

U.S. REPORTING REQUIREMENTS FOR A GLOBALIZED WORLD

BY

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“The cross-border migration of capital and people has made this a more integrated world and we all need to ensure that we have the tax administration capabilities to deal with the fast pace of change. This is an area where there are a number of vexing issues without easy answers.”²

IRS Commissioner Douglas Shulman, June 9, 2008

I. Overview

Tax compliance for international transactions is no easy feat. The required forms are generally not well known by the average taxpayer, overly-complicated and burdensome, and the information needed to complete them is generally difficult to obtain. That said, because of the increased ability U.S. taxpayers have to engage in abusive foreign transactions, the additional revenues the U.S. government believes it can generate from increased transparency in the foreign arena, and the historic inability of Internal Revenue Service (“IRS”) to obtain information from foreign persons or entities, IRS has dramatically expanded its efforts to police international holdings and transactions. As a result, it is becoming increasingly important for all taxpayers to understand their international filing obligations – and the penalties that will apply to taxpayers who ignore these responsibilities will prove make it a must.

The purpose of these materials is to shed light on some of the more pertinent tax forms that pertain to international transactions with a brief discussion of each. Both those forms concerning U.S. persons with foreign activity and those forms concerning foreign persons with U.S. activity will be examined. With that in mind, it must be noted that these materials do not, and are not intended to, provide a comprehensive discussion of all the potential international tax compliance issues that might affect any given situation. Because the variety of situations is so great, it is simply impossible for the author to address every potential reporting circumstance. The purpose of these materials, therefore, is to provide the reader with general information about the need for compliance when involved with foreign transactional and planning matters, and to encourage taxpayers and their advisors to take care when planning or consummating cross-border transactions.

II. Introduction to Penalties

To appreciate the importance of being compliant when it comes to reporting international transactions, a brief summary of some of the applicable civil penalties will likely prove

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² Remarks of Douglas Shulman before the Federation of Tax Administrators on June 9, 2008.

helpful. Generally speaking, IRS has a whole host of penalties available to punish the non-compliant U.S. taxpayer, and the following summary, taken from the *Questions and Answers IRS* issued in connection with its 2011 Offshore Voluntary Disclosure Initiative, provides an excellent recitation of just how strong the government's hand is in the context:

- A penalty for failing to file the Form TD F 90-22.1 (Report of Foreign Bank and Financial Accounts, commonly known as an "FBAR"). United States citizens, residents and certain other persons must annually report their direct or indirect financial interest in, or signature authority (or other authority that is comparable to signature authority) over, a financial account that is maintained with a financial institution located in a foreign country if, for any calendar year, the aggregate value of all foreign accounts exceeded \$10,000 at any time during the year. Generally, the civil penalty for willfully failing to file an FBAR can be as high as the greater of \$100,000 or 50 percent of the total balance of the foreign account per violation. See 31 U.S.C. § 5321(a)(5). Non-willful violations that the IRS determines were not due to reasonable cause are subject to a \$10,000 penalty per violation.
- A penalty for failing to file Form 3520, Annual Return to Report Transactions With Foreign Trusts and Receipt of Certain Foreign Gifts. Taxpayers must also report various transactions involving foreign trusts, including creation of a foreign trust by a United States person, transfers of property from a United States person to a foreign trust and receipt of distributions from foreign trusts under IRC § 6048. This return also reports the receipt of gifts from foreign entities under section 6039F. The penalty for failing to file each one of these information returns, or for filing an incomplete return, is 35 percent of the gross reportable amount, except for returns reporting gifts, where the penalty is five percent of the gift per month, up to a maximum penalty of 25 percent of the gift.
- A penalty for failing to file Form 3520-A, Information Return of Foreign Trust With a U.S. Owner. Taxpayers must also report ownership interests in foreign trusts, by United States persons with various interests in and powers over those trusts under IRC § 6048(b). The penalty for failing to file each one of these information returns or for filing an incomplete return, is five percent of the gross value of trust assets determined to be owned by the United States person.
- A penalty for failing to file Form 5471, Information Return of U.S. Persons with Respect to Certain Foreign Corporations. Certain United States persons who are officers, directors or shareholders in certain foreign corporations (including International Business Corporations) are required to report information under IRC §§ 6035, 6038 and 6046. The penalty for failing to file each one of these information returns is \$10,000, with an additional \$10,000 added for each month the failure continues beginning 90 days after the taxpayer is notified of the delinquency, up to a maximum of \$50,000 per return.

