tax return) U.S. taxpayers living abroad and holding specified financial assets with an aggregate value exceeding \$200,000 (\$400,000 Married Filing Jointly) will report information about those assets on a new Form 8938 which must be attached to the taxpayer's annual income tax return filed on a timely basis. Note lower asset thresholds apply to U.S. taxpayers who reside in the U.S. (see below).

Specified Individuals

- A U.S. citizen
- A resident alien
- If you do not have to file an income tax return you do not need to file Form 8938 even if the assets are over the threshold.

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. This will include an interest in a closely held foreign corporation that is not required to be reported on a Form 5471 as well as other collectibles held for investment. If you are the owner of a disregarded entity you have an interest in any specified foreign financial asset owned by the disregarded entity.

- Any financial account maintained by a foreign financial institution except
 - The foreign branch of a U.S. financial institution
 - The U.S. branch of a foreign financial institution
- Other foreign financial assets held for investment that are not in an account maintained by a US or foreign financial institution
 - Stock or Securities issued by someone other than a U.S. person
 - Any interest in a Foreign Entity
 - Any financial instrument or contract that has as an issuer or counterparty that is other than a U.S. person.

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Reporting Thresholds

- U.S. taxpayer **living abroad** (green card holder or substantial presence)
 - Unmarried or married filing separately (not filing a joint return)
 - More than \$200,000 on the last day of the year or more than \$300,000 at any time during the year
 - Married filing Jointly
 - More than \$400,000 on the last day of the year or more than \$600,000 at any time during the year.
- Unmarried taxpayers **living in the U.S.** or married filing separately
 - More than \$50,000 on the last day of the year or more than \$75,000 at any time during the year
- Married Taxpayers filing a joint return **living in the U.S.**
 - More than \$100,000 on the last day of the year or more than \$150,000 at any time during the year

Penalties

Failing to file Form 8938 when required could result in a \$10,000 penalty with an additional penalty of up to \$50,000 for continued failure to file after IRS notification. A 40% penalty on any understatement of tax attributable to non disclosed assets can also be imposed. In addition 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

IMPORTANT

The new Form 8938 filing requirement does not replace or otherwise affect a taxpayer's obligation to file an FBAR (Report of Foreign Bank and Financial Accounts).

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In order to prepare the New Form 8938 we will need the following information:

Foreign Deposit and Custodial Accounts

1. Type of Account (Deposit or Custodial)
2. Account Number
3. Was the account opened or closed during the tax year (specify whether opened or closed)
4. Is the account jointly owned? If yes with whom.
5. Maximum value in the account during the year in foreign currency (Canadian Dollars)
6. Name of financial institution in which the account is maintained
7. Address of the financial institution

Other Foreign Assets

1. Description of Assets
2. Identifying number or other designation if applicable
3. Date asset acquired
4. Date asset disposed of
5. Is the asset owned jointly? If yes with whom.
6. Maximum value of the asset during the tax year in foreign currency (Canadian Dollars)
7. If the asset is a stock of a foreign entity or an interest in a foreign entity
 - a. Name of entity
 - b. Type of entity (Partnership, Corporation, Trust or Estate)
 - c. Address of the Foreign Entity
8. If the asset is not a stock in a foreign entity or an interest in a foreign entity
 - a. Name of issuer or counterparty (specify if issuer or counter party)
 - b. Type of counter party (Individual, Partnership, Corporation, Trust or Estate)
 - c. Is issuer or counterparty a US or Foreign Person (specify US or Foreign)
 - d. Address of issuer or counterparty