

Everything You Need to Know About FBAR Clients

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Summary

Do we really have to file both the FBAR and Form 8938?! What about Forms 3520, 5471, 8621, 8865, 8891? Enter the World of FATCA: From the halls of Montezuma to the shores of Tripoli, we will fight our country's battles in the air, on land and sea with a regulatory onslaught of paperwork. What about Forms 926, 5472, 8300, 8854, 8898 and the FinCEN series? Seriously?! Learn what the wrath of FATCA has wrought.

This session distinguishes between foreign accounts and foreign assets, reviews reporting thresholds, and outlines the harsh consequences for non-compliance. You'll learn what to do to ensure that your clients satisfy their foreign reporting obligations and what to do if they don't.

The information contained herein is for educational use only and should not be construed as tax, financial, or legal advice. Each individual's situation is unique and may require specialized treatment. It is, therefore, imperative that you consult with tax and legal professionals prior to implementation of any strategies discussed.

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I. Introduction

No more “secret” Swiss bank accounts! Credit Suisse (Switzerland’s second largest bank) has announced that it will lift the veil of secrecy shrouding its bank accounts and will turn over previously confidential account information, including client names to the Swiss Federal Tax Administration which may, at its discretion, then share the information with the IRS.¹ Prosecutors have already charged taxpayers or bankers in cases implicating Julius Baer,² the third-largest Swiss wealth manager; Zürcher Kantonalbank, the biggest Swiss publicly owned regional bank; and Mizrahi Tefahot Bank Ltd. and Bank Leumi Le-Israel Ltd., two Israeli banks with Swiss units.³

Gone are the days of hiding money abroad. Whether by corporate decision to avoid criminal prosecution by cooperating with US tax prosecutors or by multi-national agreement between governments,⁴ the time has come for US taxpayers to come clean. To date, more than 43,000 taxpayers have voluntarily disclosed previously hidden offshore accounts and paid over \$6 billion in back taxes, interest and penalties.⁵ Those who have not (yet) disclosed foreign accounts and assets face stiff penalties and potential criminal prosecution.



Time is up! Time is *now*...

¹ *Not So Secret Swiss Bank Accounts*, SmartPros, January 3, 2012.

² Bloomberg Law reports that Chairman of the Board Daniel J. Sauter has announced to shareholders on April 15, 2015 that Julius Baer is at “an advanced stage of talks” with U.S. authorities regarding a non-prosecution agreement [as per International Financial Law Prof Blog, available at http://lawprofessors.typepad.com/intfinlaw/2015/04/julius-baer-seeking-non-prosecution-agreement-over-tax-crimes.html?utm_source=feedburner&utm_medium=email&utm_campaign=Feed%3A+IntFinLaw+%28International+Financial+Law+Blog%29, last accessed April 22, 2015].

³ Voreacos and Broom, *Credit Suisse Offers Map to 13 Swiss Banks in U.S. Tax Probe*, Bloomberg Business, May 26, 2014 [available at <http://www.bloomberg.com/news/articles/2014-05-25/credit-suisse-offers-map-to-13-swiss-banks-in-u-s-tax-probes>, last accessed April 21, 2015].

⁴ On November 19, 2014, Switzerland became the 52nd jurisdiction to sign the Multilateral Competent Authority Agreement, enabling automatic exchange of financial account information in tax matters with other countries beginning in 2018 as per *International Financial Law Prof Blog*, available at http://lawprofessors.typepad.com/intfinlaw/2014/11/switzerland-takes-important-step-to-boost-international-cooperation-against-tax-evasion.html?utm_source=feedburner&utm_medium=email&utm_campaign=Feed%3A+IntFinLaw+%28International+Financial+Law+Blog%29, last accessed April 21, 2014].

⁵ From a GAO Report [available at http://www.gao.gov/modules/ereport/handler.php?1=1&path=/ereport/GAO-14-343SP/data_center_savings/General_government/20_Tax_Policies_and_Enforcement#_ftn2_1, last accessed April 21, 2015].

II. Reporting Requirements for Foreign Accounts and Assets

A. Foreign Accounts

Mandated by the Bank Secrecy Act of 1970,⁶ a US person must file a report with the US Treasury if, at any time during the calendar year, he had a financial interest in or signatory authority over one or more foreign financial accounts with an aggregate value of \$10,000 or more.

B. Foreign Assets

In addition to foreign account reporting, certain taxpayers may be required to file supplemental forms. Indeed, some reporting requirements may seem annoyingly duplicative but are nevertheless required based on differing legislative mandates and regulatory oversights. While the **FinCEN 114** must be filed with the US Department of Treasury, **Form 8938 Statement of Specified Foreign Financial Assets** must be submitted to the IRS along with the taxpayer's income tax return.⁷

NOTE: If the taxpayer is not required to file an income tax return, he does not have to file **Form 8938**.

III. Foreign Bank Account Report (FBAR)

A. FinCEN114⁸

This form has replaced **Form TD F 90-22.1 Report of Foreign Bank and Financial Accounts (FBAR)** effective April 2013. It must be *electronically* filed.

B. Definitions

1. A US person is defined as a US citizen, a US resident,⁹ or any entity created (organized) under US law. The actual tax status of the "person" is disregarded for purposes of foreign account reporting compliance.
2. Signature authority allows an individual to control the disposition of account assets by written or oral communication. Authority may be exercised alone or in conjunction with others. Accounts may have multiple signatories and all will be required to comply with foreign account reporting requirements.

⁶ Codified as Title 31 of US Code.

⁷ IRC § 6038D.

⁸ FinCEN = Financial Crimes Enforcement Network.

⁹ IRC § 7701(b).

NOTE: If the US person cannot directly access the foreign account but must, instead, communicate through a US entity or branch, no FBAR filing is required.

3. Financial interest means that the US person holds title to the account directly, is the beneficial owner of an account held by a third party, or holds title indirectly (e.g. through majority ownership of an entity that holds title to the account).
4. A foreign account is any account held outside of the US (including all 50 states and Washington DC), as well as Puerto Rico, the Northern Mariana Islands and all US territories (including Guam, American Samoa, and the US Virgin Islands). , US territories and possessions, as well as Indian lands). **EXCEPTION:** An account in an institution known as a US “military banking facility” is not considered to be an account in a foreign country, regardless of its geographic location.
5. Financial accounts may include monetary and non-monetary assets (e.g. banks, brokerage accounts, insurance cash values, annuities, mutual funds, online gambling accounts,¹⁰ amongst others). Real and personal property is generally not included.¹¹

C. Rules

Valuation

Each account must be valued separately at its highest value as reported to the account holder on periodic statements, regardless of when the valuation was achieved during the calendar year. The value must then be converted to US currency using the applicable exchange rate on December 31st.



