

Chapter 2: Foreign Asset Disclosure

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Please note. Corrections were made to this workbook through January of 2016. No subsequent modifications were made. For clarification about acronyms used throughout this chapter, see the Acronym Glossary at the end of the Index.

For your convenience, in-text website links are also provided as shortURLs. Anywhere you see **uofi.tax/xxx**, the link points to the address immediately following in brackets.

Although owning foreign assets is not illegal, failing to disclose such assets exposes taxpayers (and perhaps tax return preparers) to substantial civil fines and even criminal penalties. Approximately four years ago, the IRS stepped up the enforcement of foreign income reporting and foreign asset disclosure.¹

The Treasury Department recently implemented procedures to obtain the identities of those taxpayers who hold accounts at foreign financial institutions (FFIs). These procedures include a requirement for FFIs to register with the IRS and provide information about U.S. account holders, unless the FFI is exempt from these requirements. Failure to adhere to these rules may subject the FFI to 30% tax withholding on U.S.-sourced payments made to that FFI.²

The Treasury Department implemented an increasing number of intergovernmental agreements (IGAs) between the United States and other countries to improve information exchange with the IRS and to facilitate compliance with FFI rules. Approximately 54 IGAs are in place, and several more are pending.³

Although these Treasury Department and IRS initiatives are certainly directed at taxpayers hiding offshore assets, the same filing and disclosure requirements exist for **all** taxpayers with foreign accounts or assets. Foreign asset ownership may occur due to receiving an inheritance, owning a business, becoming a trust beneficiary, traveling or attending school abroad, and a number of other circumstances that do not involve the intentional acquisition of a foreign asset.

Because of the substantial civil and criminal penalties, it is essential for tax return preparers to understand these rules and to exercise due diligence. Due diligence requires asking taxpayers questions about the existence of assets or accounts outside the United States in order to ensure compliance with reporting requirements.

This chapter addresses foreign account disclosure rules that affect all taxpayers. These include rules under the **Bank Secrecy Act (BSA)** and the **Foreign Account Tax Compliance Act (FATCA)**.

Also, several **international information returns** may be required to avoid substantial penalties. This chapter provides preliminary details that tax return preparers should know so they can identify the situations that trigger filing requirements.

¹ *FATCA – Regulations and Other Guidance*. Dec. 18, 2014. Internal Revenue Service. [www.irs.gov/Businesses/Corporations/FATCA-Regulations-and-Other-Guidance] Accessed on Jan. 21, 2015.

² *FATCA Information for Foreign Financial Institutions and Entities*. Jul. 11, 2014. Internal Revenue Service. [www.irs.gov/Businesses/Corporations/Information-for-Foreign-Financial-Institutions] Accessed on Jan. 21, 2015.

³ *U.S. Department of the Treasury Resource Center*. Jan. 8, 2015. U.S. Department of the Treasury. [www.treasury.gov/resource-center/tax-policy/treaties/Pages/FATCA-Archive.aspx] Accessed on Jan. 21, 2015.

OFFSHORE ACCOUNT REPORTING COMPLIANCE

Generally, taxpayers must comply with two separate sets of foreign asset disclosure rules. Each of these sets of rules represents a separate foreign asset disclosure requirement for taxpayers. These are found in the following laws.

- The Bank Secrecy Act (BSA)
- The Foreign Account Tax Compliance Act (FATCA)

Practitioners need to be aware of both sets of rules. Each affects many taxpayers, including **those who do not fit the typical profile of a taxpayer holding substantial offshore assets**. In addition, significant civil and criminal penalties exist under each set of rules for failure to file required forms. **A taxpayer may need to comply with one or both sets of rules for the same account(s).**

Note. Due diligence requires tax practitioners to **annually** ask their clients questions about whether they have assets or investments outside the United States. Circumstances may change from year to year that trigger filing requirements under one or both sets of the offshore account disclosure rules. Events such as the receipt of an inheritance, prepayment of tuition for a child attending school overseas, and other events may require the taxpayer to file additional forms reflecting offshore assets that the client did not own in prior years.

BANK SECRECY ACT

Under the BSA, a U.S. person with a **financial interest in** or **signature authority over** foreign financial accounts must generally disclose **reportable** accounts if their aggregate value exceeds **\$10,000** at any time during the year.⁴

Note. This BSA requirement was formerly known as the FBAR (foreign bank account report) requirement. In addition, filing Form TD F 90-22.1 was previously required. Although still referred to as the FBAR requirement, the form that must be filed now is Financial Crimes Enforcement Network (FinCEN) Form 114, *Report of Foreign Bank and Financial Accounts* (referred to in this chapter as Form 114).

When filed with a taxpayer's return, part III of Schedule B, *Interest and Ordinary Dividends*, may serve to alert the IRS that the taxpayer has an obligation to comply with the BSA foreign account requirements.⁵ The 2014 version of Schedule B, part III, follows. **This is the first step to compliance.** Practitioners should fulfill their due diligence obligation to annually ask clients appropriate questions about the existence of any foreign financial accounts, whether they have interest or dividends, and to respond to clients' questions appropriately.

dividends on that form. 6

Note. If line 6 is over \$1,500, you must complete Part III.

You must complete this part if you (a) had over \$1,500 of taxable interest or ordinary dividends; (b) had a foreign account; or (c) received a distribution from, or were a grantor of, or a transferor to, a foreign trust.

	Yes	No
Part III Foreign Accounts and Trusts (See instructions on back.)		
7a At any time during 2014, did you have a financial interest in or signature authority over a financial account (such as a bank account, securities account, or brokerage account) located in a foreign country? See instructions		
If "Yes," are you required to file FinCEN Form 114, Report of Foreign Bank and Financial Accounts (FBAR), to report that financial interest or signature authority? See FinCEN Form 114 and its instructions for filing requirements and exceptions to those requirements		
b If you are required to file FinCEN Form 114, enter the name of the foreign country where the financial account is located ▶		
8 During 2014, did you receive a distribution from, or were you the grantor of, or transferor to, a foreign trust? If "Yes," you may have to file Form 3520. See instructions on back		

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Note. Although part III of Schedule B is designed to ensure the disclosure of certain foreign accounts, it is necessary to make certain that any income earned on foreign accounts is also reported.

⁴ 31 CFR §1010.350(a).

⁵ IRS Fact Sheet FS-2014-7 (Jun. 2014).

To understand the scope of the filing requirements, practitioners must know the definitions of the following terms.

- U.S. person
- Financial interest in a foreign account
- Signature authority in a foreign account
- Reportable account
- Foreign financial account
- Threshold value

U.S. Person

Under the BSA rules, a U.S. person is:⁶

- A U.S. citizen,
- A U.S. resident, or
- An entity created under state or federal laws.

Special Rules for U.S. Residents.⁷ Special rules apply to certain types of U.S. residents. A legal permanent resident of the United States who elects under a tax treaty to be treated as a nonresident for tax purposes is still subject to the BSA foreign asset disclosure rules. In addition, a noncitizen of the United States who fails the substantial presence test but nonetheless elects to be treated as a U.S. resident for tax purposes is subject to the BSA foreign asset disclosure rules for the time covered by the election.

Note. Generally, a person becomes subject to U.S. tax law if they meet the substantial presence test. For further details regarding this test, see IRC §7701(b)(3)(A) and Treas. Reg. §301.7701(b)-4(a).

However, a noncitizen of the United States who elects treatment as a U.S. resident for purposes of filing a joint return with a spouse who is a U.S. person is **not** subject to the BSA offshore asset disclosure rules.

Note. Generally, a married couple may file married filing jointly (MFJ) if neither spouse is a nonresident alien. The term **alien** refers to a person who is not a U.S. citizen. However, if one spouse is a nonresident alien, the spouses can elect to file MFJ and be taxed on their collective worldwide income. This means the nonresident alien spouse is treated as a U.S. person for tax purposes. For further details regarding this election, see IRC §6013(g) and Treas. Reg. §1.6013-6.

⁶ 31 CFR §1010.350(b).

⁷ FinCEN Final Rule RIN 1506-AB08, 76 FR 10234 (Feb. 24, 2011).

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Special Rules for Entities.⁸ The federal tax classification of an entity does not determine whether that entity must disclose offshore assets under the BSA rules.

Example 1. Laszlo operates his engineering business through L's Civil Engineering and Consulting, LLC, which is an LLC established under Illinois laws. Laszlo is the sole member of the LLC. The LLC has investment accounts located outside the United States that exceed the \$10,000 threshold for 2015. These accounts fall under the BSA disclosure rules. Under the federal "check-the-box" rules used for federal tax classification purposes, the LLC is a disregarded entity. Despite being disregarded for federal income tax purposes, the LLC is subject to the BSA offshore asset disclosure rules and must report the income on a U.S. return.

A **trust** is subject to the disclosure requirements even if another person claims the deductions and credits attributed to it. The trust is subject to these rules even if the fiduciary is also simultaneously subject to them. However, a beneficiary with more than a 50% interest in the trust assets is not required to file under the BSA rules if the accounts that must be disclosed are already disclosed by the trust or the fiduciary.⁹ Beneficiaries with less than a 50% interest in a foreign trust generally fall outside the scope of the filing requirements.

Note. Form 114 instructions provide useful information on the filing requirements for taxpayers with various entities. These instructions are available at **uofi.tax/15b2x3** [www.fincen.gov/forms/files/FBAR%20Line%20Item%20Filing%20Instructions.pdf].

Financial Interest in a Foreign Account¹⁰

A U.S. person has a **financial interest** in a foreign account if they are any of the following.

- Holder of legal title of the account or owner of record
- Constructive owner
- Deemed owner

Being the **holder of a legal title** or **owner of record** creates a financial interest in the account whether the U.S. person maintains the account for their own benefit or for the benefit of others. In addition, when a foreign account is maintained in more than one person's name, all U.S. persons in whose names the account is maintained have financial interests in that account.

Constructive ownership exists if the account owner is acting on behalf of another person. Accounts owned by attorneys, agents, and nominees may be constructively owned.

Note. The meaning of the term **constructive** for purposes of this rule is different than the meaning of the term under the IRC §§318 and 267 attribution rules.

⁸. Instructions for FinCEN Form 114.

⁹. Ibid.

¹⁰. 31 CFR §1010.350(e).

A U.S. person is **deemed** the owner of a foreign account if any of the following apply.

- The account is owned by a corporation in which the U.S. person owns more than half of the voting power or share value in the corporation.
- The account is owned by a partnership in which the U.S. person owns more than half of the profits or capital.
- The account is owned by any entity other than a trust, and the U.S. person owns more than half of the entity's voting power, value of the equity interest or assets, or profits interest.
- The account is owned by a trust, and the U.S. person is the grantor and owner of that trust.
- The account is owned by a trust in which the U.S. person has a present beneficial interest in more than half of the assets or receives more than half of the current income.

Note. A U.S. person who is a discretionary beneficiary of a discretionary trust does not have a financial interest in any foreign accounts owned by that trust. In addition, a present beneficial interest in a trust does not include a remainder interest.¹¹ It is important to review the terms of the trust document and the rights of a beneficiary to determine if that beneficiary may be a deemed owner of an account owned by the trust.

Example 2. Rockport Fisheries, Inc. (Rockport), is a C corporation established under New Hampshire laws. Rockport's three U.S. citizen shareholders — Clara, Sara, and Kara — own 60%, 20%, and 20% voting interests, respectively, in the corporation.

Rockport owns a foreign brokerage account with stock in Thai Wild Fishing Company (TWFC), which is headquartered in Thailand. Rockport's interest in TWFC is greater than \$10,000. Rockport is subject to disclosure of its foreign brokerage account under the BSA rules because a U.S. person (Rockport) holds title to the foreign investment.

In addition, one of the shareholders, Clara, owns more than half the voting power in Rockport. Under the BSA rules, Clara is deemed the owner of the foreign brokerage account because she owns more than half the interest in a corporation that owns the foreign brokerage account. Clara is therefore also subject to the BSA disclosure requirements.

Example 3. Otto is a U.S. citizen and a licensed attorney in Washington, DC, and in Germany. Immediately before his client Franz sold his bakery in Stuttgart, Germany, Otto opened an escrow account at a German bank in Stuttgart to receive the proceeds from the sale of Franz's business.

The escrow account is in Otto's name. The sale closes and the proceeds (which are greater than \$10,000) are deposited to the escrow account in Otto's name. Otto is a U.S. person who has a financial interest in a foreign account that must be disclosed under the BSA rules. The fact that the escrow account was established for Franz's benefit is irrelevant.

Example 4. Matilda is sole owner and operator of FeedKidsNow, Inc. (FKN). FKN is a charitable organization that meets the requirements of IRC §501(c)(3).

During 2015, Matilda's aunt in Portugal dies. Her aunt's will donates a bank account with a substantial amount to FKN. In late 2015, the attorney in Portugal who is administering the aunt's estate makes FKN the owner of the account to facilitate the donation. The donation is in excess of \$10,000.

For 2015, both FKN and Matilda are U.S. persons having interests in a foreign financial account. FKN is subject to the BSA disclosure requirements because it directly owns the account. Matilda is deemed the owner of the account because she owns more than half of FKN, the entity that owns the foreign account.

¹¹ FinCEN Final Rule RIN 1506-AB08, 76 FR 10234 (Feb. 24, 2011); 31 CFR §1010.350(e)(2)(iv).

