

# International Tax Compliance Update

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# US Taxation of Residents

- Residents of U.S. are taxed on worldwide income
- There are three principal ways to become a U.S. tax resident:
  - Substantial presence test (formula)
  - Lawful permanent resident (Green Card)
  - Citizenship
- Elections:
  - If present in U.S. for 31 days and 75% of subsequent days in election year
  - Married to a resident or citizen and electing to file a joint return



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# Substantial Presence

- The substantial presence test met if taxpayer is:
  - Present in the U.S. at least 31 days in the current year; and
  - Present in the U.S. for 183 days according to a formula:

Year	days	multiplier	
2012	120	1	120
2011	120	1/3	40
2010	120	1/6	<u>20</u>
			180

- Exceptions:
  - Taxpayer has a closer connection to a foreign country
  - Treaty tie breaker test
    - Treaty does not exempt person from foreign reporting requirements



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## Pre-arrival Planning

- Pre-arrival planning can include:
  - Realize income prior to becoming a U.S. tax resident
  - Step up basis in assets
  - Pre-arrival sale of assets
  - Pre-arrival foreign trust planning



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## Foreign Reporting by US Persons

Form	Description	Penalties
3520	Report grantor of a foreign trust / receipt of gifts from foreign trust or estate	\$10,000 up to 35% value distributions
3520A	Report of foreign trust owned by U.S. persons	\$10,000 up to 5% value trust
5471	Report ownership in foreign corporation	\$10,000 up to max of \$50,000
8865 / 8858	Report ownership in foreign partnership / disregard	\$10,000 up to max of \$50,000
TD F 90-22.1 (FBAR)	Report interest or authority in foreign bank account INXS \$10k	\$10,000 up to 50% account balance
8938	Report interest in foreign assets or trust INXS \$50k	\$10,000 up to max of \$50,000

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## Filing Form 8938

- *Individual* US taxpayers who are required to file an income tax return must file Form 8938
- Thresholds:
  - Single living in US: \$50K at 12/31 or \$75k during year
  - Married living in US: \$100K at 12/31 or \$150k during year
  - Single living abroad: \$200K at 12/31 or \$300k during year
  - Married living abroad: \$400K at 12/31 or \$600k during year



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## What Must Be Reported

- Assets to be reported:
  - Financial accounts (savings, checking, brokerage, CDs)
  - Stocks and bonds
  - Partnership interests
  - Insurance contracts
  - Beneficiary interests in estate or trust
- Assets to exclude:
  - Real estate
  - Currency
  - US mutual funds, brokerage accounts, IRAs, 401k invested in foreign securities
  - Indirect interests held through entities



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## Valuation and Specific Assets

- Assets must be reported at FMV in U.S. dollars
  - Appraisals are not required; only a reasonable estimate of FMV must be reported
    - For assets under \$200k, value is reported via ticking category broken down into \$50k increments
  - Bank statements are satisfactory
  - Year-end values may be used
  - Value of interest in trust equal to actual distributions plus mandatory distributions
- Certain Assets
  - GbR
  - Fideicomiso



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## Filing FBARs

- U.S. persons holding any financial interest in, or authority over, bank or other financial accounts in a foreign country must report these accounts
  - U.S. person
    - U.S. citizen or resident
    - An entity formed under laws of U.S. (corporations, partnerships, LLCs, estates, trusts)
  - Financial accounts include bank or securities accounts, insurance and annuity policies with a cash value, mutual funds or similar pooled funds
    - Excluded- Bonds, notes, stock certificates
  - Situs of the account, not the situs of the institution is determinative



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## Financial Interest

- A U.S. person has a financial interest in account if owner of record is
  - Such U.S. person
  - Person acting on behalf of the U.S. person
  - An entity majority owned by the U.S. person
  - A grantor trust where U.S. person is owner
  - A trust in which U.S. person has majority present beneficial interest



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## Signature or Other Authority

- An individual has signature or other authority if he has authority (alone or in conjunction with another) to control funds or other assets in a financial account by direct communication (whether in writing or otherwise) to the person maintaining the account
- The test is whether the financial institution will act upon a direct communication from the individual regarding the *disposition* of assets in the account (*i.e.* investment authority excluded)



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## FBAR v. 8938

Asset	FBAR	8938
Financial Account at Foreign Institution- Beneficial Interest	Yes	Yes
Financial Account at Foreign Branch of US Institution- Beneficial Interest	Yes	No
Financial Account at US Branch of Foreign Institution- Beneficial Interest	No	No
Financial Account- Signature Authority	Yes	No
Domestic brokerage account with foreign securities	No	No
Foreign mutual fund	Yes	Yes
Foreign bond, note, security, partnership interest, hedge funds	No	Yes
Reportable asset owned by foreign partnership, corporation	Yes, if owned more than 50%	No
Reportable asset owned by disregarded entity	Yes, if owned more than 50%	Yes
Beneficial interest in foreign trust	No, but reportable assets reportable if beneficial interest exceeds 50%	Yes

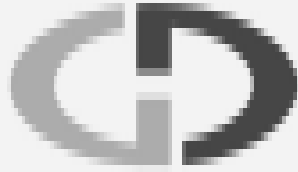
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## Voluntary Disclosure

- Offshore Voluntary Disclosure Program
  - 2012 program is extension of 2011 program
    - Program open indefinitely
  - Maximum penalty of 27.5%
  - File eight years of returns and FBARs (e.g. 2004 – 2011)
- New procedure for September 1, 2012
  - File 3 years of returns, and 6 years of FBARs
  - Penalties undetermined; details to follow
  - No protection from criminal prosecution
  - Reasonable cause may result in zero tax



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