Once each separate account has been valued and converted, all account values are aggregated to determine whether the foreign account reporting threshold (\$10,000) has been met for the reporting period.

¹⁰ *US v Hom*, US District Court, N.D. California, Case No. 3:13-cv-03721 (June 4, 2014).

¹¹ In response to an inquiry from *Forbes* contributor Kelly Phillips Erb, the IRS issued this statement: “The Financial Crimes Enforcement Network, which issues regulatory guidance pertaining to reports of Foreign Bank and Financial Accounts (FBARs), is not requiring that digital (or virtual) currency accounts be reported on an FBAR at this time but may consider requiring such accounts to be reported in the future.” [*IRS Says Bitcoin Not Reportable on FBAR (For Now)*, June 30, 2014, available at <http://www.forbes.com/sites/kellyphillipserb/2014/06/30/irs-says-bitcoin-not-reportable-on-fbar-for-now/>, last accessed April 21, 2015].

A US taxpayer has a foreign account valued at \$8,000 at Bank A. He closes the account and transfers the entire balance to Foreign Bank B during the year. Although the value of both accounts totals \$16K, the filing threshold was not met at any given time during the year since assets are not double-counted.

A US taxpayer has a foreign account valued at \$8,000 at Bank A and another account valued at \$4,000 at Bank C. He closes the Bank A account and transfers the entire balance to Foreign Bank B during the year. The aggregate value of the accounts at Bank A [later Bank B] and Bank C now exceed the reporting threshold.

Joint and Consolidated Reporting

Spouses may file one combined report to report jointly-held accounts. However, separately-held accounts must be reported individually.

Entities of all types may file consolidated reports. Truncated filing is permitted for more than 25 accounts.

D. How to File

The annual reporting cycle is on a calendar year basis (January to December). The deadline for filing **FinCEN 114** is June 30th every year. No extension is available.¹²

E-file is now mandatory. Filers have the option to prepare and submit individual reports online at <http://bsae filing.fincen.treas.gov/NoRegFBARFiler.html> or engage the services of a Bank Secrecy Act (BSA) e-Filer.¹³

Step-by-step instructions are available online to enroll in the BSA e-filing system as a Supervisory User with primary responsibility for the preparation and submission of all BSA filings by authorized users within a professional organization. Users may submit single reports or process multiple reports in batches through third-party software. Acknowledgments of all filings are sent to the user's secure inbox.

Form 114a Record of Authorization to Electronically File FBARS must be completed and signed by the client to authorize a registered BSA

¹² The IRS offers taxpayers a practitioners a helpline with a team of specially trained technicians and examiners to answer technical questions:

- (866) 270-0733 for callers within the US (toll-free)
- (313) 234-6146 for callers outside of the US (not toll-free)

¹³ Some professional tax preparation packages offer FBAR e-filing which eliminates the need to enroll with the BSA e-Filing System.

user to file on the client's behalf. The signed form must be kept on file for 5 years.¹⁴

Corrections to previously filed reports may be made by opening the saved file, checking the box at the top of the form marked "Amendment", making the necessary corrections on affected lines of the form, entering the current date, saving the changes as a new file, and resubmitting the form electronically.

E. Penalties



Unintentional failure to file may result in a maximum fine of \$10,000 per account that was not reported. However, if the government can prove that there was "willful violation" of the filing mandate, the penalty is increased to the greater of \$100,000 or 50% of the account value, along with potential criminal sanctions (maximum \$250,000) and/or up to five years jail time.¹⁵ The "willful" penalty is computed on a *per year* basis for up to six tax years!

To impose the "willful" penalty, the government must prove that failure to file was the result of the taxpayer's voluntary, conscious and intentional act. The Supreme Court explained that the term willful "consistently has been read by the Courts of Appeals to require both knowledge of the reporting requirement and a specific intent to commit the crime."¹⁶ The IRS Internal Revenue Manual goes a step further by suggesting that "willfulness may be attributed to a person who has made a conscious effort to avoid learning about the FBAR recordkeeping requirements."¹⁷

FBAR failure to file penalties should not be taken lightly: In a recent case,¹⁸ penalties totaling \$3.4 million were assessed against a taxpayer who failed to disclose his Swiss bank account which, at its highest, had a balance of only \$1.7 million. By applying the 50% penalty to each year and aggregating the years in question, the taxpayer faced a total penalty that was more than double his account holdings! (On appeal a jury reduced the penalty to \$2.2 million; the taxpayer eventually settled with the IRS for a mere \$1.8 million.)

¹⁴ 31 CFR 1010.430(d).

¹⁵ In certain circumstances – if other laws were violated – the criminal penalty may be increased to \$500,000 and/or 10 years in jail.

¹⁶ *Ratzlaf v United States*, 114 S. Ct. (1994).

¹⁷ Rettig, *Jury Determines 150-Percent FBAR Penalty and US Seeks FBAR Related Forfeiture of \$12 million!*, Journal of Tax Practice and Procedure, June-July 2014.

¹⁸ *United States v. Carl R. Zwerner*, Case # 1:13-cv-22082-CMA (SD Florida, June 11, 2013).

REMINDER: Taxpayers must also report interest and dividend income received from foreign sources on **Form 1040, Schedule B** and must check the box in Part III, Line 7 as “Yes” if the aggregate value of all foreign accounts was equal to or greater than \$10,000 at any time during the year.

F. Fixes for Failure to File

1. Offshore Voluntary Disclosure Program (OVDP)

The program currently in effect is the fourth incarnation¹⁹ to be offered by the IRS allowing taxpayers who have failed to file requisite foreign account reports to provide full disclosure in exchange for reduced civil penalties and no criminal prosecution.²⁰

NOTE: Taxpayers already under civil examination or criminal investigation are ineligible for the program.

The penalty imposed under the OVDP is equal to 27.5% of the highest year’s aggregate value during the period covered by the voluntary disclosure – the most current 8 years.²¹ The penalty amount is fixed and due at the time that the requisite amended returns are filed. IRS examiners have no authority or discretion to negotiate alternate penalty amounts.