- A penalty for failing to file Form 5472, Information Return of a 25% Foreign-Owned U.S. Corporation or a Foreign Corporation Engaged in a U.S. Trade or Business. Taxpayers may be required to report transactions between a 25 percent foreign-owned domestic corporation or a foreign corporation engaged in a trade or business in the United States and a related party as required by IRC §§ 6038A and 6038C. The penalty for failing to file each one of these information returns, or to keep certain records regarding reportable transactions, is \$10,000, with an additional \$10,000 added for each month the failure continues beginning 90 days after the taxpayer is notified of the delinquency.
- A penalty for failing to file Form 926, Return by a U.S. Transferor of Property to a Foreign Corporation. Taxpayers are required to report transfers of property to foreign corporations and other information under IRC § 6038B. The penalty for failing to file each one of these information returns is ten percent of the value of the property transferred, up to a maximum of \$100,000 per return, with no limit if the failure to report the transfer was intentional.
- A penalty for failing to file Form 8865, Return of U.S. Persons With Respect to Certain Foreign Partnerships. United States persons with certain interests in foreign partnerships use this form to report interests in and transactions of the foreign partnerships, transfers of property to the foreign partnerships, and acquisitions, dispositions and changes in foreign partnership interests under IRC §§ 6038, 6038B, and 6046A. Penalties include \$10,000 for failure to file each return, with an additional \$10,000 added for each month the failure continues beginning 90 days after the taxpayer is notified of the delinquency, up to a maximum of \$50,000 per return, and ten percent of the value of any transferred property that is not reported, subject to a \$100,000 limit.
- Fraud penalties imposed under IRC §§ 6651(f) or 6663. Where an underpayment of tax, or a failure to file a tax return, is due to fraud, the taxpayer is liable for penalties that, although calculated differently, essentially amount to 75 percent of the unpaid tax.
- A penalty for failing to file a tax return imposed under IRC § 6651(a)(1). Generally, taxpayers are required to file income tax returns. If a taxpayer fails to do so, a penalty of 5 percent of the balance due, plus an additional 5 percent for each month or fraction thereof during which the failure continues may be imposed. The penalty shall not exceed 25 percent.
- A penalty for failing to pay the amount of tax shown on the return under IRC § 6651(a)(2). If a taxpayer fails to pay the amount of tax shown on the return, he or she may be liable for a penalty of .5 percent of the amount of tax shown on the return, plus an additional .5 percent for each additional month or fraction thereof that the amount remains unpaid, not exceeding 25 percent.

- An accuracy-related penalty on underpayments imposed under IRC § 6662. Depending upon which component of the accuracy-related penalty is applicable, a taxpayer may be liable for a 20 percent or 40 percent penalty.

As the above summary makes clear, noncompliance can be very costly for the US taxpayer who engages in international transactions, but chooses not to disclose those activities to IRS or Treasury. And we haven't even gotten to the criminal penalties that might also be applied under these same circumstances....In sum, the import of proper compliance cannot be understated.

III. Common Forms

A. Form TD F 90-22.1 (See Appendix I)

Form TD F 90-22.1 (Report of Foreign Bank and Financial Accounts, commonly known as an "FBAR") has received a good deal of international attention over the last few years. Many are likely familiar with the UBS scandal and the two voluntary disclosure programs that evolved out of IRS's crackdown of U.S. taxpayers who maintained undisclosed foreign bank accounts. What many people likely are not aware of is that the FBAR has been around since the 1970's through the Bank Secrecy Act.

