

# *Dena Lacy Hartzell, CPA, Ltd. Inc.*



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## **FOREIGN FINANCIAL ASSETS**

The following are highlights of tax law. This is not meant to be a comprehensive list nor the complete wording of tax law, rules & regulations. This summary is not meant to replace tax advice on your specific tax situation nor is it meant to be relied on by existing clients or third parties. We are not responsible for any errors or omissions. This is not meant to be legal, accounting or other professional service. If legal advice or other expert assistance is required, the services of a competent professional should be sought. These materials are informational in nature and users of these materials may not rely upon them to avoid imposition of tax penalties.

This does not contain all the specifics regarding foreign bank accounts and foreign asset reporting. If you have any foreign accounts or assets, we suggest that you visit the [irs.gov](http://irs.gov) website or contact us or your tax preparer for more details. This is not meant to be written tax advice. It is general information to warn on issues relating to this topic.

Form 114	Individual have an April 15 <sup>th</sup> Due Date or an automatic Extensions of Oct. 15 <sup>th</sup> . Entities have a March 17 Due Date or an automatic extension of September 15 <sup>th</sup> .
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### **Who Must File an FBAR?**

United States persons are required to file an FBAR if:

1. The United States person had a financial interest in or signature authority over at least one financial account located outside of the United States; and
2. The aggregate value of all foreign financial accounts exceeded \$10,000 at any time during the calendar year reported.

United States person includes U.S. citizens; U.S. residents; entities, including but not limited to, corporations, partnerships, or limited liability companies, created or organized in the United States or under the laws of the United States; and trusts or estates formed under the laws of the United States.

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## **Exceptions to the Reporting Requirement**

Exceptions to the FBAR reporting requirements can be found in the <https://www.fincen.gov/sites/default/files/shared/FBAR%20Line%20Item%20Filing%20Instructions.pdf>

FBAR instructions. These recaps of the exceptions do not include all the details pertinent to the exceptions. There are filing exceptions for the following United States persons or foreign financial accounts:

- Foreign financial accounts jointly owned by spouses if the one spouse files the form
- United States persons included in a consolidated FBAR
- Correspondent/Nostro accounts
- Foreign financial accounts owned by a U S governmental entity
- Foreign financial accounts owned by an international financial institution
- Owners and beneficiaries of U.S. IRAs
- Participants in and beneficiaries of tax-qualified retirement plans
- Certain individuals with signature authority over, but no financial interest in, a foreign financial account
- Trust beneficiaries (but only if the trust, the trustee or agent of the trust a U.S. person reports the account on a FBAR filed on behalf of the trust)
- Foreign financial accounts maintained on a United States military banking facility.

Review the FBAR instructions for more information on the reporting requirement and on the exceptions to the reporting requirement.

## **Reporting and Filing Information FinCEN Form 114, Report of Foreign Bank and Financial Accounts (FBAR)**

A person who holds a foreign financial account may have a reporting obligation even when the account produces no taxable income. The reporting obligation is met by answering questions on a tax return about foreign accounts (for example, the questions about foreign accounts on Form 1040 Schedule B) and by filing an FBAR.

The FBAR is a calendar year report and must be filed on or before April 15 of the year following the calendar year being reported. Effective July 1, 2013, the FBAR must be filed electronically through FinCEN's. <https://bsaefiling.fincen.treas.gov/main.html>

The FBAR is not filed with a federal tax return. When the IRS grants a filing extension for a taxpayer's income tax return, it does not extend the time to file an FBAR. A separate extension must be filed to extend the time to file the FBAR.

Those required to file an FBAR who fail to properly file a complete and correct FBAR may be subject to a civil penalty not to exceed \$10,000 per violation for non-willful violations that are not due to reasonable cause. For willful violations, the penalty may be the greater of \$100,000 or 50 percent of the balance in the account at the time of the violation, for each violation. For guidance on circumstances including natural disasters that prevent timely filing of an FBAR, see [FIN-2013-G002](#) (June 24, 2013).

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## **U.S. Taxpayers & Specified Domestic Entity Holding Foreign Financial Assets May Also Need to File Form 8938**

Taxpayers and specified domestic entities with specified foreign financial assets that exceed certain thresholds must report those assets to the IRS on [Form 8938](#), *Statement of Specified Foreign Financial Assets*, which is filed with an income tax return. Those foreign financial assets could include foreign accounts reported on an FBAR. The Form 8938 filing requirement is in addition to the FBAR filing requirement. A chart providing a [comparison of Form 8938 and FBAR requirements](#) may be accessed on the IRS [Foreign Account Tax Compliance Act web page](#). <https://www.irs.gov/businesses/comparison-of-form-8938-and-fbar-requirements>

You are a "Specified Domestic Entity: if you are one of the following:

- 1) A closely held domestic corporation that has at least 50 percent of its gross income from passive income
- 2) A closely held domestic corporation, if at least 50 percent of its assets produce or are held for the production of passive income
- 3) A closely held domestic partnership that has at least 50 percent of its gross income from passive income
- 4) A closely held domestic partnership, if at least 50 percent of its assets produce or are held for the production of passive income
- 5) A domestic trust described in Section 7701(a)(30)€ that has one or more specified persons (a specified individual or a specified domestic entity) as a current beneficiary.