Signature Authority in a Foreign Account¹²

An individual has **signature authority** over an account if they are able to control the disposition of money or other assets in the account through communication (written or otherwise) with the financial institution or another party that maintains the account. An individual may have signature authority over an account jointly or on a joint-and-several basis with others.

Note. Although an entity may have a financial interest in an account, it is not possible for an entity to have signature authority over an account. **Only an individual** can have signature authority over an account.

Having a financial interest in or signature authority over an account may trigger a disclosure requirement under BSA rules. However, there are **five exceptions** for individuals who have signature authority over accounts that belong to certain employers. Each exception applies only if the individual has **no financial interest** in the account. In such instances, disclosure is not required by any of the following.

1. A bank employee or officer with signature authority over a foreign financial account if both of the following apply
 - a. The bank owns or maintains the foreign account.
 - b. The bank is examined by the Office of the Comptroller of the Currency, Federal Reserve System (or its Board of Governors), Federal Deposit Insurance Corporation, Office of Thrift Supervision, or National Credit Union Administration.
2. An employee or officer of a financial institution registered with and examined by the Commodity Futures Trading Commission or the Securities and Exchange Commission (SEC) if the account is owned or maintained by the financial institution
3. An employee or officer of an authorized service provider if the account is owned or maintained by an SEC-registered investment company

Note. An **authorized service provider** is an entity registered with the SEC that provides services to a regulated investment company (RIC). An RIC includes a mutual fund, real estate investment trust, or other investment entity that is eligible under the Code to pass capital gains and income taxes on earned amounts directly to individual investors so that these taxes are paid by the individuals instead of the RIC.¹³

4. Employees or officers of an entity with a class of equity securities that are listed on any U.S. national securities exchange
5. Employees or officers of an entity with a class of equity securities registered under §12(g) of the Securities Exchange Act that is obligated to register because the entity has more than \$10 million in assets and more than 500 shareholders of record

Note. Section 12(g) of the Securities Exchange Act requires companies to register if they meet the asset and shareholder thresholds. Registration subjects these companies to periodic financial and other reporting requirements to ensure certain financial information is made public. For further information on the registration requirements and recent SEC-proposed changes, see [uofi.tax/15b2x4](http://www.irs.gov/efile/2014/33-9693.pdf) [www.sec.gov/rules/proposed/2014/33-9693.pdf].

¹² 31 CFR §1010.350(f).

¹³ IRC §851.

Note. For further details on these exceptions, see 31 CFR §1010.350(f) and FinCEN Final Rule RIN 1506-AB08, 76 FR 10234 (Feb. 24, 2011). This FinCEN rule is available in PDF format at uofi.tax/15b2x5 [www.gpo.gov/fdsys/pkg/FR-2011-02-24/pdf/2011-4048.pdf].

Reportable Account¹⁴

Generally, accounts that must be reported under the BSA rules include the following.

- Bank accounts (including accounts with persons engaged in a banking business, such as savings and checking accounts)
- Certificates of deposit
- Securities accounts
- Insurance or annuity policies with cash values

Note. The **owner** of an insurance policy with a cash value is responsible for disclosure, **not the beneficiaries** of the policy.

- Commodities accounts
- Accounts with mutual funds or other pooled investments that issue shares to the general public that have regular net asset value determinations and regular redemptions
- Other investment funds

In addition, a federal district court has held that accounts with **foreign poker websites are reportable** because they operate as institutions engaged in the business of banking.¹⁵

Accounts maintained at a **U.S. military banking facility are not considered reportable** even though the facility is located in a foreign country.

Note. Generally, accounts maintained with a federal or state government or agency are not considered reportable. For further details on the accounts that are exempt from disclosure, see 31 CFR §1010.350(c)(4).

Retirement Accounts.¹⁶ Participants and beneficiaries in retirement accounts that are IRAs or that meet the requirements of IRC §401(a), §403(a), or §403(b) are exempt from the reporting requirements. Accordingly, participants in these plans are not required to disclose any foreign financial accounts that are held within such retirement plans. However, no such exemption exists for foreign retirement plans. Foreign retirement plans are subject to the same rules as other accounts. Accordingly, having either a financial interest in or signature authority over a foreign pension plan makes the plan participant subject to the disclosure rules.

Observation. Compliance with the BSA rules for U.S. persons with foreign pension plans is a gray area. Very little guidance is available from the Treasury Department on this issue.

¹⁴ 31 CFR §1010.350(c).

¹⁵ *U.S. v. Hom*, 2014 U.S. Dist. LEXIS 77489 (N.D. CA 2014).

¹⁶ 31 CFR §1010.350(g)(4).

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Frequently, a U.S. person participating in a foreign pension plan with many participants takes the position that they have neither a financial interest in nor signature authority over their pension entitlement. This may be correct if the U.S. person does not have title or ownership of their pension benefit and if they are unable to direct or influence the disposition of funds within the pension plan.

However, some foreign pensions are established through individual participant accounts. The U.S. person may have a financial interest in or signature authority over such an individual account. A tax professional must determine exactly what rights the U.S. person has over an interest in a foreign pension to know whether it is subject to the BSA rules. For cases in which this is unclear, it may be best to disclose the foreign pension interest. However, determining an accurate value may be difficult or impossible.

Generally, the focal point of the BSA rules is the disclosure of financial accounts and investments located **outside** the United States.¹⁷ Items that are **not reportable financial accounts** include the following.¹⁸

- Real estate held directly by a U.S. person
- Real estate held through a foreign entity
- Directly held foreign currency or precious metals
- Personal property, such as art, jewelry, cars, and antiques

Foreign Financial Account¹⁹

The BSA disclosure rules require the reporting of **foreign** financial accounts. A **foreign** financial account is one located anywhere outside the geographic boundaries of the United States.

Example 5. Martha has two accounts with First Manhattan Bank of the Bronx of New York (BBNY). BBNY is a major bank with international operations. Martha's first account is maintained in one of BBNY's branch offices in the Bronx. Her second BBNY account is located at the branch in Paris, France, where she vacations each summer.

The bank account at the Bronx branch is not a foreign financial account because it is maintained within the geographic boundaries of the United States. However, the account at the Paris branch is a foreign financial account and thus subject to the BSA reporting requirements. The Paris account is a foreign financial account even though it is a deposit with a U.S. bank because the account is maintained outside the geographic boundaries of the United States.

Example 6. Maynard has a certificate of deposit denominated in British pounds sterling that is maintained at the Las Vegas branch of the Great North Sea Bank of England, a British bank. Even though this amount is maintained with a foreign bank, it is not a foreign financial account subject to the disclosure requirements of the BSA because the account is located within the geographic boundaries of the United States.

Observation. In **Example 6**, the Las Vegas branch of the bank is subject to U.S. law. Therefore, Maynard should receive a Form 1099 showing interest earned on the account.

Note. Under these rules, the geographic boundaries of the United States include American Samoa, the Northern Mariana Islands, Puerto Rico, Guam, and the United States Virgin Islands. Indian lands, as defined in the Indian Gaming Regulatory Act, are also considered to be included in the geographic boundaries of the United States.

¹⁷ 31 CFR §1010.350(a).

¹⁸ *Comparison of Form 8938 and FBAR Requirements*. Feb. 2, 2015. Internal Revenue Service. [www.irs.gov/Businesses/Comparison-of-Form-8938-and-FBAR-Requirements]. Accessed on Feb. 11, 2015.

¹⁹ 31 CFR §1010.350(a), (d); 31 CFR §1010.100(hhh).

Threshold Value²⁰

Generally, a U.S. person with a financial interest in or signature authority over one or more foreign financial accounts must report those accounts. However, such accounts must be disclosed only if their aggregate value is in excess of **\$10,000 at any point during the calendar year**.

To determine whether this \$10,000 threshold is met, the maximum annual values of all the accounts **are added together**. Depending on the nature of the investment in an account, its value may vary frequently (e.g., stock market investment).

The applicable BSA rules allow the use of periodic statements to establish the maximum value of an account during the year. However, periodic statements may be used only if they fairly reflect values during the calendar year. For an investment that generates a yearend statement, the yearend statement balance may be used as long as it is a genuine statement produced by the foreign financial institution in the ordinary course of business.²¹

Observation. The \$10,000 threshold is not subject to inflation indexing. **Therefore, over time, many more taxpayers may become subject to the BSA rules.**

Currency Conversion Rules.²² Disclosure of foreign financial accounts must be made in U.S. dollars. Accounts denominated in a foreign currency must be converted into U.S. dollars. Conversion into U.S. dollars must be calculated using the Treasury Department's Financial Management Service Rate for December 31. The appropriate rates for the conversion of foreign currencies to U.S. dollars are available at **uofi.tax/15b2x6** [www.fiscal.treasury.gov/fsreports/rpt/treasRptRateExch/treasRptRateExch_home.htm]. If the required rate is not available on the website, the reporting person must use another verifiable exchange rate and indicate the source.

Reporting the Foreign Financial Accounts

For a U.S. person with reportable foreign financial accounts exceeding the \$10,000 threshold, the accounts are disclosed using Form 114, which must be filed using FinCEN's online system at **uofi.tax/15b2x7** [<http://bsaefiling.fincen.treas.gov/NoRegFBARFiler.html>].

Form 114 must be electronically filed **no later than June 30** following the tax year for which it is required.

Observation. Form 114 is not filed with the individual's tax return because it is not an IRS form. **In addition, Form 114 must be submitted electronically to FinCEN.**

Joint Accounts. Generally, if a reportable account has more than one owner, each owner who must file a Form 114 must disclose that account and indicate the number of other account owners. However, if the joint owners are spouses and one spouse files Form 114, it is not necessary for the other spouse to do so if all the following apply.²³

1. The filing spouse is the joint owner on all the reportable foreign financial accounts with the nonfiling spouse.
2. The filing spouse reports all the jointly owned accounts on a **timely filed** Form 114.
3. The filing spouse signs the Form 114 (using an electronic signature).
4. Both spouses sign a Form 114a and retain it with their records.

Note. If spouses have joint accounts and one spouse files Form 114 on the other spouse's behalf, Form 114a, *Record of Authorization to Electronically File FBARs*, is used to document the nonfiling spouse's authorization. Form 114a is available at **uofi.tax/15b2x8** [www.fincen.gov/forms/files/FBARE-FileAuth114aRecordSP.pdf].

²⁰ 31 CFR §1010.350(a); FinCEN Final Rule RIN 1506-AB08, 76 FR 10234 (Feb. 24, 2011).

²¹ FinCEN Final Rule RIN 1506-AB08, 76 FR 10234 (Feb. 24, 2011).

²² Instructions for FinCEN Form 114.

²³ Ibid.

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If the first three of the preceding requirements are not met, each spouse must file a separate Form 114. Each spouse's separate Form 114 must fully reflect the maximum balance of each joint account during the year.

Filing Form 114 for Clients

As previously mentioned, Form 114 must be filed using the online filing system established by FinCEN. If the tax practitioner wants to file Form 114 on behalf of a client, the tax practitioner must enroll as a BSA e-filer. The CPA, EA, or attorney filing on behalf of the client must register as an institution in order to become a third-party filer for clients. The registration website is **uofi.tax/15b2x9** [<http://bsaefiling.fincen.treas.gov/Enroll.html>].

Note. Only an individual filing to disclose their own accounts is considered an **individual** filer. All other third-party filers are considered **institutional** filers.

Note. If it is not possible to file Form 114 electronically, it may be possible to make arrangements with FinCEN to file using an alternative system. This may be done by contacting the FinCEN Regulatory Helpline at 800-949-2732 or 703-905-3975.

Example 7. Clayton is a CPA in Illinois and an enrolled BSA e-filer. He meets with his new clients, Bradley and Rebecca Moulton. They are Canadian citizens who relocated to Illinois in 2015. Bradley works for Central Builders, Inc., a U.S. subsidiary of a Canadian company headquartered in Toronto. The company develops commercial real estate. Bradley worked for the parent company in Toronto for 15 years before being transferred to the U.S. subsidiary in Illinois. Bradley also worked for the U.K. subsidiary of the Canadian parent company for a year after the company hired him. Bradley and Rebecca still own their home in Canada.

After asking Bradley and Rebecca relevant questions, Clayton develops a list of all their foreign assets and accounts. The list includes the maximum value that each asset and account attained during 2015. Clayton obtained these values from the investment statements provided by Bradley and Rebecca.

Among these accounts is Bradley's Canadian Registered Retirement Savings Plan (RRSP). (This RRSP account is analogous to a traditional IRA in the United States.) Bradley and Rebecca also have a jointly held brokerage account with Canadian stocks and a joint checking account at a Canadian bank.

The list Clayton prepared of foreign assets and accounts follows. The dollar amounts shown are in **Canadian dollars**.

	2015 Maximum Values	
	Bradley	Joint
Canadian residence		\$340,000
Canadian RRSP	\$64,000	
Checking account		14,000
Brokerage account		166,000
U.K. employer-sponsored pension plan	17,000	
Totals	\$81,000	\$520,000

Observation. Due diligence requirements are associated with the BSA disclosure rules. Tax professionals must ask clients questions regarding the existence and nature of assets and accounts located outside the United States. Additional inquiries may also be necessary to determine whether the client has a financial interest in or signature authority over each asset or account.