On February 23, 2011, Treasury issued final FBAR regulations under the Bank Secrecy Act, which became effective on March 28, 2011 and generally apply to taxpayers required to file FBARs on or before June 30, 2011. The final regulations address the scope of FBAR filings, the nature of reportable accounts (including certain insurance and annuity products); and provide additional rules intended to curtail circumvention of these rules.

i. *Who Must File*

A United States person that has a financial interest in, signature authority or other authority over foreign financial accounts must file an FBAR if the aggregate value of the foreign financial accounts exceeds \$10,000 at any time during the calendar year.

ii. *General Definitions*

Financial Account: A financial account includes, but is not limited to, a securities, brokerage, savings, demand, checking, deposit, time deposit, or other account maintained with a financial institution (or other person performing the services of a financial institution). A financial account also includes a commodity futures or options account, an insurance policy with a cash value (such as a whole life insurance policy), an annuity policy with a cash value, and shares in a mutual fund or similar pooled fund (i.e., a fund that is available to the general public with a regular net asset value determination and regular redemptions).

Foreign Financial Account: A foreign financial account is a financial account located outside of the United States. For example, an account maintained with a branch of a United States bank that is physically located outside of the United States is a foreign financial account. An account maintained with a branch of a foreign bank that is physically located in the United States is not a foreign financial account.

Financial Interest: A United States person has a financial interest in a foreign financial account for which:

(1) the United States person is the owner of record or holder of legal title, regardless of whether the account is maintained for the benefit of the United States person or for the benefit of another person; or

(2) the owner of record or holder of legal title is one of the following:

(a) An agent, nominee, attorney, or a person acting in some other capacity on behalf of the United States person with respect to the account;

(b) A corporation in which the United States person owns directly or indirectly: (i) more than 50 percent of the total value of shares of stock or (ii) more than 50 percent of the voting power of all shares of stock;

(c) A partnership in which the United States person owns directly or indirectly: (i) an interest in more than 50 percent of the partnership's profits (e.g., distributive share of partnership income taking into account any special allocation agreement) or (ii) an interest in more than 50 percent of the partnership capital;

(d) A trust of which the United States person: (i) is the trust grantor and (ii) has an ownership interest in the trust for United States federal tax purposes. See 26 U.S.C. sections 671-679 to determine if a grantor has an ownership interest in a trust;

(e) A trust in which the United States person has a greater than 50 percent present beneficial interest in the assets or income of the trust for the calendar year; or

(f) Any other entity in which the United States person owns directly or indirectly more than 50 percent of the voting

power, total value of equity interest or assets, or interest in profits.

Person: A person means an individual and legal entities including, but not limited to, a limited liability company, corporation, partnership, trust, and estate.

Signature Authority: Signature authority is the authority of an individual (alone or in conjunction with another individual) to control the disposition of assets held in a foreign financial account by direct communication (whether in writing or otherwise) to the bank or other financial institution that maintains the financial account.

iii. *Notable Exceptions to Filing*

Certain Accounts Jointly Owned by Spouses: The spouse of an individual who files an FBAR is not required to file a separate FBAR if the following conditions are met: (1) all the financial accounts that the non-filing spouse is required to report are jointly owned with the filing spouse; (2) the filing spouse reports the jointly owned accounts on a timely filed FBAR; and (3) both spouses sign the FBAR in Item 44. See Explanations for Specific Items, Part III, Items 25-33. Otherwise, both spouses are required to file separate FBARs, and each spouse must report the entire value of the jointly owned accounts.

Consolidated FBAR: If a United States person that is an entity is named in a consolidated FBAR filed by a greater than 50 percent owner, such entity is not required to file a separate FBAR.

IRA Owners and Beneficiaries: An owner or beneficiary of an IRA is not required to report a foreign financial account held in the IRA.

Participants in and Beneficiaries of Tax-Qualified Retirement Plans: A participant in or beneficiary of a retirement plan described in Internal Revenue Code section 401(a), 403(a), or 403(b) is not required to report a foreign financial account held by or on behalf of the retirement plan.