Process

Step 1: Taxpayers who wish to participate in the program should begin with a pre-clearance request which may be faxed to the IRS Criminal Investigation Lead Development Center at (267) 941-1115. While pre-clearance does not guarantee OVDP acceptance, it helps to streamline the process by providing basic taxpayer information and an executed power of attorney to the tax authority.

Step 2: Thereafter, the taxpayer must submit an Offshore Voluntary Disclosure Letter and attachment to the IRS Voluntary Disclosure Coordinator (1-D04-100) at 2970 Market Street Philadelphia, PA 19104. Criminal Investigations will review the submission and respond within 45

¹⁹ The 2003 program was offered to taxpayers who used offshore credit, debit and other payment cards. The 2009 program was intended to encourage taxpayers who held Swiss bank accounts to come forward voluntarily before global banking giant UBS was required to disclose the names of roughly 4,450 US clients. In 2011, taxpayers were encouraged to make voluntary disclosures of foreign accounts held in Israel, India, Hong Kong and Asia while the Department of Justice pursued HSBC, a financial services firm headquartered in the UK.

²⁰ OVDP is available for all foreign reporting, including **Forms 8938, 3520 and 5471**, as well as **FinCEN 114**.

²¹ In fact, 27.5% merely represents the base penalty which may be increased to 50% for any foreign financial account that was held at a bank that has been publicly identified as being under investigation or as cooperating with a government investigation.

days indicating preliminary acceptance into the program and requesting further documentation and payment of the total amount of tax, interest and penalties within 90 days.

Step 3: A civil examiner will be assigned to complete the certification of the taxpayer's returns for accuracy, completeness and correctness; a process that is less formal than an audit and does not carry with it all the rights and legal consequences of an examination.

There is no definitive time limit specified for approval or denial of the OVDP request; cases are handled on a first-come, first-served basis.

2. The Streamlined Disclosure Program (SDP)



On June 18th, 2014,²² the IRS introduced a new program for resident and non-resident taxpayers whose failure to comply with FBAR filing requirements was not willful. In fact, the SDP requires taxpayers to sign a self-certifying statement under penalty of perjury that “failure to report all income, pay all tax, and submit all required information returns, including FBARs, was due to non-willful conduct [which was the result of] negligence, inadvertence, mistake or conduct that is the result of good faith misunderstanding of the requirements of the law.”

NOTE: False certification will expose the taxpayer to civil fraud penalties.

Although the IRS will not impose accuracy-related, information return or FBAR penalties on SDP participants, US taxpayers will nevertheless be subject to a “miscellaneous” penalty equal to 5% of the highest aggregate balance of the taxpayer's foreign accounts during the most recent six-year period. US taxpayers who lived abroad in any one or more of the most recent three years are exempt from the penalty.

While SDP offers participants the benefit of simplified reporting and reduced penalties, taxpayers should beware that the program is only available to those who acted unintentionally. Regulatory interpretation of willful and fraudulent conduct may differ from the taxpayer's understanding and lay opinion; expert counsel should be engaged prior to SDP submission.

Taxpayers who are already participating in the OVDP process but have not yet signed a final closing agreement, may request reduced penalty treatment under SDP if they can satisfy (and certify) the non-willfulness standard. Previously, OVDP participants who wished to discontinue the

²² IR 2014-73.

process were forced to “opt-out” of the program in hopes of negotiating more favorable settlement terms.

3. The Delinquent Information Return Program (DIRP)

If a taxpayer properly included all foreign account income on his originally-filed returns and paid the tax for all years but did not file the required foreign bank account reports, he may simply file the omitted returns as soon as possible. The IRS will not impose failure-to-file penalties on delinquent or late-filed reports if the taxpayer has no outstanding tax liabilities and is not being audited.²³

BEWARE: The IRS has taken the position that even a single dollar of unreported income can make a taxpayer ineligible for penalty-free disposition.²⁴

4. Summary

	No Program	OVDP	SDP	DIRP
Penalty	\$10K/unreported account/year if unintentional; \$100K or 50% of highest balance if willful <i>plus</i> \$250K criminal penalty &/or max 5 years jail	27.5% of highest balance (max 50% if foreign bank under investigation)	5% of highest balance	None if all income was reported; otherwise \$10,000/violation
Penalty Negotiable	Yes	No	No	Yes
Number of past FBARs required to be filed	6	8	6	No guidance given
Possible criminal prosecution	Yes	No, if accepted into program	Yes	Yes



PRACTITIONER WARNING: Because the penalties are high and the consequences extreme, practitioners should beware of offering advice outside of their areas of expertise and should instead refer clients with unreported foreign accounts and/or income to a competent tax attorney.

²³ FAQ 17, Offshore Voluntary Disclosure Program Frequently Asked Questions and Answers [available at <http://www.irs.gov/Individuals/International-Taxpayers/Offshore-Voluntary-Disclosure-Program-Frequently-Asked-Questions-and-Answers>, last accessed April 21, 2015].

²⁴ Fisher and McManus, *Offshore Voluntary Disclosure: IRS simplifies path back to tax compliance*, NATP TAXPRO Journal, Fall 2014.

A tax attorney recently circulated an inquiry requesting counsel from fellow attorneys: "I just picked up a case [in which] my client is in the process of being hit with a FBAR penalty in excess of \$4,000,000. [During the] civil audit (most likely sparked by the client's name being turned over in an investigation of UBS) it was discovered that [he] had made a quiet disclosure... The CPA [who] took the client through the quiet disclosure told the IRS that he was unfamiliar with the offshore voluntary disclosure program; [t]his looks like a malpractice case on a silver platter against the CPA."

G. The Trouble with the FBAR

Although the FBAR filing requirement has been mandated since 1970 to help combat money laundering and related financial criminal activities, the rule was only sporadically enforced. Then, in 2004, Congress linked the FBAR to its counter-terrorism efforts but failed to adjust the decades-old filing threshold²⁵ and soon ensnared ordinary and unsuspecting taxpayers in its web.

Often oblivious to a filing requirement that is separate and distinct from income tax reporting, taxpayers with no criminal intent whatsoever who live, work and study abroad are surprised to discover that they have inadvertently overlooked an important filing obligation. For these individuals, "FBAR noncompliance constitutes nothing but a paperwork crime."²⁶ On the other hand, those who comply find that they must submit personal information to a federal financial crimes enforcement registry!

IV. Foreign Asset Reporting

A. Form 8938, Statement of Specified Foreign Financial Assets

The **Form 8938** filing requirement was enacted in 2010²⁷ to improve tax compliance by US taxpayers with offshore financial accounts.²⁸ US citizens, residents, non-residents who elect to file a joint return with a US citizen or resident, and certain non-residents who live in a US territory must file if the total value of specified foreign assets exceeds specified thresholds.

