



TEMPORARY REGULATIONS ON FOREIGN ASSET REPORTING PROVISIONS OF FATCA AND NEW FORM 8938 RELEASED

A Tax Department Publication

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For tax years beginning after March 18, 2010, U.S. individuals are required to report the total value of their holdings in foreign financial accounts and foreign assets by attaching new Form 8938, Statement of Specified Foreign Financial Assets, to their individual tax return filed with the Internal Revenue Service ("IRS"). This new reporting requirement was enacted as part of the Foreign Account Tax Compliance Act ("FATCA") provisions of the Hiring Incentives to Restore Employment Act ("HIRE Act"), signed into law in 2010.

On December 19, 2011, the IRS published temporary regulations on these new foreign asset reporting provisions of FATCA (the "Temporary Regulations")¹ and final versions of the Form 8938 and Instructions, which may impact individual clients' tax return filing requirements for the 2011 tax year. Under the Temporary Regulations, "specified" U.S. individuals² are required to report their ownership of foreign financial assets if the value exceeds certain threshold amounts. Reportable foreign financial assets generally include:

- any financial account maintained by a foreign financial institution; and,
- to the extent held for investment purposes and not held in a financial account, any stock or securities issued by a non-U.S. person, any interest in a foreign entity (including a capital or profits interest in a foreign partnership or an interest in a foreign trust or estate), and any financial instrument or contract with an issuer or counterparty that is a non-U.S. person.

A financial account maintained by a U.S. financial institution, including a foreign branch or subsidiary of a U.S. financial institution, is not required to be reported.

¹ In addition, proposed regulations setting forth the filing requirements for certain domestic entities "formed or availed of for purposes of holding reportable foreign financial assets," have also been issued. However, until these regulations are finalized, only specified individuals are required to file Form 8938.

² For these purposes, specified individuals include U.S. citizens, U.S. resident aliens for any part of the tax year, nonresident aliens who make an election to be treated as a resident alien for purposes of filing a joint income tax return, and nonresident aliens who are bona fide residents of American Samoa or Puerto Rico.



The Temporary Regulations provide for higher reporting thresholds for U.S. expatriates and for taxpayers filing joint returns. Taxpayers living in the United States are required to file Form 8938 if the aggregate value of their foreign financial assets exceeds \$50,000 on the last day of the taxable year, or \$75,000 at any time during the year (or \$100,000 and \$150,000, respectively, for married taxpayers filing a joint tax return). However, for U.S. taxpayers living abroad that meet certain requirements in Section 911(d)(1) of the Internal Revenue Code, these thresholds are increased, so that the form is required to be filed only if the person's foreign assets exceed \$200,000 on the last day of the tax year, or \$300,000 at any time during the tax year (or \$400,000 and \$600,000, respectively, for married taxpayers filing a joint return).

The Temporary Regulations provide some limited exceptions to the reporting rules for assets that the taxpayer is already reporting on certain forms filed with the IRS. *However, it should be noted that the foreign asset reporting requirement does not replace the annual Foreign Bank Account Report ("FBAR") required to be filed on Form TD F 90-22.1 by June 30 of each year, and the reporting requirements and definitions under the FBAR rules are different.*³

Clients who maintain financial accounts at Northern Trust, including at any Northern Trust branch or subsidiary located outside the United States, should be exempt from the Form 8938 filing requirement with respect to such accounts under the exception noted above. However, clients may be required to report any assets that are not maintained by Northern Trust or another U.S. financial institution (such as interests in limited partnerships, hedge funds or similar investment vehicles), if the reporting threshold is met. **Therefore, clients should consult their legal or tax advisor as to potential Form 8938 filing requirements and the implications of the Temporary Regulations on any particular situation.**

The Temporary and Proposed Regulations are located at:
<http://www.gpo.gov/fdsys/pkg/FR-2011-12-19/pdf/2011-32263.pdf> and
<http://www.gpo.gov/fdsys/pkg/FR-2011-12-19/pdf/2011-32254.pdf>.

The final Form 8938 and Instructions are available on the IRS website at:
<http://www.irs.gov/pub/irs-pdf/f8938.pdf> and <http://www.irs.gov/pub/irs-pdf/i8938.pdf>.

For additional information, please contact your Northern Trust Relationship Manager.

³ FATCA also included changes to the rules for reporting investments in passive foreign investment companies ("PFICs"), reported on Form 8621, *Return by a Shareholder of a Passive Foreign Investment Company or Qualified Electing Fund*.

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