

IRS issues final regulations applicable to Form 8938, Reporting of Specified Foreign Financial Assets

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Final Regulations Applicable to Form 8938

On December 12, 2014, the Treasury Department and the IRS issued Final Regulations under **section 6038D (T.D. 9706)** applicable to Form 8938, Statement of Specified Foreign Financial Assets. The previous Temporary Regulations, published December 2011, addressed the scope of Form 8938 reporting. The Final Regulations, effective for tax years ending after December 19, 2011, encompass the same material but contain several modifications from the Temporary Regulations which should be noted.

- Unlike the Temporary Regulations, the Final Regulations exempt an individual who is a nonresident by virtue of the treaty tiebreak provision from Form 8938 reporting provided the individual files his tax return in a timely manner and discloses his treaty claim using Form 8833.
- The Final Regulations resolve an open issue and provide that only vested assets need to be reported on Form 8938, and unvested property interests do not need to be reported until they are vested unless the taxpayer makes a valid election to include the assets for income tax purposes.
- The Final Regulations clarify that taxpayers who are not married or who are married but file separate returns must report the full value of jointly owned foreign financial assets.
- The Final Regulations simplify the currency conversion of foreign assets by allowing taxpayers to use a conversion that is already shown on a periodic financial accounting statement, which is provided at least annually by or on behalf of a financial institution maintaining an account.

For more information please [click here](#) or please contact:

Denise Hintzke

Director, Global FATCA Tax Leader
Deloitte Tax LLP
+1 212 436 4792

Anne Mericle

Global FATCA PMO Senior Manager
Deloitte Tax LLP
+1 212 436 3908

Americas

John Rieger

Partner, National Tax Financial
Services Industry
Deloitte Tax LLP
+1 212 436 6934

Patty Florness

Partner, Global Information
Reporting
Deloitte Tax LLP
+1 212 436 7413

Helda Rock

Director, FATCA Enterprise Risk
Services Leader, U.S.
Deloitte & Touche LLP
+1 973 602 6052

Mike Wade

Director, FATCA Enterprise Risk
Services Leader, U.S.
Deloitte & Touche LLP
+1 804 697 1537

Matthew Cahill

Partner, Global Information Reporting
Deloitte Tax LLP
+1 212 436 3420

John Kocjan

Partner, FATCA Consulting Leader,
U.S.
Deloitte Consulting LLP
+1 212 618 4181

Michael Shepard

Principal, Deloitte Transactions and
Business Analytics LLP
+1 215 299 5260

Jon Watts

Director, FATCA Enterprise Risk
Services Leader, U.S.
Deloitte & Touche LLP
+1 212 436 6561

James Dockeray

FATCA Leader,
Caribbean/Bermuda
Deloitte & Touche Ltd.
+1 441 299 1399

Dennis Metzler

FATCA Leader, Canada
Deloitte & Touche LLP
+1 416 601 6144

Greg Thomas

Principal, FATCA Enterprise
Risk Services Leader, U.S.
Deloitte & Touche LLP
+1 415 783 5211

Asia-Pacific

Jim Calvin

FATCA Leader, Asia-Pacific
Deloitte & Touche LLP
+65 9662 3014

Anna Bleazard

FATCA FAS Leader, Asia-Pacific
Deloitte & Touche Financial Advisory
Services Pte Ltd.
+65 6216 3277

Marie Gervacio

FATCA Regional Consulting
Leader, Asia-Pacific (excl.
Japan)
Deloitte Consulting (Hong
Kong) Limited
+852 9104 7451

Michael Velten

FATCA Leader, Southeast Asia
Deloitte & Touche LLP
+65 6531 5039

Europe, Middle East & Africa

Brandi Caruso

FATCA Leader, Switzerland
Deloitte AG
+41 58 279 6397

Claire Dawson

FATCA Tax Leader, Middle East
Deloitte LLP
+971 4 5064900

Humphry Hatton

FATCA Co-Leader, Middle
East
Deloitte LLP
+971 4 5064730

Umair Hameed

FATCA FAS Leader, Middle East
Deloitte Corporate Finance Ltd
+971 4 5064878

Piero Molinario

FATCA FAS Leader, Europe
Deloitte & Touche, S.p.A
+39 02 8332 5102

Nick Sandall

FATCA Consulting Leader,
EMEA
Deloitte LLP
+44 20 7007 1850

Chris Tragheim

FATCA Tax Leader, EMEA
Deloitte LLP
+44 20 7303 2848

Markus Weber

Financial Services Industry Tax
Leader, Switzerland
Deloitte AG
+41 58 279 7527

Global Information Reporting

Matthew Cahill

+1 212 436 3420

Terence Coppinger

+1 212 436 6412

Patty Florness

+1 212 436 7413

Denise Hintzke

+1 212 436 4792

Anthony Martirano

+1 973 602 6986

Susan Segar

+1 703 885 6328

Kristen Starling

+1 212 436 4281

Faye Tannenbaum

+1 212 436 2968

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