Clayton completes the necessary research regarding the assets for Bradley and Rebecca. He must determine which of these assets are reportable accounts subject to disclosure under the BSA. In addition to the information obtained from Bradley and Rebecca, Clayton finds the following sources helpful in his research.

Source	ShortURL	Reference
FinCEN final rule	uofi.tax/15b2x1	[www.gpo.gov/fdsys/pkg/FR-2011-02-24/pdf/2011-4048.pdf]
BSA electronic filing requirements for Form 114	uofi.tax/15b2x2	[www.fincen.gov/forms/files/FBAR%20Line%20Item%20Filing%20Instructions.pdf]

Note. The BSA electronic filing requirements listed in the preceding table were released in June 2014 and provide helpful definitions and guidance.

From his research, Clayton determines the following.

1. The residence that Bradley and Rebecca continue to maintain in Canada is not a reportable foreign financial account under the BSA rules. Directly held real estate is not subject to disclosure.
2. The Canadian RRSP account is a reportable foreign financial account. Bradley has a **financial interest** in his RRSP account because he is the owner of record. Bradley also has **signature authority** over his RRSP account because he can direct the disposition of the money or investments held in the account by communicating with the financial institution that maintains the account.
3. Bradley and Rebecca have a financial interest in and signature authority over the joint checking account and the Canadian brokerage account. These accounts are reportable foreign financial accounts.
4. The U.K. employer-sponsored pension plan is sponsored by the U.K. subsidiary of the Canadian parent company. It is very similar to a U.S. employer-sponsored plan. Bradley does not have a financial interest in this plan because he is not an owner. In addition, because Bradley has no ability to direct the pension plan administrator to make changes in the plan or to withdraw funds from it, he does not have signature authority over it.

Clayton therefore concludes that the following foreign assets are reportable foreign financial accounts subject to the BSA disclosure requirements.

	Bradley	Joint
Canadian RRSP	\$64,000	
Checking account		\$ 14,000
Brokerage account		166,000
Total	\$64,000	\$180,000

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Clayton must convert the Canadian dollar amounts to U.S. dollars. Form 114 requires disclosure of the maximum values of the reportable accounts in U.S. dollars. Using the Treasury Department's Bureau of Fiscal Service website, Clayton locates the December 31, 2015, exchange rate for the necessary currency conversion. He finds that the website provides an exchange rate of 1.0640. This exchange rate is shown on the website as follows.

<i>COUNTRY-CURRENCY</i>	<i>F.C. TO \$1.00</i>
AFGHANISTAN - AFGHANI	56.0000
ALBANIA - LEK	101.7000
ALGERIA - DINAR	78.0250
ANGOLA - KWANZA	95.0000
ANTIGUA - BARBUDA - E. CARIBBEAN DOLLAR	2.7000
ARGENTINA-PESO	6.5180
ARMENIA - DRAM	404.0000
AUSTRALIA - DOLLAR	1.1200
AUSTRIA - EURO	0.7260
AZERBAIJAN - NEW MANAT	0.8000
BAHAMAS - DOLLAR	1.0000
BAHRAIN - DINAR	0.3770
BANGLADESH - TAKA	79.0000
BARBADOS - DOLLAR	2.0200
BELARUS - RUBLE	9510.0000
BELGIUM-EURO	0.7260
BELIZE - DOLLAR	2.0000
BENIN - CFA FRANC	475.0000
BERMUDA - DOLLAR	1.0000
BOLIVIA - BOLIVIANO	6.8600
BOSNIA-HERCEGOVINA MARKA	1.4210
BOTSWANA - PULA	8.7490
BRAZIL - REAL	2.3620
BRUNEI - DOLLAR	1.2540
BULGARIA - LEV	1.4210
BURKINA FASO - CFA FRANC	475.0000
BURMA - KYAT	980.0000
BURUNDI - FRANC	1540.0000
CAMBODIA (KHMER) - RIEL	4103.0000
CAMEROON - CFA FRANC	476.5400
CANADA - DOLLAR	1.0640
CAPE VERDE - ESCUDO	80.3030
CAYMAN ISLANDS - DOLLAR	0.8200
CENTRAL AFRICAN REPUBLIC - CFA FRANC	475.0000
CHAD - CFA FRANC	476.5400
CHILE - PESO	525.3200
CHINA - RENMINBI	6.0540
COLOMBIA - PESO	1924.9800
COMOROS - FRANC	361.3500
CONGO - CFA FRANC	475.0000
CONGO, DEM. REP - CONGOLESE FRANC	920.0000
COSTA RICA - COLON	495.2000

Note. The exchange rate used above for December 31, 2015, is only for **illustrative purposes** in this example. For actual exchange rates, see **uofi.tax/15b2x10** [www.fiscal.treasury.gov/fsreports/rpt/treasRptRateExch/treasRptRateExch_home.htm].

Note. According to this exchange rate, on the last day of the year, \$1.00 in U.S. currency is equivalent to slightly more than \$1.06 in Canadian currency. This exchange rate of 1.0640 is used to convert U.S. dollars to Canadian dollars. However, Clayton needs to convert Canadian dollar-denominated currency to U.S. dollars for Form 114 reporting purposes. The factor to convert Canadian dollars to U.S. dollars is calculated by inverting 1.0640 (which is $1 \div 1.0640$, or 0.9398).

2015 Workbook

2

Clayton converts the reportable foreign financial accounts for Bradley and Rebecca from Canadian dollars to U.S. dollars as follows.

	Bradley	U.S. Dollar Equivalent	Joint	U.S. Dollar Equivalent
Canadian RRSP	\$64,000	$\times 0.9398 =$		
Checking account			\$ 14,000	$\times 0.9398 =$
Brokerage account			166,000	$\times 0.9398 =$
Total	\$64,000	\$60,147.20	\$180,000	\$169,164.00

Note. All amounts for foreign financial accounts are rounded up to the next dollar to arrive at the amount reported on Form 114.²⁴

Clayton informs Bradley and Rebecca that they must file Form 114 because the sum of the maximum values of these accounts during 2015 exceeds \$10,000. Because all the accounts that have Rebecca's name on them also include Bradley as joint owner, one Form 114 can be filed for both spouses. This is possible as long as all the requirements are met (such as ensuring that Form 114 is timely filed with Bradley's electronic signature and that Form 114a is signed by both spouses and retained).

Clayton files Form 114 for the 2015 tax year **before the June 30, 2016, deadline**. He completes Form 114 using the BSA e-filing system website at **uofi.tax/15b2x7** [<http://bsaefiling.fincen.treas.gov/NoRegFBARFiler.html>]

The completed forms follow. The signature page used to submit Form 114 once it has been completed is shown first.

Note. For joint accounts, line 24 indicates the number of joint account owners. The number indicated includes only owners other than the filer.

²⁴ Instructions for FinCEN Form 114.

2015 Workbook

For Example 7

Report of Foreign Bank and Financial Accounts

Home


Filer Information

Financial Account Owned Separately/Jointly

No Financial Interest Account Information

Consolidated Report

Signature Information



Report of Foreign Bank and Financial Accounts

Version Number: 1.0

FinCEN Form 114 OMB No. 1506-0009 Effective October 1, 2013

The FBAR must be received by the Department of Treasury on or before June 30th of the year immediately following the calendar year being reported. The June 30th filing date may not be extended.

IMPORTANT : After you have completed this FBAR, you must **Sign the Form** and **Save** in order to activate the **Ready to File** button, which will direct you to a page where you can attach and submit your report. Click **Validate** to identify missing or incorrectly formatted data at any time during preparation of this report. Click **Print** to print a copy of this report for record keeping purposes.

Filing name (e.g. SMITH FBAR 2013)

Sign the Form

Save

Validate

Print

Ready To File

If this report is being filed late, select the reason for filing late

This form should be used to report a financial interest in, signature authority, or other authority over one or more financial accounts in foreign countries, as required by the Department of the Treasury Regulations 31 CFR 1010.350 . No report is required if the aggregate value of the accounts did not exceed \$10,000. See help text instructions For Definitions.

PRIVACY ACT AND PAPERWORK REDUCTION ACT NOTICE

Pursuant to the requirements of Public Law 93-579 (Privacy Act of 1974), notice is hereby given that the authority to collect information on FinCEN 114 in accordance with 5 USC 552a (e) is Public Law 91-508; 31 USC 5314; 5 USC 301; 31 CFR 1010.350. The principal purpose for collecting the information is to assure maintenance of reports where such reports or records have a high degree of usefulness in criminal, tax, or regulatory investigations or proceedings. The information collected may be provided to those officers and employees of any constituent unit of the Department of the Treasury who have a need for the records in the performance of their duties. The records may be referred to any other department or agency of the United States upon the request of the head of such department or agency for use in a criminal, tax, or regulatory investigation or proceeding. The information collected may also be provided to appropriate state, local, and foreign law enforcement and regulatory personnel in the performance of their official duties. Disclosure of this information is mandatory. Civil and criminal penalties, including in certain circumstances a fine of not more than \$500,000 and imprisonment of not more than five years, are provided for failure to file a report, supply information, and for filing a false or fraudulent report. Disclosure of the Social Security number is mandatory. The authority to collect is 31 CFR 1010.350 (formerly 31 CFR 103.24) . The Social Security number will be used as a means to identify the individual who files the report. The estimated average burden associated with this collection of information is 20 minutes per respondent or record keeper, depending on individual circumstances. Comments regarding the accuracy of this burden estimate, and suggestions for reducing the burden should be directed to the Financial Crimes Enforcement Network, P. O. Box 39, Vienna, VA 22183, Attn: Office of Regulatory Policy.

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2015 Workbook

For Example 7

2

Report of Foreign Bank and Financial Accounts					
Home	Filer Information	Financial Account Owned Separately/Jointly	No Financial Interest Account Information	Consolidated Report	Signature Information

1 This report is for calendar year ended 12/31 Amended ☐ Prior Report BSA Identifier

Part I Filer Information

2 Type of filer

3 U.S. Taxpayer Identification Number

3a TIN type

4 Foreign identification

a Type

b Number

c Country/Region of issue

5 Individual's date of birth

6 Last name or organization's name

7 First name

8 Middle name

8a Suffix

9 Address

10 City

11 State

12 ZIP/postal code

13 Country/Region

14a Does the filer have a financial interest in 25 or more financial accounts?

☐ Yes Enter number of accounts If "Yes" is checked do not complete Part II or Part III, but retain records of this information

☒ No

14b Does the filer have signature authority over but no financial interest in 25 or more financial accounts?

☐ Yes Enter number of accounts If "Yes" is checked Complete Part IV items 34 through 43 for each person on whose behalf the filer has signature authority.

☒ No

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2015 Workbook

For Example 7

Report of Foreign Bank and Financial Accounts					
Home	Filer Information	Financial Account Owned Separately/Jointly	No Financial Interest Account Information	Consolidated Report	Signature Information
Part II Information on Financial Account(s) Owned Separately 1 of 1 + -					
15 Maximum account value	<input type="text" value="60,147"/>		15a Maximum account value unknown <input type="checkbox"/>		
16 Type of account	<input type="text" value="Other"/>		<input type="text" value="Canadian RRSP"/>		
17 Financial institution name	<input type="text" value="First Bank of Canada"/>				
18 Account number or other designation	<input type="text" value="6211573"/>				
19 Address	<input type="text" value="123 Bloor Street"/>				
20 City	<input type="text" value="Toronto"/>	21 State	<input type="text" value="ON"/>		
22 Foreign postal code	<input type="text" value="N7T3E5"/>	23 Country/Region	<input type="text" value="CA"/>		

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2015 Workbook

For Example 7

2

Report of Foreign Bank and Financial Accounts					
Home	Filer Information	Financial Account Owned Separately/Jointly	No Financial Interest Account Information	Consolidated Report	Signature Information

Part III Information on Financial Account(s) Owned Jointly 1 of 2		+	-
---	--	---	---

Account Information			
15 Maximum account value	13,157	15a Maximum account value unknown	<input type="checkbox"/>
16 Type of account	Bank		
17 Financial institution name	Canadian Bank of Young Street		
18 Account number or other designation	CH-345-89876-002		
19 Address	1 Young Street Place		
20 City	Toronto	21 State	ON
22 Foreign postal code	N8T6R1	23 Country/Region	CA
24 Number of joint owners	1		

Principal Joint Owner Information			
25 Taxpayer Identification Number (TIN)	999564748	25 a TIN type	SSN/ITIN
26 Last name or organization name	Moulton		
27 First name	Rebecca		
28 Middle name	Frances		
28a Suffix			
29 Address	1234 Suffolk Street		
30 City	Chicago	31 State	IL
32 ZIP/postal code	60630	33 Country/Region	US

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2015 Workbook

For Example 7

Report of Foreign Bank and Financial Accounts					
Home	Filer Information	Financial Account Owned Separately/Jointly	No Financial Interest Account Information	Consolidated Report	Signature Information

Part III Information on Financial Account(s) Owned Jointly 2 of 2		+	-
---	--	---	---

Account Information			
15 Maximum account value	156,007	15a Maximum account value unknown	<input type="checkbox"/>
16 Type of account	Securities		
17 Financial institution name	Seventh Street Brokerage Services		
18 Account number or other designation	B56568500C		
19 Address	77 Seventh Street		
20 City	Mississauga	21 State	ON
22 Foreign postal code	M7M8G2	23 Country/Region	CA
24 Number of joint owners	1		

