FATCA Discussion Points:
U.S. Taxpayer Reporting

Reminder: You may have to report information about foreign financial assets and accounts.

The Foreign Account Tax Compliance Act (FATCA) is an important development in U.S. efforts to combat tax evasion by U.S. persons holding accounts and other financial assets offshore. The Treasury Department and the IRS continue to develop guidance concerning FATCA. For current and more in-depth information, please visit www.irs.gov/FATCA.

Under FATCA, certain U.S. taxpayers holding financial assets outside the United States must report those assets to the IRS on Form 8938, Statement of Specified Foreign Financial Assets. There are serious penalties for not reporting these financial assets (as described below). This FATCA requirement is in addition to the long-standing requirement to report foreign financial accounts on Form TD F 90.22-1, Report of Foreign Bank and Financial Accounts (FBAR).

FATCA will also require certain foreign financial institutions to report directly to the IRS information about financial accounts held by U.S. taxpayers or by foreign entities in which U.S. taxpayers hold a substantial ownership interest. The reporting institutions will include not only banks, but also other financial institutions, such as investment entities, brokers, and certain insurance companies. Some non-financial foreign entities will also have to report certain of their U.S. owners.

Therefore, if you set up a new account with a foreign financial institution, it may ask you for information about your citizenship. FATCA provides special (and lessened) reporting requirements about the U.S. account holders of certain financial institutions that do not solicit business outside their country of organization and that mainly service account holders resident within it. In order to qualify for this favorable treatment, however, the local foreign financial institution cannot discriminate by declining to open or maintain accounts for U.S. citizens who reside in the country where it is organized.

Reporting by U.S. Taxpayers Holding Foreign Financial Assets

FATCA requires certain U.S. taxpayers who hold foreign financial assets with an aggregate value of more than the reporting threshold (at least $50,000) to report information about those assets on Form 8938, which must be attached to the taxpayer's annual income tax return. The reporting threshold is higher for certain individuals, including married taxpayers filing a joint annual income tax return and certain taxpayers living in a foreign country (see below).

As of January 2013, only individuals are required to report their foreign financial assets. At a later time, a limited set of U.S. domestic entities also may have to report their foreign financial assets, but not for tax years starting before 2013.

There are some exceptions to the requirement that you file Form 8938. For example, if you do not have to file a U.S. income tax return for the year, then you do not have to file Form 8938, regardless of the value of your specified foreign financial assets. Also, if you report interests in foreign entities and certain foreign gifts on other forms, you may just list the submitted forms on Form 8938, without repeating the details.

You may have to complete and file other reports about foreign assets, such as TD F 90-22.1, Report of Foreign Bank and Financial Accounts (FBAR), in addition to Form 8938. For more information, see "Form 8938 Does Not Relieve Filers of FBAR Filing Requirements" below.

Reporting Thresholds

Reporting thresholds vary based on whether you file a joint income tax return or live abroad. If you are single or file separately from your spouse, you must submit a Form 8938 if you have more than $200,000 of specified foreign financial assets at the end of the year and you live abroad; or more than $50,000, if you live in the United States. If you file jointly with your spouse, these thresholds double. You are considered to live abroad if you are a U.S. citizen whose tax home is in a foreign country and you have been present in a foreign country or countries for at least 330 days out of a consecutive 12-month period.

Taxpayers living abroad. You must file a Form 8938 if you must file an income tax return and:

- You are married filing a joint income tax return and the total value of your 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 year. These thresholds apply even if only one spouse resides abroad. Married individuals who file a joint income tax return for the tax year will file a single Form 8938 that reports all of the specified foreign financial assets in which either spouse has an interest.
- You are not a married person filing a joint income tax return and the total value of your 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 year.

Taxpayers living in the United States. You must file Form 8938 if you must file an income tax return and:

- You are unmarried and the total value of your 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
- You are married filing a joint income tax return and the total value of your 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.
- You are married filing separate income tax returns and the total value of your 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 purposes of calculating the value of your specified foreign financial assets in applying this threshold, include one-half the value of any specified foreign financial asset jointly owned with your spouse. However, report the entire value on Form 8938 if you are required to file Form 8938.

Specified Foreign Financial Assets

Specified foreign financial assets include foreign financial accounts and foreign non-account assets held for investment (as opposed to held for use in a trade or business), such as foreign stock and securities, foreign financial instruments, contracts with non-U.S. persons, and interests in foreign entities.

There are exceptions to the reporting requirement. For example, you do not have to report the following assets because they are not considered specified foreign financial assets:

- A financial account maintained by a U.S. payor. A U.S. payor includes a U.S. branch of a foreign financial institution, a foreign branch of a U.S. financial institution, and certain foreign subsidiaries of U.S. corporations. Therefore, financial accounts with such entities do not have to be reported.
- A beneficial interest in a foreign trust or a foreign estate, if you do not know or have reason to know of the interest. If you receive a distribution from a foreign trust or foreign estate, however, you are considered to have knowledge of your interest in the trust or estate.
- An interest in a social security, social insurance, or other similar program of a foreign government.

