

The Internal Revenue Service continues to widen its net for gathering information concerning taxpayers participating in foreign financial transactions. The IRS recently released Form 8938, *Statement of Specified Foreign Financial Assets*. The new form is required to be filed by taxpayers who own certain foreign financial assets exceeding the threshold amounts that the IRS specifies. The form is currently only required for *individuals* that meet these thresholds. However, it appears that the IRS intends to require Form 8938 from certain domestic entities formed to hold foreign financial assets as well. The IRS will likely require such entities to file Form 8938 or a similar disclosure in future years. If applicable, an individual taxpayer must file Form 8938 with their annual Form 1040 income tax return by the Form 1040 due date, (including extensions). Taxpayers who are not required to file an income tax return for a particular tax year are not under any circumstances required to file form 8938 for that same year.

Form 8938 requires taxpayers to report what it terms “specified foreign financial assets.” These specified assets can include but are not limited to; financial accounts with a foreign financial institution, stocks and securities issued by a foreign person or corporation, notes and bonds issued by foreign person, amounts invested in foreign retirement or deferred compensation plans, and any interest in a foreign entity. The specified foreign assets do *not* include foreign real estate or tangible personal property owned in a foreign country. The current thresholds at which a taxpayer is required to file and report these specified foreign financial assets are:

- Taxpayers living in the U.S. that file their returns with a filing status other than married filing jointly must attach Form 8938 if the value of specified assets exceeds \$50,000 on the last day of the taxable year or \$75,000 at any time during the year
- For married taxpayers living in the U.S. and filing a joint return, the filing threshold increases to assets of more than \$100,000 on the last day of the tax year or more than \$200,000 at any time during the tax year.
- For taxpayers who have a tax home in a foreign country and who do not file a married filing joint return, the thresholds are more than \$200,000 in specified assets on the last day of the tax year or more than \$300,000 at any time during the taxable year
- For married taxpayers with a foreign tax home and that file a joint return, the minimum amount of assets to trigger a filing requirement is \$400,000 on the last day of the tax year or \$600,000 at any point during the tax year.

The penalties for failure to file Form 8938 can be very substantial. The initial failure-to-file penalty may be up to \$10,000. Also, the IRS can assess up to another \$50,000 of failure-to-file penalties if they notify a taxpayer to file and the taxpayer fails to do so. Additionally, the taxpayer may be assessed an accuracy penalty of 40% of the underpaid tax on any income omitted from a tax return that involved a specified foreign financial asset that was not disclosed on Form 8938. Please note that since Form 8938 is required as part of an individual’s 1040 return filing, failure to file this form when required can result in an incomplete income tax return that may not begin running the statute of limitations for the entire return until Form 8938 is filed. The filing of Form 8938 does not relieve a taxpayer of their requirement to file Form TDF 90-22.1, *Report of Foreign Bank & Financial Accounts*.