

August 6, 2019

## Requirements for reporting foreign assets

For those taxpayers that requested an extension to file their income tax return, October 15 represents the final due date. It is important to keep in mind important requirements regarding foreign information that may have to be included in your income tax return. There are significant penalties for US citizens and US residents who fail to file these forms.

Financial asset	Form	Required	Comments
Foreign bank accounts and brokerage accounts	Foreign Bank Account Report (FBAR)	The FBAR should be prepared if the aggregate of foreign holdings is worth \$10,000 or more at any time during the tax year, or if you have signature authority over one or more foreign accounts. The FBAR must be filed electronically as FinCen Form 114 with the US Department of the Treasury by April 15 <sup>th</sup> each year, with an automatic extension to October 15 <sup>th</sup> , if living abroad.	For FBAR purposes, the US includes the States, the District of Columbia, all US territories and possessions, and the Indian lands. Therefore, Puerto Rico accounts are not considered foreign for this report.
	Form 8938 (Foreign Account Tax Compliance Act) (FATCA)	<p>Form 8938 should be filed with Form 1040 (individual income tax return) if foreign assets exceed one of the following limits:</p> <ul style="list-style-type: none"> <li>if living in US               <ul style="list-style-type: none"> <li><u>unmarried and married filing separate</u> if aggregate foreign holdings is worth \$50,000 or more on the last day of the tax year or were more than \$75,000 at any time during the tax year; or if</li> <li><u>married filing jointly</u> if foreign holdings are worth \$100,000 or more on the last day of the tax year or were more than \$150,000 at any time during the tax year;</li> </ul> </li> <li>if leaving outside US               <ul style="list-style-type: none"> <li><u>unmarried and married filing separately</u> if foreign holdings are worth \$200,000 or more on the last day of the tax year or were more than \$300,000 at any time during the tax year; or if</li> <li><u>married filing jointly if foreign holdings</u> are worth \$400,000 or more on the last day of the tax year or were more than \$600,000 at any time during the tax year.</li> </ul> </li> </ul>	Foreign banks have been reporting directly or indirectly to the IRS, so it is especially important that you file Form 8938 correctly.

## Requirements for reporting foreign assets (cont'd)

Financial asset	Form	Required	Comments
Foreign corporations	Form 5471, Information Return of US persons with respect to certain foreign corporations	<p>Should be completed by any US person who:</p> <ul style="list-style-type: none"> <li>owns 10% or more (directly or indirectly) in a foreign corporation,</li> <li>is an officer or director of a foreign corporation and acquired stock in the company during the year, or</li> <li>has an ownership in a CFC</li> </ul> <p>Categories of US persons potentially liable for filing Form 5471:</p> <ul style="list-style-type: none"> <li>US citizen and resident alien individuals,</li> <li>US domestic corporations,</li> <li>US domestic partnerships, and</li> <li>US domestic trusts.</li> </ul>	The filing requirement for Form 5471 triggers when the US person has certain level of control in foreign corporations. This form is an attachment to the federal income tax return and needs to be filed by the due date (including extensions).
	Form 926, Return by a US transferor of property to a foreign corporation	US persons that made a transfer to a foreign corporation during the year may be required to complete and attach Form 926 to their individual income tax return. This form is required if the US person owns more than 10% of the foreign corporation at the end of the year, or if he or she transferred more than \$100,000 to the foreign company during the year.	
Foreign partnerships	Form 8865, Return of US persons with respect to certain foreign partnerships	<p>Form 8865 is used to report information related to:</p> <ul style="list-style-type: none"> <li>controlled foreign partnerships,</li> <li>transfers to foreign partnerships, or</li> <li>acquisitions, dispositions, and changes in foreign partnership interests.</li> </ul> <p>If one partner does not hold a controlling interest (greater than 50%) in the foreign partnership, then any US person owning more than 10% of the company's units should attach a completed Form 8865.</p>	This form generally requires the same information that would be reported on a domestic partnership US income tax return (Form 1065). The partnership income reported on the 8865 K-1 should be reported on Form 1040, Individual Income tax return.

## Requirements for reporting foreign assets (cont'd)

Financial asset	Form	Required	Comments
Foreign disregarded entities	Form 8858, Information Return of US persons with respect to foreign disregarded entities (FDE) and foreign branches (FB)	<p>The U.S. person filing Form 8858 is any U.S. person that:</p> <ul style="list-style-type: none"> <li>• is the tax owner of an FDE,</li> <li>• owns a specified interest in an FDE indirectly,</li> <li>• constructively through a CFC or a CFP, or</li> <li>• operates (directly or indirectly through a tier of FDEs or partnerships) an FB.</li> </ul>	<p>Profits associated to the FDE will flow through the personal income tax return.</p> <p>If the US owner of a foreign LLC does not elect disregarded entity status, then the foreign LLC may be treated as a corporation for tax purposes and therefore, the owner must file Form 5471 annually.</p>
Foreign trusts	<p>Form 3520, Annual Return to report transactions with foreign trusts and receipt of certain foreign gifts</p> <p>Form 3520-A, Annual information return of foreign trust with a US owner</p>	<p>Generally, if a US person has any transaction with a foreign trust (creation, transfer, distribution, ownership, etc.), the IRS will require Form 3520 and possibly Form 3520-A to report transactions during the year.</p> <p>Form 3520-A should be filed separately from the individual income tax return and is originally due on March 15<sup>th</sup> each year.</p>	Investment in foreign trusts is very popular for asset protection and tax planning

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