²⁵ The FBAR threshold has been fixed at a mere \$10,000; far lower than the tax filing threshold for most taxpayers which tops out at more than double that amount for married taxpayers in 2015.

²⁶ Christians, *Paperwork and Punishment: It's Time to Fix FBAR*, Tax Analysts, October 13, 2014.

²⁷ Hiring Incentives to Restore Employment Act of 2010 (HIRE).

²⁸ The Foreign Account Tax Compliance Act (FATCA), enacted as part of HIRE and now IRC §§ 1471 - 1474, is intended to apply to "specified entities" as well as individuals. Prop. Reg. § 1.6038D-6 was introduced to establish conditions under which a domestic entity would be required to file **Form 8938**. Yet, IRS Notice 2013-10 has temporarily postponed the implementation of reporting requirements for domestic entities and trusts.

NOTE: The filing thresholds are higher for taxpayers who live abroad (referred to as “foreign” taxpayers) than for those who live in the US (“domestic” taxpayers).

B. Reportable Assets

Specified foreign financial assets include:²⁹

- Depository or custodial accounts at foreign financial institutions
- Stocks or securities issued by foreign persons
- Foreign pension or deferred compensation plans³⁰
- Any other financial instrument or contract held for investment that is issued by or has a counter-party that is not a US person
- Any interest in a foreign entity³¹
- Gold certificates

Assets that do not have to be reported include:

- Foreign real estate (e.g., personal residence or rental property)³²
- Foreign currency holdings
- Directly held shares of a US mutual fund that owns foreign stocks and securities
- A financial account maintained by a US financial institution that holds foreign stocks and securities, such as IRAs, 401(k) plans, qualified US retirement plans, and brokerage accounts maintained by US financial institutions
- A financial account maintained by a US branch or US affiliate of a foreign financial institution
- A financial account (e.g., depository, custodial or retirement account) held through a foreign branch or foreign affiliate of a US-based financial institution
- Payments or the rights to receive the foreign equivalent of social security, social insurance benefits or another similar program of a foreign government
- Directly held tangible assets, such as art, antiques, jewelry, cars and other collectibles (once these assets are sold, the resulting proceeds become reportable)
- Directly held precious metals, such as gold (but gold certificates issued by a foreign person are reportable)

²⁹ IRC §1471(d).

³⁰ Canadian Registered Retirement Savings Plans, for example, are reportable.

³¹ IRC § 6038D(b).

³² Non-Mexican citizens may not hold title to real property in Mexico within 100 km of international borders and 50 km of the coastline and are instead required to establish a Mexican Land Trust (MLT), also known as a “fideicomiso”. Upon purchase, legal title is transferred to a Mexican bank which acts as fiduciary but otherwise disclaims all responsibility for the property, allowing (forcing) the foreign buyer to pay maintenance, taxes and all expenses associated with his investment. Rev Rul 2013-14 clearly states that an MLT is not a “trust” for income tax purposes; hence, no **Form 8938** filing is required.

C. Filing Thresholds

The filing requirement applies only to US taxpayers, including US citizens and residents as well as certain non-resident aliens. Thus, the reference to “domestic” and “foreign” filers may be misleading. In fact, the terms merely distinguish between those US taxpayers that live in the US and those who live abroad.

Domestic Taxpayers

An individual taxpayer residing in the US must file **Form 8938** if he has an interest in one or more specified foreign financial assets with an aggregate value of either \$50,000 on December 31st or \$75,000 at any time during the year.

Married individuals must file if they exceed the thresholds of \$100,000 and \$150,000, respectively.³³

Foreign Taxpayers

If residing abroad,³⁴ **Form 8938** must be filed if the taxpayer has an interest in one or more specified foreign financial assets with an aggregate value of either \$200,000 on December 31st or \$300,000 at any time during the year.



Married individuals must file if they exceed the thresholds of \$400,000 and \$600,000, respectively.³⁵

NOTE: Currently, only individuals must file **Form 8938**; domestic entities will be required to file when applicable Treasury Regulations are finalized.

Summary

	Single or MFS	MFJ
Domestic – living in the US	\$50K on 12/31 OR \$75K at any time	\$100K on 12/31 OR \$150K at any time
Foreign – living outside of the US	\$200K on 12/31 OR \$300K at any time	\$400K on 12/31 OR \$600K at any time

³³ Reg. § 1.6038D-2T(a)(1), Reg. § 1.6038D-2T(a)(2).

³⁴ “Foreign” taxpayers must satisfy the Bona Fide Residence (BFR) or Physical Presence (PP) tests (IRC § 911). BFR requires that the taxpayer is a resident of one or more foreign countries for an uninterrupted period that includes an entire tax year. PP requires that the taxpayer is present for at least 330 full days during any 12-month period of time that ends during the current tax year.

³⁵ The regulations have not clarified filing threshold requirements for joint returns if one spouse resides abroad and the other lives in the US.

To avoid duplicative reporting, foreign financial assets that have been reported on other forms – including **Forms 3520, 5471, 8621, 8865, 8891** – do not also have to be reported on **Form 8938**.³⁶ If an owner of a Canadian Registered Retirement Savings Plan (RRSP) elects to file **Form 8891** to postpone income recognition, he will be exempt from providing account details on **Form 8938** but must nevertheless include RRSP's account value when determining his filing threshold; he will still have to file **FinCEN 114**.³⁷

Valuation

Valuation of assets is based on the highest fair market value during the year, converted into US dollars at the applicable exchange rate on December 31st.³⁸

D. Penalties

Failure to disclose may result in a maximum fine of \$10,000 plus an additional \$10,000 penalty for each 30-day period after IRS issues its 90-day failure to disclose notification. The maximum penalty equals \$50,000.³⁹

NOTE: The statute of limitations for an income tax return (**Form 1040**) remains open until three years after an associated **Form 8938** with all reportable assets has been filed – if even just one asset is omitted, the entire return remains at risk! If failure to file **Form 8938** is due to reasonable cause, the open statute will apply only to the item(s) related to the failure.⁴⁰

³⁶ **Form 3520** Annual Return to Report Transactions with Foreign Trusts and Receipt of Certain Foreign Gifts, **Form 5471** Information Return of US Persons With Respect, **Form 8621** Information Return by a Shareholder of a Passive Foreign Investment Company or Qualified Electing Fund, **Form 8865** Return of US Persons With Respect to Certain Foreign Partnerships, **Form 8891** US Information Return for Beneficiaries of Certain Canadian Registered Retirement Plans.

