

Do I Need to File Form 8938?

The IRS has issued the final version of Form 8938, *Statement of Specified Foreign Financial Assets*, which must be filed with Form 1040 for taxable years starting after March 18, 2010—i.e., 2011, for calendar year taxpayers. The final version of the form slightly lowers the asset values that will trigger the filing requirement.

In 2012, certain domestic entities will be required to file Form 8938 as well. For now, only individuals are required to file.

You must file Form 8938 if:

1) You are a “*specified individual*”, i.e.:

- a U.S. citizen
- a resident alien of the United States for any part of the tax year
- a nonresident alien who makes an election to be treated as resident alien for purposes of filing a joint income tax return
- a nonresident alien who is a resident of American Samoa or Puerto Rico

AND

2) You have an interest in a “*specified foreign financial asset*”, i.e.:

- Any **financial account** maintained by a foreign financial institution, except for a U.S. branch of a foreign financial institution.
 - An account at a foreign branch of a U.S. financial institution is not a specified foreign financial asset.
- Other **foreign financial assets** held for investment that are not in an account maintained by a US or foreign financial institution, namely:
 - **Stock or securities** issued by someone other than a U.S. person
 - Any **interest** in a foreign entity, and
 - Any **financial instrument or contract** that has as an issuer or counterparty that is other than a U.S. person.

AND

3) The *aggregate value* of all your specified foreign financial assets is more than the following applicable *reporting thresholds*:

- **Unmarried taxpayers living in the US:** The total value of your specified foreign financial assets is more than:
 - \$50,000 on the last day of the tax year or
 - \$75,000 at any time during the tax year

- **Married taxpayers filing a joint income tax return and living in the US:** The total value of your specified foreign financial assets is more than:
 - \$100,000 on the last day of the tax year or
 - \$150,000 at any time during the tax year
- **Married taxpayers filing separate income tax returns and living in the US:** The total value of your specified foreign financial assets is more than:
 - \$50,000 on the last day of the tax year or
 - \$75,000 at any time during the tax year.
- **Taxpayers living abroad filing a return other than a joint return:** The total value of your specified foreign assets is more than:
 - \$200,000 on the last day of the tax year or
 - \$300,000 at any time during the year
- **Taxpayers living abroad filing a joint return:** The total value of your specified foreign assets is more than:
 - \$400,000 on the last day of the tax year or
 - \$600,000 at any time during the year

Exceptions/Special Rules:

If you ***do not have to file a Form 1040*** for the tax year, you do not need to file Form 8938, even if the value of your specified foreign assets is more than the appropriate reporting threshold.

If you are required to file a Form 8938 and you have a specified foreign financial asset that is reported on ***Form 3520, Form 3520-A, Form 5471, Form 8621, Form 8865, or Form 8891***, you do not need to report the asset on Form 8938. However, you must identify on Part IV of your Form 8938 which and how many of these form(s) report the specified foreign financial assets.

- Even if a specified foreign financial asset is reported on a form listed above, you must still include the value of the asset in determining whether the aggregate value of your specified foreign financial assets is more than the reporting threshold that applies to you.