Other Exceptions From Reporting

If you reported specified foreign financial assets on other forms, you do not have to report them a second time on Form 8938. These include interests in

- trusts and foreign gifts reported on Form 3520 or Form 3520-A (filed by the trust);
- foreign corporations reported on Form 5471;

- passive foreign investment companies reported on Form 8621;
- foreign partnerships reported on Form 8865; and
- registered Canadian retirement savings plans reported on Form 8891.

The value of the foreign financial assets reported on these forms is included in determining the total value of assets for the reporting threshold, but you do not have to list the assets on Form 8938. In this situation, identify on Form 8938 which and how many of these form(s) report the specified foreign financial assets.

Additional exceptions from reporting are made for certain trusts, certain assets held by bona fide residents of U.S. territories, and assets or accounts for which mark-to-market elections have been made under Internal Revenue Code Section 475. For example, a U.S. beneficiary of a domestic bankruptcy trust or a domestic widely held fixed investment trust is not required to report any specified foreign financial asset held by the trust on Form 8938.

The Instructions for Form 8938 provide more information on specified foreign financial assets.

Asset Valuation

You will need to determine the value of your specified foreign financial assets to know if the total value exceeds the threshold applicable to you. Generally, a reasonable estimate of the highest fair market value of the asset during the tax year is reported, but special rules apply to ease valuation burdens.

For reporting purposes, you may rely on periodic financial account statements (provided at least annually) to determine the maximum value of a financial account. For a specified foreign financial asset that is not held in a financial account, you may rely on the year-end value of the asset if it reasonably approximates the maximum value of the asset during the tax year. Special rules also apply for reporting the maximum value of an interest in a foreign trust, a foreign retirement plan, or a foreign estate.

You may determine the fair market value of a specified foreign financial asset based on information publicly available from reliable financial information sources or from other verifiable sources. Even if there is no information from reliable financial information sources regarding the fair market value of a reported asset, a reasonable estimate of the fair market value will be sufficient for reporting purposes.

For assets denominated in a currency other than U.S. dollars, use the U.S. Treasury Department's Financial Management Service foreign currency exchange rate to convert the denomination into U.S. dollars. If no U.S. Treasury Financial Management Service foreign currency exchange rate is available for a

particular currency, use another publicly available foreign currency exchange rate to convert the value of a specified foreign financial asset into U.S. dollars. The exchange rate is determined by reference to the exchange rate on the last day of your tax year.

Non-Compliance With Form 8938 Reporting Requirements

If you must file Form 8938 and do not do so, you may be subject to penalties: a $10,000 failure to file penalty, an additional penalty of up to $50,000 for continued failure to file after IRS notification, and a 40 percent penalty on an understatement of tax attributable to non-disclosed assets.

The statute of limitations is extended to six years after you file your return if you omit from gross income more than $5,000 that is attributable to a specified foreign financial asset, without regard to the reporting threshold or any reporting exceptions. If you fail to file or properly report an asset on Form 8938, the statute of limitations for the tax year is extended to three years following the time you provide the required information. If the failure is due to reasonable cause, the statute of limitations is extended only with regard to the item or items related to such failure and not for the entire tax return.

If you make a showing that any failure to disclose is due to reasonable cause and not due to willful neglect, no penalty will be imposed for failure to file Form 8938, however. Reasonable cause is determined on a case-by-case basis, considering all relevant facts and circumstances.

Form 8938 Does Not Relieve Filers of FBAR Filing Requirements

If you have a financial interest in or signatory authority over an offshore financial account, you must report the account on an FBAR (Form TD F 90-22.1), regardless of your obligation to file Form 8938. Certain foreign financial accounts are reported on both Form 8938 and the FBAR. However, the information required by the forms is not identical in all cases. Different rules, key definitions (for example, "financial account"), and reporting requirements apply to Form 8938 and FBAR reporting. Because of these differences, certain foreign financial accounts may be reported on one but not both forms. A chart comparing Form 8983 and FBAR filing requirements is available at http://www.irs.gov/Businesses/Comparison-of-Form-8938-and-FBAR-Requirements.

The due date for filing the FBAR is June 30 for financial accounts for which the filer had a financial interest or signature authority during the previous calendar year. The FBAR is filed with the IRS in Detroit. Form 8938 is due with your annual income tax return and filed with the applicable IRS service center.

Specified foreign financial assets held outside of an account with a financial institution are reported on Form 8938, but not reported on the FBAR.

Streamlined Procedures to Get Current With Your Filing Obligation

If you are a non-resident U.S. taxpayer who wishes to come into compliance with your U.S. filing obligations, you may be eligible for special IRS procedures. On June 26, 2012, the IRS announced new streamlined filing compliance procedures for non-resident U.S. taxpayers. These procedures recognize that some U.S. taxpayers living abroad have failed to timely file U.S. federal income tax returns or FBARs, but have recently become aware of their filing obligations and now seek to come into compliance with the law. These new procedures are for non-residents including, but not limited to, dual citizens who have not filed U.S. income tax and information returns. See www.irs.gov for information concerning the Streamlined Filing Procedures.