Closely held is generally 80% ownership of stock or partnership interest as of the last day of the tax year. Constructive ownership combines family members per IRC Section 267© and e (3)

## **Information for U.S. Taxpayers on Form 8938 Requirements**

Under FATCA, certain U.S. taxpayers holding financial assets outside the United States must report those assets to the IRS, generally using Form 8938, Statement of Specified Foreign Financial Assets. The [Form 8938](#) must be attached to the taxpayer's annual tax return.

- Uncertain whether you have to file? Generally, aggregate value of these assets must exceed \$50,000, but in some cases, the threshold [may be higher](#).
- Unclear about what qualifies as a specified foreign financial asset? Here's a [chart](#) that can help.
- You may also have to file FIN CEN Form 114 This [comparison table](#) will help you figure out whether you also need to file the FBAR.

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- Still looking for more answers? View the [frequently-asked-questions \(FAQs\)](#) for Form 8938 for information on real estate, foreign assets held in U.S.-based financial accounts, foreign pensions, valuing certain assets and more.

Failure to report foreign financial assets on Form 8938 may result in a penalty of \$10,000 (and a penalty up to \$50,000 for continued failure after IRS notification). Further, underpayments of tax attributable to non-disclosed foreign financial assets will be subject to an additional substantial understatement penalty of 40 percent.

## **Delinquent FBAR Submission Procedures**

Taxpayers who have not filed a required FBAR and are not under a civil examination or a criminal investigation by the IRS, and have not already been contacted by the IRS about a delinquent FBAR, should file any delinquent FBARs according to the [FBAR instructions](#) and include a statement explaining why the filing is late. All FBARs are required to be filed electronically through FinCEN's [BSA E-Filing System](#). Select a reason for filing late on the cover page of the electronic form or enter a customized explanation using the 'Other' option. If unable to file electronically you may contact FinCEN's Regulatory Helpline at 800-949-2732 or 703-905-3975 (if calling from outside the United States) to determine acceptable alternatives to electronic filing.

The IRS will not impose a penalty for the failure to file the delinquent FBARs if income from the foreign financial accounts reported on the delinquent FBARs is properly reported and taxes are paid on your U.S. tax return, and you have not previously been contacted regarding an income tax examination or a request for delinquent returns for the years for which the delinquent FBARs are submitted.

## **Comparison of Form 8938 and FBAR Requirements**

The Form 8938 filing requirement does not replace or otherwise affect a taxpayer's obligation to file FinCEN Form 114 (Report of Foreign Bank and Financial Accounts). Individuals must file each form for which they meet the relevant reporting threshold.

	<b>Form 8938, Statement of Specified Foreign Financial Assets</b>	<b>FinCEN Form 114, Report of Foreign Bank and Financial Accounts (FBAR)</b>
<b>Who Must File?</b>	Specified individuals, which include U.S citizens, resident aliens, and certain non-resident aliens that have an interest in specified foreign financial assets and meet the reporting threshold	U.S. persons, which include U.S. citizens, resident aliens, trusts, estates, and domestic entities that have an interest in foreign financial accounts and meet the reporting threshold
<b>Does the United States include U.S. territories?</b>	No	Yes, resident aliens of U.S territories and U.S. territory entities are subject to FBAR reporting
<b>Reporting Threshold</b>	Taxpayers living in the US:	Aggregate value of financial

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	<b>Form 8938, Statement of Specified Foreign Financial Assets</b>	<b>FinCEN Form 114, Report of Foreign Bank and Financial Accounts (FBAR)</b>
<b>(Total Value of Assets)</b>	<ul style="list-style-type: none"> <li>• Unmarried taxpayer (or married filing separately): Total value of assets was more than \$50,000 on the last day of the tax year, or more than \$75,000 at any time during the year.</li> <li>• Married taxpayer filing jointly: Total value of assets was more than \$100,000 on the last day of the tax year, or more than \$150,000 at any time during the year.</li> </ul> <p>Taxpayers living outside the US:</p> <ul style="list-style-type: none"> <li>• Unmarried taxpayer (or married filing separately): Total value of assets was more than \$200,000 on the last day of the tax year, or more than \$300,000 at any time during the year.</li> <li>• Married taxpayer filing jointly: Total value of assets was more than \$400,000 on the last day of the tax year, or more than \$600,000 at any time during the year.</li> </ul>	<p>accounts exceeds \$10,000 at any time during the calendar year. This is a cumulative balance, meaning if you have a combined account balance of \$12,000 at any one time (but divided between 2 accounts), both accounts would have to be reported.</p>
<b>When do you have an interest in an account or asset?</b>	<p>If any income, gains, losses, deductions, credits, gross proceeds, or distributions from holding or disposing of the account or asset are or would be required to be reported, included, or otherwise reflected on your income tax return</p>	<p>Financial interest: you are the owner of record or holder of legal title; the owner of record or holder of legal title is your agent or representative; you have a sufficient interest in the entity that is the owner of record or holder of legal title.</p> <p>Signature authority: you have authority to control the disposition of the assets in the account by direct communication with the financial institution maintaining the account.</p> <p>See instructions for further details.</p>

