



Taxes and Israelis living/doing business in the US

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Tax Seminar

Stuart M. Schabes, Esquire

Ober, Kaler, Grimes & Shriver

smschabes@ober.com

410-347-7696 (U.S.)

Form 8938

- Used to report a “specified person’s” foreign financial assets total value of all specified foreign financial assets in which an individual has an interest and meets certain thresholds.
- Filed with the annual Federal Tax Return and must be filed by the due date (including extensions).

“Specified Individual”

- A U.S. Citizen.
- A resident alien of the United States for any part of the tax year (“green card” test or ‘substantial presence’ test).
- A nonresident alien who elects to be treated as a resident alien for purposes of filing a joint income tax return.
- Proposed Treasury Regulations issued that will require a domestic entity to file Form 8938.

Applicable Threshold Amounts

	Aggregate value of all specified foreign financial assets on last day of the tax year is more than:	OR at any time during the tax year is more than:
Unmarried taxpayers living in the U.S.	\$50,000	\$75,000
Married taxpayers filing a joint return and living in the U.S.	\$100,000	\$150,000
Married taxpayers filing separate returns and living in the U.S.	\$50,000	\$75,000
Unmarried taxpayers living abroad	\$200,000	\$300,000
Married taxpayers filing a joint return and living abroad	\$400,000	\$600,000
Married taxpayers filing separate returns and living abroad	\$200,000	\$300,000

Specified Foreign Financial Assets

- Specified foreign financial assets include:
 - Financial accounts maintained by a foreign financial institution.
 - A financial account is any depository or custodial account maintained by a foreign financial institution (or one organized under laws of U.S. possessions) as well as any equity or debt interest in a foreign financial institution (other than interests that are regularly traded on an established securities market).

Specified Foreign Financial Assets

- Foreign Financial Assets include investments other than in an account maintained by a financial institution:
 1. Stock or securities issued by someone that is not a U.S. person;
 2. An interest in a foreign entity;
 3. Stock issued by a foreign corporation;
 4. A capital or profits interest in a foreign partnership

Specified Foreign Financial Assets

- Interest in a social security, social insurance, or other similar program of a foreign government is not included.

Value of Foreign Financial Asset

- Maximum value of a specified foreign financial asset means a “reasonable estimate” of the asset’s maximum fair market value during the taxable year.
- Temporary Treasury Regulations § 1.6038 D-5T(b).
- Foreign currency must first be converted to U.S. dollars and show the conversion rate.

Jointly Held Assets

- If asset is jointly owned with someone other than a spouse, **each** joint owner includes the entire value of the jointly owned asset.

Penalties

- Failure to file a correct Form 8938 within 90 days after the IRS mails a notice.
- The failure to file may subject an individual to a \$10,000 penalty for each 30 day period.
- After the 90 day period has expired the maximum penalty is \$50,000.
- Reasonable cause exception may be available.

Updates to the FBAR Form

- Revised Form (November 2011) requires taxpayers amending a previously filed FBAR to complete a new Form in its entirety as opposed to simply making the needed change and attaching a copy of the prior Form. No need to attach original Form.
- Taxpayer must wait at least 120 days to amend the previously filed FBAR after the original was filed as opposed to waiting 90 days.

FBAR: Filing Requirements

Any United States person who has a financial interest in or signature authority or other authority over any financial account in a foreign country, if the aggregate value of these accounts exceeds \$10,000 at any time during the calendar year.

2012 Offshore Voluntary Disclosure Initiative

- Announced on January 9, 2012
- Written guidance and updated FAQ's were to be issued within approximately one month. It is anticipated that such information will be released in two (2) weeks or so.
- No definitive deadline
- Program can be “closed down” at any time

2012 Offshore Voluntary Disclosure Initiative

- 2009 and 2011 programs were deemed very successful and offered consistency and predictability to taxpayers in determining the amount of tax and penalties they faced by coming forward voluntarily.
- Major change – penalty amount increased to 27.5% instead of 25%
- 5% penalty for Foreign Resident will apply if specific criteria is satisfied as per FAQ 52 Part 3

IRS OVDI Program – FAQ 52 Part 3 (Foreign Resident)

- Taxpayer who is a foreign resident must meet the following three (3) tests to have the reduced 5% penalty:
 - Taxpayer resides in a foreign country
 - Made a good faith showing of timely complying with all tax, reporting and payment requirements in the country of residence
 - Taxpayer has \$10,000 or less of U.S. sourced income each year.
- Most importantly the actual penalty will not apply to non-financial assets, including real property, business interest, or outwards purchase of funds for which the taxpayer “can establish that all applicable taxes have been paid, either in the U.S. or his country of residence.

U.S. Citizens Living Abroad – Tax Compliance and Tax Planning in 2012

- Compliance with U.S. tax return filings
- FBAR documents filed by June 30th of each year
- Gift tax exclusion of \$5.2M in 2013
- Significant gift and estate tax planning opportunities in 2012
- Use of defective Irrevocable Grantor Trusts
- Traps for the unwary regarding U.S. located property as opposed to Israeli based property