Principal Joint Owner Information			
25 Taxpayer Identification Number (TIN)	999564748	25 a TIN type	SSN/ITIN
26 Last name or organization name	Moulton		
27 First name	Rebecca		
28 Middle name	Frances		
28a Suffix			
29 Address	1234 Suffolk Street		
30 City	Chicago	31 State	IL
32 ZIP/postal code	60630	33 Country/Region	US

2015 Workbook

For Example 7

2

Report of Foreign Bank and Financial Accounts					
Home	Filer Information	Financial Account Owned Separately/Jointly	No Financial Interest Account Information	Consolidated Report	Signature Information

Part IV Information on Financial Account(s) Where Filer has Signature or Other Authority but No financial Interest in the Account(s) 1 of 1 + -

Account Information

15 Maximum account value 15a Maximum account value unknown ☐

16 Type of account

17 Financial institution name

18 Account number or other designation

19 Address

20 City 21 State

22 Foreign postal code 23 Country/Region

Owner Information + -

34 Last name or organization name

35 Taxpayer Identification Number (TIN) 35 a TIN type

36 First name

37 Middle name

37a Suffix

38 Address

39 City

40 State/territory/province

41 ZIP/postal code

42 Country/Region

43 Filer's title with this owner

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2015 Workbook

For Example 7

Report of Foreign Bank and Financial Accounts			
Home	Filer Information	Financial Account Owned Separately/Jointly	No Financial Interest Account Information
Consolidated Report		Signature Information	

Part V Information on Financial Account(s) Where Filer is Filing a Consolidated Report 1 of 1 + -

Account Information

15 Maximum account value

15a Maximum account value unknown

☐

16 Type of account

17 Financial institution name

18 Account number or other designation

19 Address

20 City

21 State

22 Foreign postal code

23 Country/Region

Owner Information + -

34 Organization name

35 Taxpayer Identification Number (TIN)

35 a TIN type

38 Address

39 City

40 State/territory/province

41 ZIP/postal code

42 Country/Region

For Example 7


2

Report of Foreign Bank and Financial Accounts	
Home	Filer Information
<p>Signature 44a Click here <input type="checkbox"/> if this report is completed by a third party preparer, complete the third party preparer section.</p> <p>44 Filer signature Please return to the Home tab to sign the report.</p> <p>45 Filer title <input type="text"/></p> <p>46 Date of signature <input type="text"/> (Date of signature will be auto-populated when the report is signed.)</p> <p>Third Party Preparer Use Only</p> <p>47 Preparer's last name <input type="text" value="Hill"/></p> <p>48 First name <input type="text" value="Clayton"/></p> <p>49 Middle name/initial <input type="text" value="B"/></p> <p>50 Check <input type="checkbox"/> if self employed</p> <p>51 Preparer's TIN <input type="text" value="999 88 7777"/> 51a TIN type <input type="text" value="SSN/TIN"/></p> <p>52 Contact phone number <input type="text"/> 52a Extension <input type="text"/></p> <p>53 Firm's name <input type="text" value="Hill Tax Preparation Services"/></p> <p>54 Firm's TIN <input type="text"/> 54a TIN type <input type="text"/></p> <p>55 Address <input type="text" value="963 Main Street"/></p> <p>56 City <input type="text" value="Joliet"/></p> <p>57 State <input type="text" value="IL"/></p> <p>58 ZIP/postal code <input type="text" value="60431"/></p> <p>59 Country/Region <input type="text" value="US"/></p> <p>Back to Home</p>	

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2015 Workbook

Clayton also completes the following Form 114a showing that Rebecca has authorized Bradley to file Form 114 on her behalf. Both Bradley and Rebecca must sign this form. Form 114a is not filed with FinCEN but must be retained in case FinCEN requests it.

<p>Form 114a</p> <p>Department of the Treasury Financial Crimes Enforcement Network (FinCEN)</p> <p>October 2013</p>	<h2 style="margin: 0;">Record of Authorization to Electronically File FBARS</h2> <p>(See instructions below for completion)</p> <p><u>Do not send to FinCEN. Retain this form for your records.</u></p>	
Part I Persons who have an obligation to file a Report of Foreign Bank and Financial Account(s)		
1. Owner last name or entity's legal name Moulton	2. Owner first name Bradley	3. Owner M. I. C
4. Spouse last name (if jointly filing FBAR - see instructions below) Moulton	5. Spouse first name Rebecca	6. Spouse M. I. F
<p>I/we declare that I/we have provided information concerning <u>2</u> (enter number of accounts) foreign bank and financial account(s) for the filing year ending December 31, 2015 to the preparer listed in Part II; that this information is to the best of my/our knowledge true, correct, and complete; that I/we authorize the preparer listed in Part II to complete and submit to the Financial Crimes Enforcement Network (FinCEN) a Report of Foreign Bank and Financial Accounts (FBAR) based on the information that I/we have provided; and that I/we authorize the preparer listed in Part II to receive information from FinCEN, answer inquiries and resolve issues relating to this submission. I/we acknowledge that, notwithstanding this declaration, it is my/our legal responsibility, not that of the preparer listed in Part II, to timely file an FBAR if required by law to do so.</p>		
7. Owner signature (Authorized representative if entity)	8. Date 06/02/2015 MM DD YYYY	9. Owner or entity TIN 9 9 9 6 5 4 2 4 2
11. Spouse signature	12. Date 06/02/2015 MM DD YYYY	13. Spouse TIN 9 9 9 5 6 4 7 4 8
<p>10. TIN type a <input type="checkbox"/> EIN b <input checked="" type="checkbox"/> SSN/ITIN c <input type="checkbox"/> Foreign</p> <p>14. TIN type a <input type="checkbox"/> EIN b <input checked="" type="checkbox"/> SSN/ITIN c <input type="checkbox"/> Foreign</p>		
Part II Individual or Entity Authorized to File FBAR on behalf of Persons who have an obligation to file.		
15. Preparer last name Hill	16. Preparer first name Clayton	17. Preparer M.I. B
18. Preparer PTIN P12345678		
19. Address 963 Main St.	20. City Joliet	21. State IL
22. ZIP/postal code 60431		
23. Country code US	24. Preparer's (item 15) employer's (Entity) name Hill Tax Preparation Service	25. Employer EIN
26. Preparer's signature		
<p style="text-align: center;">Instructions for completing the FBAR Signature Authorization Record This is a fill and print form using Adobe Reader</p> <p>This record may be completed by the individual or entity granting such authorization (Part I) OR the individual/entity authorized to perform such services. The completed record <u>must</u> be signed by the individual(s)/entity granting the authorization (Part I) and the individual/entity that will file the FBAR. The Preparer/filing entity must be registered with FinCEN BSA E-File system. (See http://bsaeifiling.fincen.treas.gov/main.html for registration).</p> <p>Read and complete the account owner statement in Part I.</p> <p>To authorize a third party to file the Foreign Bank and Financial Accounts Report (FBAR), the account owner should complete Part I, items 1 through 3 (as required), sign and date the document in Part I, Items 7/8 and complete items 9 and 10.</p> <p><u>Accounts Jointly Owned by Spouses (see exceptions in the FBAR instructions)</u></p> <p>If the account owner is filing an FBAR jointly with his/her spouse, the spouse must also complete Part I, items 4 through 6. The spouse must also sign and date the report in items 11/12, and complete items 13 and 14. A third party preparer may be one of the spouses of the jointly owned foreign account. In this case, both spouses must complete Part I of form 114a in its entirety. The third party preparer (spouse) that will file the FBAR on behalf of both spouses will complete Part II in its entirety (do not use such terms as <i>see above</i>, or <i>same as item number x</i>).</p> <p>Complete Part II, items 15 through 18 with the preparer's information. The address, items 19 through 23, is that of the preparer or the preparer's employer if the preparer is an employee. Record the employer's information (if any) in items 24 and 25. If the preparer does not have a PTIN, leave item 18 blank. The third party preparer <u>must</u> sign in item 26 of Part II indicating that the FBAR will be filed as directed by the authorizing authority.</p> <p>The person(s) listed in Part I, and the person listed in Part II as authorized to file on behalf of the person(s) listed in Part I, should retain copies of this record of authorization and the filing itself, both for a period of 5 years. See 31 CFR 1010. 430(d).</p> <p style="text-align: center;">DO NOT SEND THIS RECORD TO FinCEN UNLESS REQUESTED TO DO SO.</p>		

Rev. 10.5 Nov 6, 2013

Note. Both spouses must sign part I of the form. Clayton, the preparer, must sign part II. For box 23, the two-letter country code established by the International Organization for Standardization is used. These country codes are found at uofi.tax/15b2x11 [www.iso.org/iso/home/standards/country_codes/country_names_and_code_elements_txt-temp.htm].

Special Filing Rules for Multiple Accounts²⁵

If the U.S. person filing Form 114 has **financial interests** in 25 or more foreign financial accounts, parts II and III of Form 114 do not need to be completed. Only part I should be completed. The filer's identifying information and the number of accounts are entered on line 14a of part I. Information about the accounts must be retained by the filer in case it is requested by FinCEN.

If the U.S. person has **signature authority** over 25 or more foreign financial accounts but does not have financial interests in these accounts, their identifying information is indicated in part I. The number of accounts over which the filer has signature authority is reported on line 14b. In addition, account ownership information is entered in part IV, lines 34 through 43. A U.S. person who meets all the following criteria is required to complete only part I and lines 34 through 43 of part IV.²⁶

1. Resides outside the United States
2. Is an officer or employee of an employer who is physically located outside the United States
3. Has signature authority over (but no financial interest in) a foreign financial account maintained or owned by their employer

If the filer is an entity that directly or indirectly owns more than 50% of another entity that is required to file Form 114, a **consolidated** Form 114 can be filed for both entities.

Note. For further details on consolidated filing, the special filing rules associated with filers who have 25 or more accounts subject to disclosure, or U.S. persons who meet the preceding three criteria, see the instructions for Form 114 at **uofi.tax/15b2x12** [www.fincen.gov/forms/files/FBAR%20Line%20Item%20Filing%20Instructions.pdf]. To access the consolidated form filing section of Form 114, click on the tab at the top of the online Form 114 that says "Consolidated Report."

Filing Form 114 for Children²⁷

The rules indicate that a child may be responsible for filing Form 114. If a child cannot file their Form 114 for any reason (including age), the child's parent, guardian, or other legal representative must file it for them. The parent, guardian, or legal representative must also sign the form for the child if the child is unable to do so.

Amended Filings²⁸

To amend Form 114 after it has been filed, a new Form 114 must be electronically filed that reflects the information necessitating the amendment. To indicate that an amended form is being filed, the filer should check the box immediately above part I.

Note. The Internal Revenue Manual provides additional helpful information about filing Form 114. It is available at **uofi.tax/15b2x13** [www.irs.gov/irm/part4/irm_04-026-016.html].

²⁵ FinCEN Final Rule RIN 1506-AB08, 76 FR 10234 (Feb. 24, 2011).

²⁶ Instructions for FinCEN Form 114.

²⁷ Ibid.

²⁸ Ibid.

Recordkeeping Requirement²⁹

A U.S. person required to file Form 114 is obligated to retain records for a period of **five years after the form's June 30 due date**. These records must show the following information.

- The name in which each foreign financial account is maintained
- Each account number (or other similar designation)
- The name and address of the FFI that maintains the account
- The type of each account
- The maximum account value attained by each account during the reporting year

Note. For tax years beginning after December 31, 2015, the due date for Form 114 will be April 15. Taxpayers will be allowed a 6-month extension.

Penalties

A U.S. person who fails to file a required Form 114 may be subject to a maximum civil penalty of \$10,000 per violation.³⁰ However, the penalty may be waived if there was reasonable cause for failure to file Form 114 and the amount of the transaction (or account balance) was properly reported.³¹ If the failure to file was willful, the penalty may be as high as the greater of \$100,000 or 50% of the total balance of the foreign account.³²

Failure to file Form 114, failure to report information on Form 114, and filing a false Form 114 may result in criminal penalties. A maximum criminal fine of \$250,000 or imprisonment for up to five years may be imposed. However, if the violation forms part of an overall pattern of illegal activity, the criminal fine and sentence may increase to \$500,000 and 10 years, respectively.³³ Under the statute that provides for the criminal penalties,³⁴ both the criminal fine and imprisonment may be imposed.

The government has been successful in filing lawsuits against noncompliant taxpayers to enforce and collect penalties.³⁵

Note. For additional details on the penalties associated with Form 114, see IRM 4.26.16.4 (2008) *et seq.*

FOREIGN ACCOUNT TAX COMPLIANCE ACT

FATCA consists of account disclosure requirements that apply to a **specified person** who has an **interest in reportable specified foreign financial assets** (SFFA) that exceed an applicable **threshold**. The **disclosure** is made by filing an information return with the taxpayer's annual tax return.

Note. These FATCA disclosure requirements are effective for all tax years ending after December 19, 2011. Taxpayers may elect to apply these FATCA rules to earlier tax years.³⁶

²⁹ Ibid.

³⁰ 31 USC §5321(a)(5)(B).

³¹ Ibid.

³² 31 USC §5321(a)(5)(C).

³³ 31 USC §5322(b).

³⁴ 31 USC §5322(a), (b).

³⁵ See *U.S. v. Williams*, 489 Fed.Appx. 655 (4th Cir. 2012), and *U.S. v. McBride*, 908 F.Supp.2d 1186 (D. Utah 2012).