³⁷ With the issuance of Rev Proc 2014-55, **Form 8891** became obsolete as of December 31, 2014. The IRS has provided for prospective as well as retroactive relief for eligible US citizens and resident aliens by granting them *automatic* tax deferral on income earned in Canadian registered retirement savings plans (RRSPs) and registered retirement income funds (RRIFs). Eligibility requires that these taxpayers must have filed US tax returns for all years in which they held an interest in these accounts and must have included distributions (if taken) on all previously-filed returns.

NOTE: The revenue procedure does not modify other US reporting requirements that may apply under the Bank Secrecy Act and IRC § 6038D. Therefore, affected taxpayers must still file FBARs by June 30th of each year as well as attach **Form 8938** to their US income tax returns and provide all account details.

³⁸ Taxpayer may use the Treasury Department Financial Management Service rate (available at <https://www.fms.treas.gov/intn.html>) or any accepted currency converter (Treas. Reg. § 1.6038D-5T(c)).

³⁹ IRC § 6038D(d).

⁴⁰ IRC § 6501(c)(8).

If a taxpayer fails to report gross income in excess of \$5,000 attributable to reportable assets, the statute of limitations is extended to six years after the return was filed, whether or not the assets were reported on **Form 8938**.⁴¹

E. Relief

The IRS announced⁴² that procedures will go into effect September 1, 2012 to help non-compliant taxpayers resolve their delinquencies. Under the mandate, US citizens who live overseas and pose a “low compliance risk”⁴³ will be required to file all delinquent tax returns for the past three years, as well as delinquent foreign account reports for the past six years. While the returns will be subject to expedited examination, the IRS will not assess penalties or pursue follow-up actions. Taxpayers that present higher compliance risks will be subject to more thorough review and an audit that might well cover more than three years.

NOTE: “Taxpayers who are in a situation where they are concerned about the risk of criminal prosecution should be advised that this new procedure does not provide protection from criminal prosecution if the IRS and Department of Justice determine that the taxpayer’s particular circumstances warrant such prosecution.”⁴⁴ These taxpayers should consult their legal advisers about the Offshore Voluntary Disclosure Program. However, once a taxpayer makes a submission under the new procedures [detailed in the prior paragraph], OVDP is no longer available. Furthermore, taxpayers who are ineligible to participate in OVDP are also ineligible to participate in the new procedure.

V. And there’s more...

With fresh articles, blogs and e-mail blasts advertising webinars on the “Latest FBAR Voluntary Disclosure” and “Form 8938 Reporting on Foreign Financial Assets”, it may be easy to overlook the myriad of other international reporting requirements imposed by the IRS. To alert practitioners to the potential filing needs of their clients, the following list of forms is provided as a survey – albeit not all-inclusive – of additional forms that may be required.



A. Form 3520, Annual Return to Report Transactions with Foreign Trusts and Receipt of Certain Foreign Gifts

US persons must report the creation of foreign trusts, as well as transfers of property into and distributions from such trusts whenever there is a reportable

⁴¹ Additionally, a penalty equal to 40% of the resulting under-payment of tax will be assessed [IRC § 6662(b)(7)].

⁴² IR 2012-65 (June 26, 2012).

⁴³ These taxpayers generally file simple returns and owe less than \$1,500.

⁴⁴ Excerpted from *New Help for US Citizens Overseas*, TheTaxBook News, June 28, 2012.

transaction.⁴⁵ Mexican Land Trusts – despite their name – are deemed not to be “trusts” for income tax purposes and are exempt from **Form 3520** and **Form 8938** filings.

Additionally, US persons who receive gifts or bequests in excess of \$100,000 from a nonresident alien individual or a foreign estate or receive gifts in excess of \$15,601 [in 2015] from foreign corporations or foreign partnerships must file **Form 3520**. Gifts from related parties must be aggregated to determine if the filing threshold has been met.

A separate **Form 3520** must be filed for transactions with each foreign trust; however, spouses who file joint returns may submit a joint **Form 3520** if both are grantors to or beneficiaries from the same foreign trust.

Reportable Events

Transactions and events that must be reported include:

- The creation/formation of a foreign trust.
- The transfer of any money or property to a foreign trust.
- The death of a US grantor of a foreign trust.
- The conversion of a domestic trust to a foreign trust.
- Sales to a foreign trust that are not arms-length transactions.

Exceptions

Form 3520 is not required to be filed for the following transactions:

- Most fair market value transfers to foreign trusts, except transfers of qualified obligations, transfers of appreciated property for which the transferor does not immediately recognize gain, and transfers involving a transferor who is related to the foreign trust.
- Transfers to foreign trusts recognized as exempt IRC § 501(c)(3) organizations, as well as distributions from foreign trusts to US exempt organizations.
- Transfers to certain other exempt trusts.⁴⁶
- Transfers to and distributions from certain Canadian retirement plans.
- Distributions from foreign trusts that are taxable and reported as compensation for services rendered.

Filing Deadline

Treas. Reg. § 16.3-1(c) states that **Form 3520** should be filed within 90 days of forming or funding a foreign trust;⁴⁷ however, this contradicts IRS instructions for

⁴⁵ IRC § 6038.

⁴⁶ As per IRC §§ 402(b), 404(a)(4), and 404A.

⁴⁷ IRC § 6048.

the form which state that “in general” the form must be submitted at the same time as the taxpayer’s timely filed income tax return.⁴⁸ If filing for a US decedent, **Form 3520** is due on the date that **Form 706** is due (including extensions), or would be due if the estate were required to file a return. **Form 3520** must be mailed to the Internal Revenue Service Center, P.O. Box 409101, Ogden, UT 84409.

Penalties

Penalty for failure to file **Form 3520** is the greater of \$10,000 or 35% of the gross reportable amount; although the penalty for failure to report a gift is 5% of the value of the gift per month, up to a maximum penalty of 25%.

B. Form 3520-A, Annual Information Return of Foreign Trust with a US Owner

This form must be filed annually on behalf of a foreign trust with at least one US owner. Each US person treated as an owner of any portion of a foreign trust is responsible for ensuring that the foreign trust files and furnishes the requisite statements to US owners and beneficiaries.

