



7235 N. Western  
Chicago, IL, 60645  
T. 773.262.0470/F.773.262.4457  
Info@wisecpagroup.com

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## The "FBAR" on Steroids- Statement of Specified Foreign Financial Assets (8938)

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The I.R.S. introduced a new form; special for affluent taxpayer's holding foreign financial assets overseas, during the 2011 tax year. This form may be called the "FBAR on Steroids" as it encompasses a similar reporting requirement as the FBAR does, but has a higher reporting threshold and must be included with one's tax return.

### *Form 8938*

Unless an exception applies, one must file Form 8938 if one is 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. A specified individual is any of the following: U.S. citizen, a resident of the United States (even if an election is made under a tax treaty tie breaker rule), a nonresident alien who makes an election to be treated as a resident alien for purposes of filing a joint income tax return, and a nonresident alien who is a bona fide resident of American Samoa or Puerto Rico.

### *Taxpayers living in the United States*

Depending on one's filing status will dictate the individual's reporting threshold. For **unmarried taxpayers** residing in the United States, the threshold is triggered if the total value of the 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.

For **married taxpayers** residing in the United States and **filing jointly**, the threshold is triggered if the total value of the 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.

For **married taxpayers** residing in the United States and **filing separately**, the threshold is triggered if the total value of the 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*

For **unmarried taxpayers** residing outside the United States, the threshold is triggered if the total value of the 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.

For **married taxpayers** residing outside the United States and **filing jointly**, the threshold is triggered if the total value of the 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.

For **married taxpayers** residing outside the United States and **filing separately**, the threshold is triggered if the total value of the 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.



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### *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
  - 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

Other specified foreign financial assets include the following, if they are held for investment and not held in a foreign 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, 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

### *Reporting Maximum Value*

One 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 the specified foreign financial asset is its fair market value. If one specified foreign financial asset is denominated in a foreign currency, the maximum value of the asset must be determined in the foreign currency and then converted to U.S. dollars.

### *Penalties*

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

If you would like to discuss this or any other U.S. tax or accounting matter, please feel free to call Gabriel at 773.269.6513 or email [Gabriel.wise@wisecpagroup.com](mailto:Gabriel.wise@wisecpagroup.com).

We look forward to hearing from you.

Gabriel Wise, CPA MST