³⁶ Treas. Reg. §1.6038D-2(g).

Specified Persons

Under FATCA, a **specified person** is:³⁷

- A U.S. citizen or resident alien,
- A nonresident alien married to a U.S. citizen who elects to be treated as a U.S. citizen for tax purposes, or
- A nonresident alien who is a bona fide resident of Puerto Rico or a U.S. possession and who is required to file an annual tax return.

Note. A taxpayer qualifying as a resident alien under either the Green Card test or substantial presence test is a specified individual even if they elect to be taxed as a resident of a foreign country under the terms of a tax treaty.

Note. Proposed regulations have been **drafted** to make certain corporations, partnerships, and trusts subject to the FATCA disclosure requirements. These rules are not effective until the proposed regulations become final. For further information, see IRS Notice 2013-10 and Prop. Treas. Reg. §1.6038D-6. **As of this volume's publication date, there is no FATCA reporting requirement for entities.**

Interest in Specified Foreign Financial Assets

To be subject to the FATCA disclosure rules, the specified person must have the type of interest in an SFFA that is covered by FATCA. FATCA applies if the interest is such that the specified person is or would be obligated to report any income, gains, losses, deductions, or credits generated by the asset (regardless of whether there are any such items to actually report in the tax year).³⁸

For a parent making an election to report a child's unearned income on the parent's return, the parent is considered to be the specified person having an interest in an SFFA held by the child.

Note. For further details on this election, see IRC §1(g)(7) and the instructions for Form 8814, *Parents' Election To Report Child's Interest and Dividends*. For further guidance, see IRS Pub. 929, *Tax Rules for Children and Dependents*.

Note. Special rules apply to a specified person who obtains an interest in an SFFA through the performance of services. For the applicable rules, see Treas. Reg. §1.6038D-2(b)(2).

Generally, if an entity (such as a corporation, partnership, or trust) holds SFFAs, the specified person is not considered to have an interest in those SFFAs solely because of their status as a shareholder, partner, or beneficiary of the entity.³⁹ However, a specified person who owns a foreign disregarded entity is treated as directly owning the SFFAs within that entity. If a specified person is considered the owner of a trust under the Code, they are treated as having an interest in the SFFAs held in the trust.⁴⁰

Note. IRC §§671 through 679 provide the relevant rules for trust ownership.

Note. For a specified person that owns an interest in a foreign corporation or partnership, it is the foreign corporation or partnership interest that is subject to FATCA disclosure rules — not the assets indirectly held within the entity. This is discussed in the next section.

³⁷ Treas. Reg. §1.6038D-1(a)(1).

³⁸ Treas. Reg. §1.6038D-2(b)(1).

³⁹ Treas. Reg. §1.6038D-2(b)(4)(i).

⁴⁰ Treas. Reg. §1.6038D-2(b)(4)(ii).

Specified Foreign Financial Assets

Generally, an SFFA is a **financial account** maintained by an **FFI**. The following assets are considered SFFAs if they are not in an account with an FFI but are held for investment purposes.⁴¹

- A stock or security issued by a non-U.S. person
- An interest in a foreign entity
- A financial instrument or contract having an issuer or counterparty who is not a U.S. person

U.S. Person. A U.S. person is any one of the following.⁴²

- A U.S. citizen or resident
- A domestic corporation, partnership, or estate
- Certain trusts

A **domestic estate** is a U.S. person; however, a **foreign estate** is not a U.S. person. A foreign estate is an estate that receives foreign income that is not reportable under federal tax law.⁴³

A **trust** is a U.S. person if the following two items apply.⁴⁴

1. A U.S. court has jurisdiction to supervise administration of the trust.
2. U.S. persons have authority to control the substantial decisions made by the trust.

A **trust** for which these two criteria do not apply is considered a foreign trust.⁴⁵

Financial Accounts. Most financial accounts maintained by an FFI (including a financial institution organized under the laws of a U.S. possession) are SFFAs. This includes depository and custodial accounts. Some types of accounts, however, are specifically excluded from the SFFA definition. These **excepted financial accounts** are:⁴⁶

- Accounts maintained by a **U.S. payor**, and
- Holdings subject to the **mark-to-market rules** of IRC §475(e).

⁴¹. Instructions for Form 8938.

⁴². IRC §7701(a)(30).

⁴³. IRC §7701(a)(31)(A).

⁴⁴. IRC §7701(a)(30)(E).

⁴⁵. IRC §7701(a)(31)(B).

⁴⁶. Treas. Reg. §1.6038D-3(a)(3).

A U.S. payor is:⁴⁷

- Any U.S. person;
- The government or any government agency of the United States or a state;
- A foreign corporation in which more than half of the total combined voting power or the total stock value is owned by U.S. shareholders on any day of the tax year of the foreign corporation;⁴⁸

Note. Special rules for constructive ownership apply to the ownership of foreign corporation stock. See IRC §§957(a) and 958(a) for further details.

- A foreign partnership in which one or more partners are U.S. persons owning (in the aggregate) more than half of the income or the capital interest at any time during the tax year;
- A foreign partnership that is engaged in conducting a trade or business in the United States at any time during the tax year; or
- A foreign person with more than half of their gross income effectively connected with a U.S. trade or business for the past three years.

Note. In determining whether a foreign person is a U.S. payor, the relevant period used is the three years “ending with the close of [the foreign person’s] taxable year preceding the collection or payment.” The meaning of this phrase is not entirely clear. See Treas. Reg. §1.6049-5(c)(5)(i)(E) for further details, including application of the test for foreign persons with less than a 3-year history to consider.

Note. The IRC §475(e) mark-to-market rules generally apply to securities dealers. For further information, see IRC §475 and **uofi.tax/15b2x14** [www.irs.gov/taxtopics/tc429.html].

The FATCA disclosure rules are intended to reach SFFA assets if they are **held for investment**. An asset is considered to be held for investment if it is **not** used in a trade or business.⁴⁹ To determine whether an asset is used in a trade or business, the regulations provide a trade or business test. An asset is used in a trade or business if it is:⁵⁰

- Held for the principal purpose of promoting the present operation of the trade or business,
- Acquired and held in the ordinary course of the trade or business, or
- Otherwise held in **direct relationship** to the trade or business.

To be considered an asset held in direct relationship to a trade or business, the asset must be needed in the trade or business. Holding the asset to meet an anticipated future need is not sufficient. An asset is considered to be needed in the trade or business if it is used to meet operating expenses. If the asset is held to provide for future diversification into a new business or for a future acquisition, it is not considered to be held in direct relationship to the business and therefore does not meet the trade or business test.⁵¹

Shares of stock are never considered to be held for use in a trade or business under these rules.⁵²

⁴⁷ Treas. Reg. §1.6049-5(c)(5).

⁴⁸ See IRC §957(a).

⁴⁹ Treas. Reg. §1.6038D-3(b)(3).

⁵⁰ Treas. Reg. §1.6038D-3(b)(4).

⁵¹ Treas. Reg. §1.6038D-3(b)(5).

⁵² Ibid.

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The regulations associated with the trade or business test provide a **presumption of direct relationship** when determining whether the asset is held in direct relationship to the trade or business.⁵³ Under this presumption, an asset is treated as held in direct relationship to the trade or business if **all** the following apply.

- The asset was acquired using funds generated by the trade or business (or group of businesses owned by the same specified person).
- The income earned from the asset is retained or reinvested in the trade or business.
- Personnel who are actively involved in the business exercised significant management and control over investment of the asset.

An interest in a foreign social security, social insurance, or similar program of a foreign government does not constitute an SFFA.⁵⁴ However, a foreign pension plan, deferred compensation plan, or foreign individual retirement account may constitute an SFFA.

An interest in a foreign estate or a foreign trust is not an SFFA unless the person knows or has reason to know (based on readily accessible information) that they have such an interest. Any receipt of a distribution constitutes knowledge of the interest.⁵⁵

Observation. Form 114 may also be required for the same accounts that must be disclosed under FATCA.

Example 8. Giancarlo lives in Syracuse, New York, and is a U.S. citizen. He directly owns a vacation home in Napoli, Italy. The vacation home is not an SFFA.

Example 9. Use the same facts as **Example 8**, except Giancarlo's vacation home is owned by an Italian corporation. Giancarlo owns a 30% interest in the Italian corporation, and other family members own the remaining 70% interest. Although the vacation home is not an SFFA, Giancarlo's interest in the Italian corporation is an SFFA. The value of the vacation home is taken into account in determining the value of Giancarlo's interest in the foreign corporation when he discloses it under FATCA.

Example 10. Claire has a Green Card issued by U.S. Citizenship and Immigration Services. She is a British citizen who lives in Rhode Island. She has a safe deposit box at Barclay's Bank in England, in which she holds a substantial amount of British currency. The foreign currency is not an SFFA.

Example 11. Use the same facts as **Example 10**, except instead of holding the cash in a safe deposit box, Claire has these funds on deposit in a savings account at Barclay's Bank. The foreign bank account is an SFFA.

Example 12. Liza is a U.S. citizen who has invested millions of dollars in precious paintings and sculptures. She owns the paintings and sculptures and has made them available for display at the Hungarian National Museum. Liza's artwork is not an SFFA.

Note. For a helpful reference about whether common types of assets are SFFAs, see uofi.tax/15b2x15 [www.irs.gov/Businesses/TypesofForeignAssetsandWhetherTheyareReportableonForm-8938].

⁵³ Treas. Reg. §1.6038D-3(b)(5)(ii).

⁵⁴ Instructions for Form 8938.

⁵⁵ Treas. Reg. §1.6038D-3(c).

Thresholds

Disclosure is required if the specified person's SFFAs are in excess of a certain threshold. The threshold that applies is based on filing status. Disclosure is required if the SFFAs exceed either:

- A threshold value at the **end** of the tax year, or
- A threshold value at any time **during** the tax year.

The following table summarizes the filing status and threshold values that determine whether the taxpayer has a filing requirement.⁵⁶

Note. The threshold amounts are not subject to an annual inflation adjustment.

Filing Status	Taxpayers Living in the U.S.		Taxpayers Living Outside the U.S.	
	End of Year	During Year	End of Year	During Year
Unmarried (Single, HoH, QW)	\$ 50,000	\$ 75,000	\$200,000	\$300,000
MFJ	100,000	150,000	400,000	600,000
MFS	50,000	75,000	200,000	300,000

Note. A person who is not a U.S. citizen may be treated as a U.S. resident for tax purposes if they are physically present in the United States for a period of time sufficient to meet the **substantial presence test**.

Valuation Rules.⁵⁷ Generally, the **maximum fair market value (FMV)** of an asset during the year should be used for both threshold determination and reporting purposes. However, a reasonable estimate of an asset's maximum FMV can be used for these purposes.

If the asset is valued or denominated in a foreign currency, that foreign currency value must be converted to U.S. dollars for threshold determination and reporting purposes.

Note. For currency conversions, the Treasury Department's Bureau of the Fiscal Service provides the exchange rates that must be used. Current and historical exchange rates may be found at **uofi.tax/15b2x16** [www.fiscal.treasury.gov/fsreports/rpt/treasRptRateExch/treasRptRateExch_home.htm]. If no Treasury Department rate is available for the currency, another publicly available source may be used to determine the exchange rate.

Regardless of the foreign currency involved, the correct exchange rate to use is the rate used to purchase U.S. dollars on the last day of the specified person's tax year (even if the asset was disposed of earlier in that year).

Note. An asset with a negative value is treated as having a value of zero for threshold determination purposes.⁵⁸

⁵⁶ IRC §6038D(a); Instructions for Form 8938.

⁵⁷ Treas. Reg. §1.6038D-5.

⁵⁸ Treas. Reg. §1.6038D-2(a)(5).

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For a **financial account**, a financial institution may provide periodic statements showing the account value. If such statements are produced at least annually, they may reasonably be relied on to determine the account's maximum value for threshold and reporting purposes. Any currency conversions into U.S. dollars shown on the statements can also be reasonably relied on. However, these statements may not be relied on if there is reason to know, based on **readily accessible** information, that the statements do not reflect a reasonable estimate of the account's maximum value during the year.

Generally, for an asset that is **not a financial account** maintained at a financial institution, the value of the asset on the last day of the tax year may serve as the maximum value for threshold determination and reporting purposes. This value may be used unless there is reason to know that it is not a reasonable estimate of the asset's maximum value.

If the person has **readily accessible** information that the value on the last day of the year does not reflect a reasonable estimate of the SFFA's maximum FMV, the value on the last day of the year cannot be used. Instead, the actual maximum value should be used (or a more reasonable estimate if the actual maximum value cannot be obtained).

Example 13. Yasmine, a single woman, has a Green Card and lives in Chicago. She owns stock in Luxembourg Banking Enterprises, SA, a publicly listed Luxembourg corporation. The shares of stock are not held in a financial account. Yasmine has share certificates and therefore directly owns the shares. On December 31, 2015, the shares are worth \$46,000 in U.S. dollars (USD). However, in July 2015, the shares reached a peak value of \$78,000. Yasmine has a FATCA filing requirement because even though the yearend FMV of the shares does not exceed the applicable yearend filing threshold of \$50,000, the maximum FMV of \$78,000 exceeds the threshold of \$75,000 during the year. Ownership of the shares must be disclosed.