EXCEPTION: Effective October 27, 2014, custodians of Canadian registered retirement savings plans (RRSPs) and Canadian registered retirement income funds (RRIFs) are not required to file **Form 3520-A** with respect to a U.S. citizen or resident alien who holds an interest in a RRSP or RRIF.⁴⁹

Filing Deadline



Form 3520-A is due by the 15th day of the 3rd month after the end of the trust's tax year and should be submitted to Internal Revenue Service Center, P.O. Box 409101, Ogden, UT 84409. Filers must also provide copies of the **Foreign Grantor Trust Owner Statement** (page 3 of **Form 3520-A**) and the **Foreign Grantor Trust Beneficiary Statement** (page 4) to all US owners and beneficiaries at the same time so that these individuals may incorporate information about taxable distributions on their personal income tax returns in a timely manner.

Taxpayers may request an automatic six-month extension using **Form 7004, Application for Automatic Extension of Time to File Certain Business Income Tax, Information, and Other Returns.**

⁴⁸ Chief Counsel Advice 201208028 issued on February 24, 2012 appears to resolve these conflicting instructions by granting taxpayers permission to file on April 15th (plus extensions) based on a reading of the phrase “or such later day as the Secretary may prescribe” included in IRC § 6048. Should the IRS nevertheless seek to impose a penalty, some practitioners believe that reliance on specifically stated form instructions should constitute reasonable grounds for a waiver of the penalty.

⁴⁹ Rev. Proc. 2014-55.

Penalties

Failure to timely file or provide all requisite information exposes the taxpayer to a penalty equal to the greater of \$10,000 or 5% of the gross value of the portion of the trust's assets at the close of the tax year, as well as potential criminal penalties.

NOTE: If the foreign trust fails to file **Form 3520-A**, then the US owner must attach a substitute **Form 3520-A** for the foreign trust to **Form 3520** in order to avoid a penalty.

C. Other Entity Filings

Just as the IRS seeks information from US persons who transact with foreign trusts, the agency demands similar information about transactions with foreign corporate, partnership and other entities.

- 1. Form 5471, Information Return of U.S. Persons with Respect to Certain Foreign Corporations** must be filed by a US citizen or resident shareholder who acquires, disposes of, or owns a certain percentage of stock, or who serves as a director or officer of a foreign corporation.⁵⁰ The form must be attached to the taxpayer's timely filed individual income tax return (or, if applicable, a partnership or exempt organization return). For failure to furnish requisite information in a timely manner a minimum penalty of \$10,000 will be assessed; the penalty may be increased to a maximum of \$50,000 computed at \$10,000 per month after the taxpayer receives a 90-day warning letter from the IRS.
- 2. Form 5472, Information Return of a 25% Foreign-Owned US Corporation or a Foreign Corporation Engaged in a US Trade or Business** must be filed by a "reporting corporation"⁵¹ that has "reportable transactions" with related parties, either foreign or domestic. The corporation is not required to file if it had no reportable transactions or a US shareholder who controls the corporation files **Form 5471**. A separate **Form 5472** must be filed for each foreign or domestic related party with which the reporting corporation had a reportable transaction during the tax year. The form must be attached to the corporation's timely-filed corporate return. A penalty of \$10,000 will be assessed for failure to file. If the failure continues for more than 90 days after notification by the IRS, an additional penalty of \$10,000 will apply for each 30-day period (or part of a 30-day period) during which the failure continues; plus potential criminal penalties.

⁵⁰ IRC §§ 6038 and 6046.

⁵¹ A "reporting corporation" is a US corporation that is at least 25% foreign-owned or a foreign-owned corporation that engages in a US trade or business.

3. **Form 8621, Information Return by a Shareholder of a Passive Foreign Investment Company or Qualified Electing Fund** must be filed by a US person who is a shareholder of a passive foreign investment company (PFIC)⁵² if he receives certain direct or indirect distributions, recognizes a gain on a direct or indirect disposition of stock, or is making a reportable election. The form is used to compute the tax resulting from an excess distribution that exceeds 125% of the average distribution in the previous three years. A separate **Form 8621** must be filed for each PFIC in which stock is held and must be attached to a timely filed individual, partnership or exempt organization income tax return, as applicable.
4. **Form 926, Return by a US Transferor of Property to a Foreign Corporation** must be filed by a US citizen or resident, a domestic corporation, estate or trust to report certain transfers of property⁵³ to a foreign corporation. If the transferor is a partnership, the individual partners, not the partnership itself, must file. Spouses may file **Form 926** jointly if they file a joint income tax return. The form must be filed with the transferor's income tax return for the tax year that includes the date of the transfer. The failure to file penalty equals 10% of the fair market value of the property at the time of the transfer but is limited to \$100,000 per return unless the failure to comply was due to intentional disregard. An additional 40% penalty may be imposed on any underpayment resulting from an undisclosed foreign financial asset.⁵⁴
5. **Form 8858, Information Return of US Persons with Respect To Foreign Disregarded Entities** must be filed by US persons who are "tax owners" of a foreign disregarded entity (FDE); an entity that is not created or organized in the US and that is disregarded as an entity separate from its owner.⁵⁵ The tax owner of the FDE is the person who is treated as owning the assets and liabilities of the FDE for purposes of US income tax law. Failure to file timely is subject to a \$10,000; up to a maximum of \$50,000 based on additional \$10,000 per 30-day period after the IRS has issued its 90-day warning letter. Additionally, US taxpayers will forfeit 10% of the foreign tax credit to which they would otherwise have been

⁵² A foreign corporation is defined as a PFIC if at least 75% of the corporation's gross income is derived from passive income or at least 50% of the corporate assets are held for the production of passive income.

⁵³ These property transfers are defined by IRC §§ 332 (complete liquidation of a corporate subsidiary), 336 (property distributed in a complete liquidation), 351 (transfer to a controlled corporation), 354 (exchange of stock in a reorganization), 355 (distribution of a controlled corporation's stock), 356 (receipt of additional consideration) and 361 (non-recognition of gain or loss to corporations).

⁵⁴ IRC § 6662(j).

⁵⁵ Treas. Reg. §§ 301.7701-2 and 301.7701-3.

eligible plus an additional 5% for each 3-month period after the IRS issues a 90-day warning. Criminal penalties may also apply.