Signature Authority: Individuals who have signature authority over, but no financial interest in, a foreign financial account are not required to report the account in the following situations:

- (1) An officer or employee of a bank that is examined by the Office of the Comptroller of the Currency, the Board of Governors of the Federal Reserve System, the Federal Deposit Insurance Corporation, the Office of Thrift Supervision, or the National Credit Union Administration is not required to report signature authority over a foreign financial account owned or maintained by the bank.

(2) An officer or employee of a financial institution that is registered with and examined by the Securities and Exchange Commission or Commodity Futures Trading Commission is not required to report signature authority over a foreign financial account owned or maintained by the financial institution.

(3) An officer or employee of an Authorized Service Provider is not required to report signature authority over a foreign financial account that is owned or maintained by an investment company that is registered with the Securities and Exchange Commission. Authorized Service Provider means an entity that is registered with and examined by the Securities and Exchange Commission and provides services to an investment company registered under the Investment Company Act of 1940.

(4) An officer or employee of an entity that has a class of equity securities listed (or American depository receipts listed) on any United States national securities exchange is not required to report signature authority over a foreign financial account of such entity.

(5) An officer or employee of a United States subsidiary is not required to report signature authority over a foreign financial account of the subsidiary if its United States parent has a class of equity securities listed on any United States national securities exchange and the subsidiary is included in a consolidated FBAR report of the United States parent.

(6) An officer or employee of an entity that has a class of equity securities registered (or American depository receipts in respect of equity securities registered) under section 12(g) of the Securities Exchange Act is not required to report signature authority over a foreign financial account of such entity.

Trust Beneficiaries. A trust beneficiary with a financial interest described in section (2)(e) of the financial interest definition is not required to report the trust's foreign financial accounts on an FBAR if the trust, trustee of the trust, or agent of the trust: (1) is a United States person and (2) files an FBAR disclosing the trust's foreign financial accounts.

United States Military Banking Facility. A financial account maintained with a financial institution located on a United States military installation is not required to be reported, even if that military installation is outside of the United States.

B. Form 3520 (See Appendix 2)

The Code requires any U.S. person who transfers property to a foreign trust to notify IRS of the transfer and provide IRS with the identity of the trustees and beneficiaries. Reporting a transfer to a foreign trust is done on Form 3520, *Annual Return to Report Transactions With Foreign Trusts and Receipt of Certain Foreign Gifts*, which is attached to the U.S. transferor's Form 1040 for the year.

In addition, whenever a U.S. beneficiary receives a distribution, either directly or indirectly, from a foreign trust, including the uncompensated use of trust property, a Form 3520 is required to be filed. For this purpose, a distribution from a foreign trust includes: (i) any gratuitous transfer of money or property from a foreign trust, whether or not the trust is deemed to be owned by another U.S. person; (ii) the receipt of trust corpus and the receipt of a gift or bequest that is not otherwise subject to income tax; and (iii) a direct or indirect loan of cash or marketable securities to a U.S. grantor or U.S. beneficiary by a foreign trust. Note that a distribution is reportable whether is it actually or constructively received.

Further, a U.S. person who receives during the tax year more than \$100,000 from a foreign nonresident individual or foreign estate (including foreign persons related to that nonresident alien individual or foreign estate) or more than \$14,165 from foreign corporations or foreign partnerships (including foreign persons related to such foreign corporations or foreign partnerships) and treats receipt as a gift or bequest must file a Form 3520 reporting the distribution.

Finally, certain “reportable events” must be reported on a Form 3520 for the year in which the event happened by the “responsible person.” “Reportable events” include: (1) the creation of a foreign trust by a U.S. person; (2) the transfer of any money or property, directly or indirectly, to a foreign trust by a U.S. person, including a transfer by reason of death. This includes transfers that are deemed to have occurred under sections 679(a)(4) and (5); and (3) the death of a citizen or resident of the United States if: the decedent was treated as the owner of any portion of a foreign trust under the rules of sections 671 through 679, or any portion of a foreign trust was included in the gross estate of the decedent. The “responsible person” is: the grantor in the case of the creation of an inter vivos trust; the transferor, in the case of a reportable event other than a transfer by reason of death; or the executor of the decedent’s estate in any other case (whether or not the executor is a U.S. person).