Example 14. Use the same facts as **Example 13**, except Yasmine holds her shares in a financial account at LuxBrokerz. LuxBrokerz is a stock brokerage firm in Luxembourg. The only information Yasmine receives each year about her shares is a yearend statement from LuxBrokerz showing the December 31 value. Even though guidance indicates that a yearend statement may be relied on for financial accounts, Yasmine has reason to know that the yearend balance is not the maximum FMV. The shares are publicly listed, and the share price throughout the year is readily accessible. Yasmine has a filing requirement.

Example 15. Use the same facts as **Example 14**, except Yasmine's shares held in the financial account are not publicly listed. The only information Yasmine receives is a yearend statement from LuxBrokerz showing a valuation of \$46,000 on December 31, 2015. Yasmine did not obtain any other valuation information during 2015. She is entitled to rely on the value shown on the yearend statement. She may use that value as a reasonable estimate for the maximum FMV of the shares. She does not have a 2015 reporting requirement.

For an SFFA interest in a **foreign estate, pension plan, or deferred compensation plan**, the value that must be used for threshold and reporting purposes is the FMV of the total beneficial interest in the asset on the last day of the tax year. However, this may be difficult or impossible to determine. If the FMV of the beneficial interest is not known or readily available, the FMV of any currency or other property actually distributed to the specified person as a beneficiary or participant in the plan may be used. In addition, if the specified person received no distributions during the tax year and does not know or have reason to know (based on readily accessible information) the FMV on the last day of the tax year, the maximum value of the asset for the year is deemed to be zero.⁵⁹

Note. The appropriate value used for an interest in a foreign trust is generally the value of distributions to the specified person, plus the value of that person's right to receive mandatory distributions from the trust. The valuation of these mandatory distribution rights involves the use of valuation tables under IRC §7520. See Treas. Reg. §1.6038D-5(f)(2) and IRC §7520 for further details.

⁵⁹ Instructions for Form 8938.

Special Rule for Joint Interests.⁶⁰ Generally, each specified person who is a joint owner of an SFFA must include the **full value** of the SFFA for both threshold determination and reporting purposes. However, special rules apply to MFJ and MFS taxpayers. For MFS taxpayers, when both spouses are specified individuals, the SFFA value to include for threshold determination purposes is different than the value used for reporting purposes. The following table summarizes the threshold determination and reporting rules for joint interests held by MFJ and MFS taxpayers.

Filing Status	Threshold Determination Rule for Jointly Held SFFAs	Amount of Jointly Held SFFAs to Report
MFJ	Include the value of jointly owned SFFAs only once	Report all assets in which there is a joint interest only once
MFS (when both spouses are specified persons)	Each spouse includes only half of jointly owned SFFAs	Each spouse reports the entire value of jointly held SFFAs
MFS (when one spouse is a specified person)	The specified person includes the entire value of the jointly owned SFFA	The specified person reports the entire value of the jointly owned SFFA

Note. Special rules apply to **dual resident** taxpayers. A dual resident is a person who is treated as a resident of the United States under U.S. rules and simultaneously treated as a resident under the rules of another country. For further information on dual residents and the special rules for FATCA reporting, see Treas. Reg. §§301.7701(b)-7(a)(1) and 1.6038D-2(e), respectively.

Example 16. Scott and Lori are married U.S. residents who file MFJ. On December 31, 2015, they own the following.

- A joint account in the Cayman Islands with a balance of \$90,000 in USD
- A certificate of deposit at Barclay's Bank in the United Kingdom solely in Scott's name with a value of \$10,000 in USD
- A certificate of deposit at the Cayman Islands bank solely in Lori's name with a value of \$1,000 in USD

For threshold determination purposes, Scott and Lori must count each other's individual assets. The value of the joint assets are included only once. Scott and Lori's total SFFAs at the end of 2015 for threshold determination purposes are \$101,000 (\$90,000 + \$10,000 + \$1,000). This amount exceeds the yearend \$100,000 threshold applicable to MFJ taxpayers. Scott and Lori are required to report these SFFAs under the FATCA rules. Under the reporting rules, each of the three assets is only reported once on Scott and Lori's joint disclosure.

Example 17. Use the same facts as **Example 16**, except Scott is not a specified person and the spouses file separately. For threshold determination purposes, Lori must include the entire value of the jointly owned Cayman Islands bank account plus her own certificate of deposit. For threshold purposes, Lori therefore has \$91,000 of SFFAs (\$90,000 joint account + \$1,000 certificate of deposit). Because this is above the \$50,000 yearend threshold amount, Lori must report her SFFAs for 2015. Scott has no disclosure requirement because he is not a specified person.

⁶⁰ Treas. Reg. §1.6038D-2(c).

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Example 18. Frank is a citizen of France. He has a Green Card, lives in New York and is a single taxpayer. Each year, Frank travels to Paris, where he operates a lucrative business that operates as a sole proprietorship. The business involves the sale of specialty food items from 20 bicycle carts in a major plaza in Paris during the tourist season. The business employs several persons in France.

The business has been profitable, and Frank has accumulated money in it. He plans to purchase a small café on the plaza. When he is in Paris during the tourist season, he stays at a condominium that he owns.

A couple of years ago, Frank loaned money to his mother. He made the loan to help her purchase a condominium unit in the same building in which his condominium is located. Frank's mother is a citizen of France and resides exclusively in that country. The loan carries a 4% interest rate. Frank's mother repays him in monthly installments.

Frank meets with his tax preparer, Lorenzo, about preparing his 2015 tax return. Frank furnishes Lorenzo with income and expense information for the year. Lorenzo asks Frank some questions about the business income and realizes that Frank has assets outside the United States. Frank indicates that in addition to the condominium, he also has business assets at a French bank, Credit Agricole. The assets at Credit Agricole include a business account from which operating expenses are paid. He also has a certificate of deposit in which the interest is reinvested. These are funds that Frank plans to use to purchase a café.

Frank mentions to Lorenzo that he is eligible for French social security. He is eligible because part of the business tax he pays in France is used to fund a government pension benefit. Frank also tells Lorenzo that he has a personal retirement account in France. (It is analogous to an IRA in the United States.) Frank opened this account during 2015 and deposited \$22,000 into it. He manages the investments in the account, which is held at the Bank of Paris.

In addition to the certificate of deposit mentioned above, Frank also has a money market account that he plans to use for the café purchase. Although the principal amount in this account remains constant, Frank uses the interest earned to pay for personal expenses throughout the year.

Frank mentions that he purchased a futures contract for produce to lock in prices for the following year. He did this through a special account at Credit Agricole. He also owns foreign stocks in a custodial brokerage account at his bank in New York.

Lorenzo asks Frank to create a list of his foreign personal and business assets, and Frank provides the following list.

	FMV on Dec. 31, 2015 in U.S. Dollars
Personal	
Condominium in Paris	\$400,000
Household account for condominium	20,000
Note for loan to mother	157,000
Foreign stocks in U.S. brokerage account	300,000
French personal retirement account	22,000
Business	
Food carts	120,000
Food inventory	52,000
Futures contract for produce	110,000
Credit Agricole business account	116,000
Credit Agricole certificate of deposit	428,000
Credit Agricole money market account	188,000

Observation. Separating assets into personal and business categories may be helpful because the assets in the business category may qualify for the trade or business exception under FATCA rules.

Lorenzo researches the definition of SFFA under the FATCA rules and determines the following.

1. The condominium in Paris is not an SFFA because it is neither a financial account nor any of the other types of assets held for investment purposes that fall under the SFFA definition.
2. The household account for the condominium is an SFFA because it is a financial account.
3. The note relating to the loan Frank made to his mother is an SFFA because it is a financial contract held for investment, and Frank's mother is a non-U.S. counterparty.
4. Even though the stocks in the U.S. brokerage account are foreign stocks, that account is not considered an SFFA because the account is located in the United States. It is therefore not a foreign account with an FFI.
5. Frank's interest in the government-sponsored French social security system is not an SFFA. However, the French personal retirement account is an SFFA because it is a foreign financial account held at an FFI. Frank has signature authority over this account because he can direct changes within it.
6. The food carts and food inventory are not SFFAs because they are neither financial accounts nor any of the other types of assets (stock or securities, financial instruments, or contracts or interests in a foreign entity) held for investment purposes that fall under the SFFA definition.
7. The account at Credit Agricole that holds the futures contract is a foreign financial account and is an SFFA.
8. Because the business account is used to pay operating expenses of the business, it may be regarded as an account held in direct relationship to the business — not as an SFFA.

Note. No guidance exists to address a situation in which the balance in a business account that is used to pay operating expenses is substantially in excess of the amount that would be required to pay the business's normal operating expenses. This appears to be a gray area. Specific guidance indicates that an amount held to meet future needs of the business does not meet the business test. Accordingly, if the balance of an operating account is substantially in excess of the amount needed for typical expenses, it may be prudent to report the account.

9. The funds in the Credit Agricole certificate of deposit are not used to meet operating expenses. They are an asset held for future diversification into a new business or for a future acquisition. Therefore, the funds are not treated as needed by the business and are not considered to be held in direct relationship to the business. The funds do not meet the trade or business test. The certificate of deposit is therefore an SFFA.
10. Although the money market funds were generated by the business and the account is one over which Frank (as business owner) exercises control, the income is not retained in the account. Therefore, the money market account balance is not entitled to the presumption that it is being held in direct relationship to the business. The absence of any direct relationship to the business is also indicated by the fact that Frank is holding these funds for a future acquisition. Accordingly, the money market account is an SFFA.

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Observation. Guidance regarding the trade or business exception mentioned earlier indicates that, as a general rule, assets held for future diversification or future acquisition are not regarded as needed by the business. Such assets are not considered to be held in direct relationship to the business and therefore are SFFAs. However, guidance also indicates that there may be a **presumption** that the funds are held in direct relationship to the business. This presumption exists if the funds are generated from the business, the income is retained in the business, and Frank (as business owner) makes decisions regarding the funds. The certificate of deposit arguably falls under this presumption.

The guidance on **direct relationships** creates a gray area for business-related accounts that represent surplus funds and for funds that do not have a clear purpose. It may be prudent to simply report the accounts in this category unless the purpose **clearly** falls outside the general rule or within the presumption. Requesting documentation from the client may be necessary for the practitioner to make the necessary determination.

Lorenzo asks Frank more questions about the amount in the business account. He concludes that the amount is required for a typical level of operating expenses. Accordingly, Lorenzo decides that the business account is not an SFFA.

Lorenzo summarizes Frank's 2015 SFFAs as follows.

Frank's Specified Foreign Financial Assets for 2015

Household account for condominium	\$ 20,000
Note for loan to mother	157,000
French personal retirement account	22,000
Futures contract for produce	110,000
Credit Agricole certificate of deposit	428,000
Credit Agricole money market account	188,000
Total SFFAs	<u>\$925,000</u>

Because Frank's SFFAs are above the applicable threshold for his filing status, he must disclose them under FATCA rules.

Observation. Although the guidance regarding what constitutes an SFFA provides some basic guidelines, it is not always clear whether a particular type of account falls under the definition of an SFFA. In a questionable case, it may be best to simply report the account, especially given the severe civil and criminal penalties associated with failing to do so. For further guidance on the types of assets that may fall under the definition of an SFFA, see the instructions to Form 8938, *Statement of Specified Foreign Financial Assets*, and **uofi.tax/15b2x17** [www.irs.gov/Businesses/Corporations/Basic-Questions-and-Answers-on-Form-8938].

Reporting Specified Foreign Financial Assets

Form 8938 is used to meet the disclosure requirements for a specified person with an SFFA value in excess of the applicable threshold amount. **Form 8938 is attached to the taxpayer's annual tax return and is due on the same date as the tax return (including extensions).** A blank Form 8938 is shown in the appendix to this chapter.

Note. Presently, there are proposed regulations⁶¹ that would establish a FATCA filing requirement for specified entities. Until these proposed regulations are finalized, there is no filing requirement under FATCA for a domestic entity (such as a corporation or partnership) that holds SFFAs. The proposed regulations would create a filing requirement for domestic entities that are “formed or availed” for purposes of directly or indirectly holding SFFAs. These complex regulations may be finalized at any time.

SFFAs do not need to be reported on Form 8938 if the same SFFAs are reported on Forms 3520, 3520-A, 5471, 8621, or 8865.⁶² However, Form 8938 must still be filed, and part IV must be completed to indicate which other international information returns were used to report the SFFAs that do not appear on Form 8938.

FOREIGN ASSET INFORMATION RETURNS

Several international information returns must be filed for a taxpayer with various interests or transactions with a foreign person or entity. These forms, which are summarized in the following table, are generally required annually.

Note. All of the forms in the following table can be found at **uofi.tax/15b2x20** [<http://apps.irs.gov/app/picklist/list/formsPublications.html>].