6. **Form 8865, Return of US Persons with Respect to Certain Foreign Partnerships** must be filed by qualifying US persons to report acquisitions, dispositions, transfers and changes in foreign partnership interests. The form must be attached to a timely filed individual, partnership or exempt organization income tax return, as applicable. For failure to furnish requisite information in a timely manner a minimum penalty of \$10,000 will be assessed; the penalty will increase to a maximum of \$50,000 computed at \$10,000 per month after the taxpayer receives a 90-day warning letter from the IRS. Any person who fails to report a contribution will be subject to an additional penalty equal to 10% of the fair market value of the property at the time of the contribution, capped at \$100,000 unless the failure is due to intentional disregard.



PRACTITIONER WARNING: You'll note that all of the forms listed are mere informational returns; none are tax returns in the sense that a tax liability is computed and due on filing. But all of these forms are subject to significant penalty assessments for failure to file. It is imperative that the practitioner is aware of all requisite filing requirements or refers potentially affected clients to advisors with experience and expertise in this arena.

D. Withholdings and Beneficiary Forms

1. **Form W-8BEN** must be submitted to payers and withholding agents by non-resident aliens who are the beneficial owners of an amount subject to withholding (e.g., wages, interest, dividends, rents, royalties, annuities, and other investment income) to ensure withholdings at a flat rate of 30% on all US source income.
2. **Form W-8IMY, Certificate of Foreign Intermediary, Foreign Flow-Through Entity, or Certain US Branches for United States Tax Withholding and Reporting** must be provided to a withholding agent if receiving a reportable amount or withholdable payment as a flow-through entity or on behalf of a foreign person to ensure withholdings at a flat 30% rate.
3. **Form 1042-S, Foreign Person's US Source Income Subject to Withholding** is an informational return that must be filed by every withholding agent for every foreign payee who received US-source fixed, determinable, annual, or periodic income. The withholding agent must indicate the amount of each category of income paid to the foreign payee (e.g., dividends, interest, etc.) and the amount of tax withheld. A separate **Form 1042-S** must be filed for each payee and each type of income. If the withholding agent did not withhold tax because it was exempt from withholding tax under a relevant income tax treaty, the withholding agent must nevertheless file **Form 1042-S** with the IRS and also provide a copy

to the foreign payee so that it may be attached to any US income tax return that the payee files.

Form 1042, Annual Withholding Tax Return for US Source Income of Foreign Persons is the associated tax return that must be filed annually by the withholding agent who receives or pays a withholdable amount on behalf of foreign persons, including nonresident aliens, foreign partnerships, foreign corporations, foreign estates, and foreign trusts. The withholding agent is personally liable for any tax that is required to be withheld plus interest and applicable penalties. **Form 1042** must be mailed to the IRS Service Center, P.O. Box 409101, Ogden, UT 84409 by March 15th. **Form 7004** may be used to request an automatic extension of time to file but not pay the amount of tax that should be withheld. The penalty for not filing **Form 1042** when due (including extensions) is 5% of the unpaid tax for each month or part of a month the return is late, up to a maximum of 25% of the unpaid tax. Interest is charged on taxes not paid by the due date, even if an extension of time to file is granted. Interest is also charged on penalties imposed for failure to file, negligence, fraud, and substantial understatements of tax from the due date (including extensions) to the date of payment.⁵⁶

E. Cash Transactions

1. **FinCEN Form 104, Currency Transaction Report**⁵⁷ must be electronically filed by a financial institution (including banks, broker/dealers, money transmitters, currency exchangers, check cashers and travelers check sellers but not a casino⁵⁸) to report any currency transaction or series of transactions over \$10,000 within 15 calendar days after the transaction.



2. **FinCEN Form 105, Report of International Transportation of Currency or Monetary Instruments** must be filed by any individual who receives or distributes non-US currency or other monetary instrument, whether shipped, mailed or physically transported, in excess of \$10,000 at one time.⁵⁹ Monetary instruments include foreign coins and currency, money orders, traveler's checks, securities and negotiable instruments in bearer form. Funds transferred through normal banking procedures are exempt.⁶⁰ This form is due within 15 days after taking receipt of the

⁵⁶ IRC § 6621.

⁵⁷ This form replaced **Form 4789, Currency Transaction Report**.

⁵⁸ Casinos must file **FinCEN Form 103**.

⁵⁹ This form replaced **Form 4790, Report of International Transportation of Currency or Monetary Instruments**.

⁶⁰ 31 U.S.C. 53.

transfer and must be electronically filed using the BSA e-File System. Failure to file may result in civil and criminal penalties, including a fine of not more than \$500,000 and imprisonment of not more than ten years. In addition, the currency or monetary instrument may be subject to seizure and forfeiture.

- 3. Form 8300, Report of Cash Payments over \$10,000 Received in a Trade or Business** must be filed by any person in a trade or business who receives more than \$10,000 in cash in a single transaction or in related transactions. Cash includes US and foreign currencies, as well as cashier's and traveler's checks, money orders and bank drafts with face amounts less than \$10,000; but not checks drawn on an individual's personal account.⁶¹

NOTE: This form may also be used to report suspicious activities if, for example, it appears that a person is trying to purposefully avoid the \$10,000 filing threshold or if there is a sign of possible illegal activity.

Form 8300 must be filed within 15 days after receiving a payment (or the next business day if the 15th day falls on a weekend or holiday). If the payer is paying in installments, **Form 8300** must be filed as soon as any payment in the series raises the aggregate amount above the filing threshold.

Form 8300 may be filed electronically on the BSA e-File System or mailed to the IRS at Detroit Computing Center, P.O. Box 32621, Detroit, Michigan 48232. Filers must give a written or electronic statement to each person named on any **Form 8300** and must keep a copy of the form for 5 years. Civil penalties for intentional disregard of the filing requirement are equal to the greater of \$25,000 or the amount of cash received but not reported (up to \$100,000). Willful failure to file may result in penalties up to \$250,000 (individuals) or \$500,000 (corporations) and/or up to 5 years jail time.⁶²

VI. Is all this reporting working?

It is widely acknowledged that "offshore tax evasion is a significant contributor to the tax gap."⁶³ A US Senate report estimates that more than \$100 billion of tax revenues are

⁶¹ A cashier's check, bank draft, traveler's check, or money order with a face amount in excess of \$10,000 is not considered "cash". Transactions involving these items will be reported by the issuing financial institution on **Form FinCEN 112**.

⁶² 18 U.S.C. 3571.

⁶³ Stack, *Myth vs. FATC: The Truth About Treasury's Effort to Combat Offshore Tax Evasion*, White & Case Tax Flash, September 20, 2013.

lost each year, giving the IRS plenty of incentive to pursue scofflaws and not-so gently prodding these taxpayers to step forward voluntarily.



