

## **NEW FOREIGN REPORTING RULES STARTING IN 2011 – FORM 8938**

Beginning with tax year 2011, if the aggregate value of all your foreign financial assets exceed \$50,000 at the end of the year (\$100,000 if married and filing a joint tax return) or \$75,000 at any time during the year (\$150,000 if married and filing a joint tax return), you will generally be required to file Form 8938, "Statement of Specified Foreign Financial Assets", with your income tax return to report the ownership of such assets (thresholds for taxpayers who reside abroad are higher). This form is in addition to other foreign forms already being filed such as the Foreign Bank Account Report (Form TD F 90-22.1), Form 8621, Form 5471, Form 3520, etc.

### **WHAT ARE FOREIGN FINANCIAL ASSETS**

Examples of foreign financial assets include:

- Depository or custodial financial accounts maintained at foreign financial institutions (does include financial accounts maintained by the foreign branch of a U.S. financial institution, or the U.S. branch of a foreign financial institution) and,
- Other foreign financial assets held for investments that are not in an account maintained by a U.S. or foreign financial institution such as:
  - Stocks or securities issued by foreign persons (does not include stock or securities purchased as an American Depository Receipt (ADR)),
  - An interest in a foreign entity (such as ownership of a capital or profits interest in a foreign partnership),
  - An interest in a foreign trust or estate,
  - An interest in a foreign pension or deferred compensation plan (an interest in a foreign social security program of a foreign government is not a foreign financial asset), and
  - Any other financial instruments or contracts, such as swaps and options, that have a foreign issuer or counterparty.

### **WHAT YOU NEED TO DO**

If this new filing requirement applies to you it is important you complete the enclosed tax organizer pages titled "Foreign Assets" and attach your year-end account statements for these investments. Also, attach the monthly statement which shows your highest account balance during the year. We need both statements for each foreign investment account. Each statement should indicate which functional currency is being used (e.g., U.S. dollar, Euro, etc.).

If you are unsure whether an investment is a foreign financial asset or you have valuation questions, please contact us.

### **WHAT ARE THE PENALTIES FOR NOT FILING THESE FORMS WHEN REQUIRED**

Penalties start at \$10,000 and increase to \$50,000 for continuing not to file this form. Other penalties may apply for failure to file and/or underreporting taxes. A failure to file the form could extend the limitations period for the entire tax return.