International Information Return	Code Reference
Form 3520, <i>Annual Return to Report Transactions With Foreign Trusts and Receipt of Certain Foreign Gifts</i>	IRC §6048
Form 3520-A, <i>Annual Information Return of Foreign Trust With a U.S. Owner</i>	IRC §6048(b)
Form 5471, <i>Information Return of U.S. Persons With Respect To Certain Foreign Corporations</i>	IRC §§6035, 6038 and 6046
Form 5472, <i>Information Return of a 25% Foreign-Owned U.S. Corporation or a Foreign Corporation Engaged in a U.S. Trade or Business</i>	IRC §§6038A, 6038C
Form 926, <i>Return by a U.S. Transferor of Property to a Foreign Corporation</i>	IRC §6038B
Form 8865, <i>Return of U.S. Persons With Respect to Certain Foreign Partnerships</i>	IRC §§6038, 6038B and 6046A

FORM 3520

Generally, IRC §6048 requires an information return to be filed to disclose a **reportable event**. Under this Code provision, a reportable event includes the following.⁶³

- Creation of a foreign trust by a U.S. person
- Transferring money or property to a foreign trust by a U.S. person
- Death of a U.S. citizen or resident having an ownership interest in a foreign trust under the grantor trust rules
- Death of a U.S. citizen or resident with an estate that includes an interest in a foreign trust

⁶¹ NPRM REG-130302-10, 2012-8 IRB 412.

⁶² Instructions for Form 8938.

⁶³ IRC §6048(a)(3)(A).

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However, under these rules, if the trust is a charitable or deferred compensation trust, the event is not reportable.⁶⁴ Moreover, a FMV sale of property to a foreign trust is not a reportable event.⁶⁵

The reportable event must be disclosed by the **responsible party**. The responsible party is the U.S. person who is:⁶⁶

- The grantor who created the foreign trust,
- The transferor of the money or property to the foreign trust, or
- The executor of the decedent's estate that is involved in a reportable event.

A U.S. person who during the tax year is treated as an owner of an interest in a foreign trust under grantor trust rules must disclose that ownership interest. In addition, a U.S. beneficiary who received a distribution (directly or indirectly) from a foreign trust must disclose the distribution.

Note. The grantor trust rules are found in IRC §§671 through 679.

Disclosure must also be made by a U.S. person who receives any of the following as gifts.

- Amounts in excess of \$100,000 from a nonresident alien or foreign estate (Gifts from different foreign nonresident aliens and foreign estates must be aggregated if those persons are related.)
- Amounts in excess of \$15,601 (for 2015) from a foreign corporation or partnership (or from persons related to the foreign corporation or partnership)⁶⁷

Note. For further details on who is a **related person**, see the instructions for Form 3520.

Furthermore, a U.S. person holding a **qualified obligation** (such as a bond, note receivable, or similar type of debt) issued by a related foreign trust (or a U.S. person that issues such an obligation that is held by a foreign trust) during the tax year must disclose the debtor-creditor relationship. In addition, if a related foreign trust held an obligation issued by the U.S. person and the U.S. person treated it as a qualified obligation, disclosure is required.⁶⁸

Disclosure of the preceding reportable events or transactions must be made using Form 3520. Generally, this form is due on the same date (including extensions) as the filer's income tax return. Form 3520 is **not filed** with the annual tax return but is instead mailed to the IRS Service Center in Ogden, Utah.

Note. For additional details on filing deadlines for estates, definitions of terms, persons required to file the form, exceptions to the filing requirement, and penalties for failure to file, see the Form 3520 instructions and Temp. Treas. Reg. §16.3-1.

Form 3520 generally provides the IRS with identifying information about the foreign trust and the responsible party or parties. It also provides information about ownership interests, distributions, and qualified obligations for which IRC §6048 requires disclosure.

Note. Attachments typically must be filed with Form 3520. See the instructions for Form 3520 for further details.

⁶⁴ IRC §6048(a)(3)(B).

⁶⁵ Ibid.

⁶⁶ IRC §6048(a)(4).

⁶⁷ Instructions for Form 3520.

⁶⁸ Ibid.

FORM 3520-A

IRC §6048 also requires a foreign trust to disclose ownership by a U.S. owner. Any U.S. person who owns part or all of a foreign trust under the grantor trust rules is required to disclose that ownership. The U.S. owner is responsible for ensuring the foreign trust's compliance with the annual filing requirement.

A completed Form 3520-A includes the following information.

- Identifying information about the foreign trust
- An income statement and balance sheet for the foreign trust
- A foreign grantor trust owner statement (page 3 of Form 3520-A)
- A foreign grantor trust beneficiary statement (page 4 of Form 3520-A)

The foreign grantor trust owner statement must be completed for each owner of the foreign trust. Each U.S. person who is considered an owner under the grantor trust rules must be furnished with their respective copy of the statement by the 15th day of the third month following the end of the foreign trust's tax year. The foreign grantor trust owner statement reports the foreign trust income and expenses attributable to each owner.

In addition, each U.S. beneficiary must be furnished with their respective copy of the foreign grantor trust beneficiary statement by the 15th day of the third month following the end of the foreign trust's tax year. This part of Form 3520-A describes the property distributed to each U.S. beneficiary and the property's FMV.

Note. For further information about Form 3520-A, see the instructions to Form 3520-A and uofi.tax/15b2x18 [www.irs.gov/uac/About-Form-3520A].

Note. The American Bar Association provides additional information about Forms 3520 and 3520-A at uofi.tax/15b2x19 [www.americanbar.org/publications/probate_property_magazine_2012/2013/july_august_2013/article_kayan_weyenberg_foreign_trusts_form_3520_and_form_3520a.html].

FORM 5471

Form 5471 provides information to the IRS about foreign corporations and the U.S. persons who control them.

Generally, this form must be filed by the following persons.

- An officer or director (who is either a U.S. citizen or resident) of a foreign corporation in which **any** U.S. person acquires stock representing 10% or more of the value or voting power in the foreign corporation (This is referred to as the "10% stock ownership test.")
- Any U.S. person who has a stock ownership interest in a foreign corporation that meets this 10% stock ownership test
- A person who already meets the 10% stock ownership test when they become a U.S. person
- A U.S. person who meets the 10% stock ownership test and disposes of sufficient stock to reduce their ownership to less than 10%
- A U.S. person who has control over a foreign corporation for a continuous period of at least 30 days during the foreign corporation's annual accounting period

Note. Generally, for purposes of this rule, **control** means ownership of more than 50% of either the voting power or the value of the foreign corporation's stock. For further details on the definition of **control** for purposes of this filing requirement, see the Form 5471 instructions.

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- A U.S. shareholder who directly, indirectly, or constructively owns 10% or more of a controlled foreign corporation (CFC) for a continuous period of at least 30 days during the CFC's tax year and who owns the stock on the final day of that tax year

Note. A CFC is a foreign corporation that has U.S. shareholders who own (directly, indirectly, or constructively) more than 50% of either the total voting power or the total value of the foreign corporation's stock on any day of the corporation's tax year. For further information on the definition of a CFC, see IRC §957(a) and Treas. Reg. §1.957-1(a). Special ownership and constructive ownership rules apply under IRC §§958(a) and 958(b), respectively.

Note. Form 5471 includes a schedule that is provided under certain circumstances to each shareholder that shows their share of income and dividends received from the foreign corporation. For further details about Form 5471, including several exceptions to the filing requirement, see the instructions to Form 5471 and IRC §§6035, 6038, and 6046 and the underlying regulations.

FORM 5472

Form 5472 is used to disclose details about reportable transactions between a reporting corporation and a foreign or domestic related party.

A **reportable transaction** includes any of the following transactions if the only payment was in the form of money, part of the consideration was not money, or less than full consideration was paid.⁶⁹

- A sale or purchase of inventory
- A sale or purchase of any tangible property other than inventory
- Rental payments paid or received
- Royalties paid or received
- The sale, lease, or licensing of patents, trademarks, or other intangible property rights
- Commissions paid or received
- Consideration paid or received for managerial, engineering, technical, construction, or other services
- Interest paid or received
- Premiums paid or received for insurance and reinsurance

Note. Several other types of transactions constitute reportable transactions, and there are also some exceptions. For further details, see the instructions to Form 5472 and Treas. Reg. §1.6038A-2.

⁶⁹ Treas. Reg. §§1.6038A-2(b)(3), (4).

Generally, a **reporting corporation** is either:⁷⁰

- A U.S. corporation that has at least one foreign shareholder at any time during the year who owns (directly or indirectly) at least 25% of the voting power or value of stock, or
- A foreign corporation engaged in a trade or business in the United States.

Note. The attribution rules of IRC §318 apply in determining whether there is sufficient indirect ownership to meet the definition of a **reporting corporation**. For further details on the definition of a reporting corporation, see the instructions to Form 5472.

The definition of a **related party** includes any direct or indirect 25% foreign shareholder of the reporting corporation and other parties who are related to the 25% foreign shareholder or to the reporting corporation. A modified version of the IRC §318 attribution rules applies to the definition of **related party**.⁷¹

Note. The definition of **related party** makes reference to various Code sections, including §§267(b) and 707(b)(1). See the instructions for Form 5472 for further details.

Generally, a reporting corporation must file Form 5472 if it had any reportable transactions with either a foreign or domestic related party.⁷²

Note. There are several exceptions to the filing requirement. See the instructions for Form 5472 for a list of these exceptions.

Form 5472 must be filed with the reporting corporation's annual income tax return. The due date for filing Form 5472 is the same as that for filing the corporate tax return (including extensions). For tax years ending after December 23, 2014, Form 5472 will not be considered timely filed if it is filed separately from the tax return.⁷³

⁷⁰ Instructions for Form 5472.

⁷¹ IRC §6038A(c)(2).

⁷² Instructions for Form 5472.

⁷³ Ibid.

FORM 926

Generally, Form 926 must be filed by a U.S. citizen or resident, a domestic corporation, or a domestic estate or trust to disclose certain transfers of property to a foreign corporation. In addition, U.S. partners of a foreign or domestic partnership that make such transfers must also file this form.⁷⁴

A U.S. person transferring cash to a foreign corporation must report the cash transfer on Form 926 if **either** of the following applies.

- Immediately after the transfer, the U.S. person owns at least 10% (directly or indirectly) of either the total voting power or the total stock value of the foreign corporation.
- The U.S. person has transferred more than \$100,000 to the foreign corporation during the 12-month period ending on the date of the transfer.

Note. A modified version of the IRC §318 attribution rules is used to determine indirect ownership. For further details on these attribution rules and the transfers covered by Form 926, see Treas. Regs. §§1.6038B-1 and 1.6038B-2 and Temp. Treas. Reg. §1.6038B-1T. These regulations and the Form 926 instructions provide guidance on the filing requirements for this form, exceptions to the filing requirements, and other details.

Observation. Contributions of cash or property to a corporation are generally governed by IRC §§351, 354, and 356 and other related Code sections. When such a transaction takes place with a foreign corporation, it may trigger a Form 926 filing requirement.⁷⁵ It is not uncommon for certain partnerships to engage in these types of transactions with foreign corporations. Practitioners should review all of the information provided with the Schedule K-1 package by those partnerships to determine if there are any special foreign reporting requirements for the individual partner. Frequently, the partnership includes a completed Form 926 in the reporting package as guidance.

Form 926 is filed by the transferor of the property to the foreign corporation. The form is filed with the transferor's annual tax return for the year that includes the date of the property transfer.⁷⁶

FORM 8865

Generally, Form 8865 is filed by a U.S. person who at any time during the tax year of a foreign partnership:

- **Controlled** the foreign partnership, or
- Owned at least a 10% interest in the foreign partnership while it was controlled by other U.S. persons who each had at least a 10% interest.

Note. There are some exceptions to this filing requirement. See the Form 8865 instructions for further details.

⁷⁴ Instructions for Form 926; Treas. Reg. §1.6038B-2.

⁷⁵ IRC §6038B(a)(1).

⁷⁶ Instructions for Form 926.

In addition, a U.S. person who contributed property to a foreign partnership in exchange for an interest in the partnership (an IRC §721 transfer) must file Form 8865 to disclose the transaction in either of the following situations.

- The U.S. person owned (directly or constructively) **at least a 10% interest** in the foreign partnership immediately after the contribution.
- During the 12-month period ending on the contribution date, the U.S. person contributed more than \$100,000 of property to the foreign partnership.⁷⁷

For purposes of these rules, a **10% interest** in the foreign partnership exists if the U.S. person has at least a 10% interest in the partnership's deductions or losses, capital, or profits.⁷⁸ Having at least a 50% interest in any of these aspects of the foreign partnership constitutes **control**. Determining whether a 10% interest or a controlling interest exists requires application of a modified version of the constructive ownership rules in IRC §267(c).

Additionally, a filing requirement is triggered by a reportable event under IRC §6046A. Generally, a U.S. person engages in a reportable event if any of the following occurs.

- The U.S. person's interest in the foreign partnership is increased to at least 10% or more through **acquisition**.
- The U.S. person's interest was previously 10% or more in the foreign partnership, but through a **disposition**, their interest falls below 10%.
- There is a **change in the proportional interest** of the U.S. person by an amount that is equivalent to at least a 10% interest in the foreign partnership.

Form 8865 is filed with the U.S. person's income tax return and is due on the same date as the tax return (including extensions).

Note. For further details on the foreign partnership transactions that trigger a Form 8865 filing requirement, the exceptions to this requirement, and the applicable constructive ownership rules, see the Form 8865 instructions, IRC §§6038B and 6046A, and the underlying regulations.

⁷⁷ Instructions for Form 8865.

⁷⁸ Ibid.

APPENDIX A: PENALTIES

The following table summarizes the **civil penalties** that may apply to the taxpayer for failing to comply with the various foreign asset reporting requirements discussed in this chapter.