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	<b>Form 8938, Statement of Specified Foreign Financial Assets</b>	<b>FinCEN Form 114, Report of Foreign Bank and Financial Accounts (FBAR)</b>
<b>What is Reported?</b>	Maximum value of specified foreign financial assets, which include financial accounts with foreign financial institutions and certain other foreign non-account investment assets	Maximum value of financial accounts maintained by a financial institution physically located in a foreign country
<b>How are maximum account or asset values determined and reported?</b>	Fair market value in U.S. dollars in accord with the Form 8938 instructions for each account and asset reported. Convert to U.S. dollars using the end of the taxable year exchange rate and report in U.S. dollars.	Use periodic account statements to determine the maximum value in the currency of the account. Convert to U.S. dollars using the end of the calendar year exchange rate and report in U.S. dollars.
<b>When Due?</b>	Form is attached to your annual return and due on the date of that return, including any applicable extensions	The FBAR is not filed with a federal tax return. Due Date for return or extension for 2016 is April 15, 2017
<b>Where to File?</b>	File with income tax return pursuant to instructions for filing the return. Form 8938 and Instructions can be found at <a href="http://www.irs.gov/form8938">www.irs.gov/form8938</a>	File electronically through FinCENs <a href="#">BSA E-Filing System</a> . The FBAR is not filed with a federal tax return.
<b>Penalties</b>	Up to \$10,000 for failure to disclose and an additional \$10,000 for each 30 days of non-filing after IRS notice of a failure to disclose, for a potential maximum penalty of \$60,000; criminal penalties may also apply	If non-willful, up to \$10,000; if willful, up to the greater of \$100,000 or 50 percent of account balances; criminal penalties may also apply
<b>Types of Foreign Assets and Whether They are Reportable</b>		
<b>Financial (deposit and custodial) accounts held at foreign financial institutions</b>	Yes	Yes
<b>Financial account held at a foreign branch of a U.S. financial institution</b>	No	Yes
<b>Financial account held at a U.S. branch of a foreign financial institution</b>	No	No

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	<b>Form 8938, Statement of Specified Foreign Financial Assets</b>	<b>FinCEN Form 114, Report of Foreign Bank and Financial Accounts (FBAR)</b>
<b>Foreign financial account for which you have signature authority</b>	No, unless you otherwise have an interest in the account as described above	Yes, subject to exceptions
<b>Foreign stock or securities held in a financial account at a foreign financial institution</b>	The account itself is subject to reporting, but the contents of the account do not have to be separately reported	The account itself is subject to reporting, but the contents of the account do not have to be separately reported
<b>Foreign stock or securities not held in a financial account</b>	Yes	No
<b>Foreign partnership interests</b>	Yes	No
<b>Indirect interests in foreign financial assets through an entity</b>	No	Yes, if sufficient ownership or beneficial interest (i.e., a greater than 50 percent interest) in the entity. See instructions for further detail.
<b>Foreign mutual funds</b>	Yes	Yes
<b>Domestic mutual fund investing in foreign stocks and securities</b>	No	No
<b>Foreign accounts and foreign non-account investment assets held by foreign or domestic grantor trust for which you are the grantor</b>	Yes, as to both foreign accounts and foreign non-account investment assets	Yes, as to foreign accounts
<b>Foreign-issued life insurance or annuity contract with a cash-value</b>	Yes	Yes
<b>Foreign hedge funds and foreign private equity funds</b>	Yes	No

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	<b>Form 8938, Statement of Specified Foreign Financial Assets</b>	<b>FinCEN Form 114, Report of Foreign Bank and Financial Accounts (FBAR)</b>
<b>Foreign real estate held directly</b>	No	No
<b>Foreign real estate held through a foreign entity</b>	No, but the foreign entity itself is a specified foreign financial asset and its maximum value includes the value of the real estate	No
<b>Foreign currency held directly</b>	No	No
<b>Precious Metals held directly</b>	No	No
<b>Personal property, held directly, such as art, antiques, jewelry, cars and other collectibles</b>	No	No
<b>'Social Security'-type program benefits provided by a foreign government</b>	No	No

*Page Last Reviewed or Updated: 04-May 2016*

## **FORM 3520 Foreign Trust Reporting**

U S Citizens and Residents may also be required for file Form 3520:

- Creates or transfers money or property to a foreign trust
- Receives (directly or indirectly) any distributions from a foreign trust
- Receives certain gifts or bequests from foreign entities

Although you may not think that you are involved with any foreign trusts, the distribution to a U.S. beneficiary from a foreign estate of \$100,000 or more, requires the Form 3520 to be filed.

## **FORM 5471 U.S. Shareholder owning 25% or more of a Foreign Corporation**

## **FORM 5472 Reportable Transactions with Foreign Corporations by U.S. Companies**

**THIS DOES NOT COVER ALL OF THE REPORTING REQUIREMENTS. IT IS MEANT AS A GENERAL OVERVIEW.**

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