And as FATCA becomes the global standard in the universal battle against offshore tax evasion, increasing numbers of foreign governments continue to sign on through intergovernmental agreements (IGAs) which have been developed by the US Treasury facilitating the exchange of tax information between countries.⁶⁴ While Americans abroad were initially treated as pariahs and the embodiment of a banker's record-keeping and reporting nightmare, many foreign regulatory authorities have recognized the power and benefit of international cooperation enabling governments to fill their own coffers with tax revenues that previously eluded detection.

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⁶⁴ Wood, *Incredibly, 48 Nations Embrace FATCA To Reveal U.S. Depositors*, Forbes, April 7, 2014 [available at <http://www.forbes.com/sites/robertwood/2014/04/07/incredibly-48-nations-embrace-fatca-to-reveal-u-s-depositors/>, last accessed May 29, 2014].

APPENDIX A

Comparison of Form 8938 and FinCEN 114 Requirements⁶⁵

	Form 8938	FinCEN 114
Who Must File?	Specified individuals, which include US citizens, resident aliens, and certain non-resident aliens that have an interest in specified foreign financial assets and meet the reporting threshold	US persons, which include US citizens, resident aliens, trusts, estates, and domestic entities that have an interest in foreign financial accounts and meet the reporting threshold
Does the United States include US territories?	No	Yes, resident aliens of US territories and US territory entities are subject to foreign account reporting
Reporting Threshold (Total Value of Assets)	\$50,000 on the last day of the tax year or \$75,000 at any time during the tax year (higher threshold amounts apply to married individuals filing jointly and individuals living abroad)	\$10,000 at any time during the calendar year
When do you have an interest in an account or asset?	If any income, gains, losses, deductions, credits, gross proceeds, or distributions from holding or disposing of the account or asset are or would be required to be reported, included, or otherwise reflected on your income tax return	Financial interest: you are the owner of record or holder of legal title; the owner of record or holder of legal title is your agent or representative; you have a sufficient interest in the entity that is the owner of record or holder of legal title. Signature authority: you have authority to control the disposition of the assets in the account by direct communication with the financial institution maintaining the account.
What is Reported?	Maximum value of specified foreign financial assets, which include financial accounts with foreign financial institutions and certain other foreign non-account investment assets	Maximum value of financial accounts maintained by a financial institution physically located in a foreign country
How are maximum account or asset values determined and reported?	Fair market value in US dollars in accord with the Form 8938 instructions for each account and asset reported Convert to US dollars using the end of the taxable year exchange rate and report in US dollars.	Use periodic account statements to determine the maximum value in the currency of the account. Convert to US dollars using the end of the calendar year exchange rate and report in US dollars.
When Due?	By due date, including extension, if any, for income tax return	Received by June 30 (no extensions of time granted)
Where to File?	File with income tax return pursuant to instructions for filing the return	Must be electronically filed
Penalties	Up to \$10,000 for failure to disclose and an additional \$10,000 for each 30 days of non-filing after IRS notice of a failure to disclose, for a potential maximum penalty of \$60,000; criminal penalties may also apply	If non-willful, up to \$10,000; if willful, up to the greater of \$100,000 or 50 percent of account balances; criminal penalties may also apply

⁶⁵ Available at <http://www.irs.gov/Businesses/Comparison-of-Form-8938-and-FBAR-Requirements> [last accessed May 28, 2014].

APPENDIX B
Types of Foreign Assets and whether they are Reportable⁶⁶

	Form 8938	FinCEN 114
Financial (deposit and custodial) accounts held at foreign financial institutions	Yes	Yes
Financial account held at a foreign branch of a US financial institution	No	Yes
Financial account held at a US branch of a foreign financial institution	No	No
Foreign financial account for which you have signature authority	No, unless you otherwise have an interest in the account as described above	Yes, subject to exceptions
Foreign stock or securities held in a financial account at a foreign financial institution	The account itself is subject to reporting, but the contents of the account do not have to be separately reported	The account itself is subject to reporting, but the contents of the account do not have to be separately reported
Foreign stock or securities not held in a financial account	Yes	No
Foreign partnership interests	Yes	No
Indirect interests in foreign financial assets through an entity	No	Yes, if sufficient ownership or beneficial interest (i.e., a greater than 50 percent interest) in the entity. See instructions for further detail.
Foreign mutual funds	Yes	Yes
Domestic mutual fund investing in foreign stocks and securities	No	No
Foreign accounts and foreign non-account investment assets held by foreign or domestic grantor trust for which you are the grantor	Yes, as to both foreign accounts and foreign non-account investment assets	Yes, as to foreign accounts
Foreign-issued life insurance or annuity contract with a cash-value	Yes	Yes
Foreign hedge funds and foreign private equity funds	Yes	No
Foreign real estate held directly	No	No
Foreign real estate held through a foreign entity	No, but the foreign entity itself is a specified foreign financial asset and its maximum value includes the value of the real estate	No
Foreign currency held directly	No	No
Precious Metals held directly	No	No
Personal property, held directly, such as art, antiques, jewelry, cars and other collectibles	No	No
'Social Security'- type program benefits provided by a foreign government	No	No

⁶⁶ Available at <http://www.irs.gov/Businesses/Comparison-of-Form-8938-and-FBAR-Requirements> [last accessed May 28, 2014].

APPENDIX C
Options Available to Noncompliant Taxpayers⁶⁷

	OVDP	SDP	DIRP
Who may participate	Individuals, estates, partnerships, corporations and other entities	Individuals and estates	Individuals and estates
Willful failure to report	Eligible	Not eligible	Not eligible
Prior tax returns filed	Not required	Not required	Must have filed
Under IRS audit	Not eligible (even if taxpayer not aware of audit)	Not eligible	Not eligible
Must self-certify non-willfulness	Not required	Required	Required
File amended tax returns with payment	Required	Required	Required
Applicable penalty	27.5% of foreign financial assets (or 50% if bank publicly under investigation), plus standard tax penalties	None	5% of foreign financial assets
Required filings	Original or amended tax returns (8 years), FBARs (8 years) and other miscellaneous forms	Original or amended returns (3 years), FBARs (6 years)	Amended returns (3 years), FBARs (6 years)

⁶⁷ Fisher and McManus, *Offshore Voluntary Disclosure: IRS simplifies path back to tax compliance*, NATP TAXPRO Journal, Fall 2014.