Civil Penalty	Reference	Possible Penalty Amount
Failure to file FinCEN Form 114	31 USC §5321(a)(5)(B)	\$10,000 per violation
Willful failure to file FinCEN Form 114	31 USC §5321(a)(5)(C)	Greater of \$100,000 or 50% of the total foreign account balance
Failure to file Form 8938 ^a	IRC §6038D	\$10,000 plus an additional \$10,000 for each subsequent month of noncompliance (after 90 days from notification), up to a maximum of \$50,000 per Form 8938
Failure to file Form 3520, <i>Annual Return to Report Transactions With Foreign Trusts and Receipt of Certain Foreign Gifts</i>	IRC §6048	Greater of \$10,000 or 35% of the gross reportable amount. For gifts, 5% of the gift amount per month, up to a maximum of 25% of the gift
Failure to file Form 3520-A, <i>Annual Information Return of Foreign Trust With a U.S. Owner</i>	IRC §6048(b)	Greater of \$10,000 or 5% of the gross value of trust assets owned by the taxpayer
Failure to file Form 5471, <i>Information Return of U.S. Persons with Respect to Certain Foreign Corporations</i>	IRC §§6035, 6038 and 6046	\$10,000 plus an additional \$10,000 for each subsequent month of noncompliance (after 90 days from notification), up to a maximum of \$50,000 per Form 5471
Failure to file Form 5472, <i>Information Return of a 25% Foreign-Owned U.S. Corporation or a Foreign Corporation Engaged in a U.S. Trade or Business</i>	IRC §§6038A, 6038C	\$10,000 plus an additional \$10,000 for each subsequent month of noncompliance (after 90 days from notification)
Failure to file Form 926, <i>Return by a U.S. Transferor of Property to a Foreign Corporation</i>	IRC §6038B	10% of the value of the transferred property, up to a maximum of \$100,000 per return (but no maximum if failure to report was intentional)
Failure to file Form 8865, <i>Return of U.S. Persons With Respect to Certain Foreign Partnerships</i>	IRC §§6038, 6038B and 6046A	\$10,000 plus an additional \$10,000 for each subsequent month of noncompliance (after 90 days from notification), up to a maximum of \$50,000 per Form 8865 plus 10% of the transferred property value up to a maximum of \$100,000
Fraudulent failure to file penalties	IRC §§6651(f) and 6663	A maximum of 75% of the underpayment of tax ^b
Failure to file a return	IRC §6651(a)(1)	5% of the balance due plus an additional 5% for each month (or fraction of a month) that the failure continues, up to a maximum of 25%
Failure to pay tax due	IRC §6651(a)(2)	0.5% of the balance due plus an additional 0.5% for each month (or fraction of a month) that the tax remains unpaid, up to a maximum of 25%
Accuracy-related penalty	IRC §6662	20% of the understatement (40% for gross valuation misstatements or other circumstances)

^a Penalty for failure to file Form 8938 applies only to certain asset disclosures for 2011 and later years. This penalty is discussed earlier in this chapter.

^b Penalty calculation under each of the two Code sections indicated is calculated differently.

APPENDIX B: FORM 8938

2

8938Form
(Rev. December 2014)Department of the Treasury
Internal Revenue Service**Statement of Specified Foreign Financial Assets**► Information about Form 8938 and its separate instructions is at www.irs.gov/form8938.
► Attach to your tax return.

OMB No. 1545-2195

Attachment
Sequence No. 175

For calendar year 20 or tax year beginning , 20 and ending , 20

If you have attached continuation statements, check here ☐ Number of continuation statements _____

Name(s) shown on return

TIN

Part I Foreign Deposit and Custodial Accounts Summary

1	Number of Deposit Accounts (reported on Form 8938)	►
2	Maximum Value of All Deposit Accounts	\$
3	Number of Custodial Accounts (reported on Form 8938)	►
4	Maximum Value of All Custodial Accounts	\$
5	Were any foreign deposit or custodial accounts closed during the tax year?	<input type="checkbox"/> Yes <input type="checkbox"/> No

Part II Other Foreign Assets Summary

1	Number of Foreign Assets (reported on Form 8938)	►
2	Maximum Value of All Assets	\$
3	Were any foreign assets acquired or sold during the tax year?	<input type="checkbox"/> Yes <input type="checkbox"/> No

Part III Summary of Tax Items Attributable to Specified Foreign Financial Assets (see instructions)

(a) Asset Category	(b) Tax item	(c) Amount reported on form or schedule	Where reported	
			(d) Form and line	(e) Schedule and line
1 Foreign Deposit and Custodial Accounts	1a Interest	\$		
	1b Dividends	\$		
	1c Royalties	\$		
	1d Other income	\$		
	1e Gains (losses)	\$		
	1f Deductions	\$		
	1g Credits	\$		
2 Other Foreign Assets	2a Interest	\$		
	2b Dividends	\$		
	2c Royalties	\$		
	2d Other income	\$		
	2e Gains (losses)	\$		
	2f Deductions	\$		
	2g Credits	\$		

Part IV Excepted Specified Foreign Financial Assets (see instructions)

If you reported specified foreign financial assets on one or more of the following forms, enter the number of such forms filed. You do not need to include these assets on Form 8938 for the tax year.

1. Number of Forms 3520 _____	2. Number of Forms 3520-A _____	3. Number of Forms 5471 _____
4. Number of Forms 8621 _____	5. Number of Forms 8865 _____	6. Number of Forms 8891 _____

Part V Detailed Information for Each Foreign Deposit and Custodial Account Included in the Part I Summary (see instructions)

If you have more than one account to report, attach a continuation statement for each additional account (see instructions).

1 Type of account <input type="checkbox"/> Deposit <input type="checkbox"/> Custodial	2 Account number or other designation				
3 Check all that apply: <table border="0"> <tr> <td>a <input type="checkbox"/> Account opened during tax year</td> <td>b <input type="checkbox"/> Account closed during tax year</td> </tr> <tr> <td>c <input type="checkbox"/> Account jointly owned with spouse</td> <td>d <input type="checkbox"/> No tax item reported in Part III with respect to this asset</td> </tr> </table>		a <input type="checkbox"/> Account opened during tax year	b <input type="checkbox"/> Account closed during tax year	c <input type="checkbox"/> Account jointly owned with spouse	d <input type="checkbox"/> No tax item reported in Part III with respect to this asset
a <input type="checkbox"/> Account opened during tax year	b <input type="checkbox"/> Account closed during tax year				
c <input type="checkbox"/> Account jointly owned with spouse	d <input type="checkbox"/> No tax item reported in Part III with respect to this asset				
4 Maximum value of account during tax year	\$				
5 Did you use a foreign currency exchange rate to convert the value of the account into U.S. dollars?	<input type="checkbox"/> Yes <input type="checkbox"/> No				
6 If you answered "Yes" to line 5, complete all that apply.					
(a) Foreign currency in which account is maintained	(b) Foreign currency exchange rate used to convert to U.S. dollars				
(c) Source of exchange rate used if not from U.S. Treasury Financial Management Service					

For Paperwork Reduction Act Notice, see the separate instructions.

Cat. No. 37753A

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Page **2****Part V Detailed Information for Each Foreign Deposit and Custodial Account Included in the Part I Summary**
(see instructions) (continued)**7a** Name of financial institution in which account is maintained **b** Reserved**8** Mailing address of financial institution in which account is maintained. Number, street, and room or suite no.**9** City or town, state or province, and country (including postal code)**Part VI Detailed Information for Each "Other Foreign Asset" Included in the Part II Summary** (see instructions)**Note.** If you reported specified foreign financial assets on Forms 3520, 3520-A, 5471, 8621, 8865, or 8891, you do not have to include the assets on Form 8938. You must complete Part IV. See instructions.

If you have more than one asset to report, attach a continuation statement for each additional asset (see instructions).

1 Description of asset**2** Identifying number or other designation**3** Complete all that apply. See instructions for reporting of multiple acquisition or disposition dates.**a** Date asset acquired during tax year, if applicable**b** Date asset disposed of during tax year, if applicable**c** ☐ Check if asset jointly owned with spouse **d** ☐ Check if no tax item reported in Part III with respect to this asset**4** Maximum value of asset during tax year (check box that applies)**a** ☐ \$0 - \$50,000 **b** ☐ \$50,001 - \$100,000 **c** ☐ \$100,001 - \$150,000 **d** ☐ \$150,001 - \$200,000**e** If more than \$200,000, list value \$**5** Did you use a foreign currency exchange rate to convert the value of the asset into U.S. dollars? . . . ☐ Yes ☐ No**6** If you answered "Yes" to line 5, complete all that apply.**(a)** Foreign currency in which asset is denominated**(b)** Foreign currency exchange rate used to convert to U.S. dollars**(c)** Source of exchange rate used if not from U.S. Treasury Financial Management Service**7** If asset reported on line 1 is stock of a foreign entity or an interest in a foreign entity, enter the following information for the asset.**a** Name of foreign entity **b** Reserved**c** Type of foreign entity **(1)** ☐ Partnership **(2)** ☐ Corporation **(3)** ☐ Trust **(4)** ☐ Estate**d** Mailing address of foreign entity. Number, street, and room or suite no.**e** City or town, state or province, and country (including postal code)**8** If asset reported on line 1 is not stock of a foreign entity or an interest in a foreign entity, enter the following information for the asset.**Note.** If this asset has more than one issuer or counterparty, attach a continuation statement with the same information for each additional issuer or counterparty (see instructions).**a** Name of issuer or counterpartyCheck if information is for ☐ Issuer ☐ Counterparty**b** Type of issuer or counterparty**(1)** ☐ Individual **(2)** ☐ Partnership **(3)** ☐ Corporation **(4)** ☐ Trust **(5)** ☐ Estate**c** Check if issuer or counterparty is a ☐ U.S. person ☐ Foreign person**d** Mailing address of issuer or counterparty. Number, street, and room or suite no.**e** City or town, state or province, and country (including postal code)Form **8938** (Rev. 12-2014)

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Page _____

(Continuation Statement)

Name(s) shown on return

Identifying number

Part V Detailed Information for Each Foreign Deposit and Custodial Account Included in the Part I Summary (see instructions)

1 Type of account <input type="checkbox"/> Deposit <input type="checkbox"/> Custodial	2 Account number or other designation
3 Check all that apply: a <input type="checkbox"/> Account opened during tax year b <input type="checkbox"/> Account closed during tax year c <input type="checkbox"/> Account jointly owned with spouse d <input type="checkbox"/> No tax item reported in Part III with respect to this asset	
4 Maximum value of account during tax year \$	
5 Did you use a foreign currency exchange rate to convert the value of the account into U.S. dollars? . . . <input type="checkbox"/> Yes <input type="checkbox"/> No	
6 If you answered "Yes" to line 5, complete all that apply.	
(a) Foreign currency in which account is maintained	(b) Foreign currency exchange rate used to convert to U.S. dollars
(c) Source of exchange rate used if not from U.S. Treasury Financial Management Service	
7a Name of financial institution in which account is maintained	b Reserved
8 Mailing address of financial institution in which account is maintained. Number, street, and room or suite no.	
9 City or town, state or province, and country (including postal code)	

Part VI Detailed Information for Each "Other Foreign Asset" Included in the Part II Summary (see instructions)

1 Description of asset	2 Identifying number or other designation
3 Complete all that apply. See instructions for reporting of multiple acquisition or disposition dates.	
a Date asset acquired during tax year, if applicable	
b Date asset disposed of during tax year, if applicable	
c <input type="checkbox"/> Check if asset jointly owned with spouse d <input type="checkbox"/> Check if no tax item reported in Part III with respect to this asset	
4 Maximum value of asset during tax year (check box that applies)	
a <input type="checkbox"/> \$0 - \$50,000 b <input type="checkbox"/> \$50,001 - \$100,000 c <input type="checkbox"/> \$100,001 - \$150,000 d <input type="checkbox"/> \$150,001 - \$200,000 e If more than \$200,000, list value \$	
5 Did you use a foreign currency exchange rate to convert the value of the asset into U.S. dollars? . . . <input type="checkbox"/> Yes <input type="checkbox"/> No	
6 If you answered "Yes" to line 5, complete all that apply.	
(a) Foreign currency in which asset is denominated	(b) Foreign currency exchange rate used to convert to U.S. dollars
(c) Source of exchange rate used if not from U.S. Treasury Financial Management Service	
7 If asset reported on line 1 is stock of a foreign entity or an interest in a foreign entity, enter the following information for the asset.	
a Name of foreign entity b Reserved	
c Type of foreign entity (1) <input type="checkbox"/> Partnership (2) <input type="checkbox"/> Corporation (3) <input type="checkbox"/> Trust (4) <input type="checkbox"/> Estate	
d Mailing address of foreign entity. Number, street, and room or suite no.	
e City or town, state or province, and country (including postal code)	
8 If asset reported on line 1 is not stock of a foreign entity or an interest in a foreign entity, enter the following information for the asset.	
a Name of issuer or counterparty	
Check if information is for <input type="checkbox"/> Issuer <input type="checkbox"/> Counterparty	
b Type of issuer or counterparty	
(1) <input type="checkbox"/> Individual (2) <input type="checkbox"/> Partnership (3) <input type="checkbox"/> Corporation (4) <input type="checkbox"/> Trust (5) <input type="checkbox"/> Estate	
c Check if issuer or counterparty is a <input type="checkbox"/> U.S. person <input type="checkbox"/> Foreign person	
d Mailing address of issuer or counterparty. Number, street, and room or suite no.	
e City or town, state or province, and country (including postal code)	

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