Again, the filing deadline for the Form 3520 is the same as the deadline for filing the filer’s Form 1040, taking into account extensions.

C. Form 3520-A (See Appendix 3)

A foreign trust with a U.S. owner must file Form 3520-A, *Information Return of Foreign Trust With a U.S. Owner*, in order for the U.S. owner to satisfy its annual information reporting requirements under section 6048(b). Each U.S. person treated as an owner of portion of a foreign trust under sections 671 through 679 is responsible for ensuring that the foreign trust files Form 3520-A and furnishes the required annual statements to its U.S. owners and U.S. beneficiaries.

The Form 3520-A is due the 15th day of the third month after the end of the trust's taxable year. An automatic extension to file is available by filing Form 7004.

D. Form 5471 (See Appendix 4)

Form 5471, *Information Return of U.S. Persons with Respect to Certain Foreign Corporations*, must be filed by certain U.S. persons who are shareholders, officers or directors of foreign corporations (or equivalent foreign entities). More specifically, the list of persons required to file Form 5471 includes the following:

- a. A U.S. person who is an officer or director of a foreign corporation in which any U.S. person owns or acquires ten percent (10%) or more of the stock of said corporation;
- b. A U.S. person who acquires stock in a foreign corporation which results in such person's owning ten percent (10%) or more of the stock of said corporation;
- c. A person who becomes a U.S. person while owning ten percent (10%) or more of the stock of a foreign corporation;
- d. A U.S. person who disposes of stock in a foreign corporation that reduces his interest to less than ten percent (10%) of the stock of said corporation; and
- e. A U.S. person who had control (who owned more than fifty percent (50%) of the stock or voting power) of a foreign corporation for an uninterrupted period of at least thirty (30) days during the tax year.

It should be noted that in determining stock ownership, "constructive ownership" rules apply so that stock owned by parties related to a person may be treated as owned by that person. In certain cases where more than one person must file this form for the same foreign corporation, it may be permissible for only one person to file the form.

Form 5471 is to be attached to the filer's income tax return and filed by the deadline for that return, taking into account extensions.

E. Form 5472 (See Appendix 5)

Generally, a "reporting corporation" must file Form 5472, *Information Return of a 25% Foreign-Owned U.S. Corporation or a Foreign Corporation Engaged in a U.S. Trade or Business*, if it had a "reportable transaction" with a foreign or domestic "related party."

A "reporting corporation" is either: a 25% foreign-owned U.S. corporation or a foreign corporation engaged in a trade or business within the United States. For these purposes, a corporation is 25% foreign owned if it has at least one direct or indirect 25% foreign shareholder at any time during the tax year.

Generally, a foreign person is a 25% foreign shareholder if the person owns, directly or indirectly, at least 25% of either: the total voting power of all classes of stock entitled to vote or the total value of all classes of stock of the corporation.

The constructive ownership rules of section 318 apply with the following modifications to determine if a corporation is 25% foreign owned. Substitute "10%" for "50%" in section 318(a)(2)(C). Do not apply sections 318(a)(3)(A), (B), and (C) so as to consider a U.S. person as owning stock that is owned by a foreign person.

A "related party" is any direct or indirect 25% foreign shareholder of the reporting corporation, any person who is related (within the meaning of section 267(b) or 707(b)(1)) to the reporting corporation, any person who is related (within the meaning of section 267(b) or 707(b)(1)) to a 25% foreign shareholder of the reporting corporation, or any other person who is related to the reporting corporation within the meaning of section 482 and the related regulations. "Related party" does not include any corporation filing a consolidated Federal income tax return with the reporting corporation. The rules in section 318 apply to the definition of related party with the modifications listed under the definition of 25% foreign shareholder above.

In general, any transaction that can affect the U.S. taxable income of the reporting corporation is a "reportable transaction." That said, if neither the reporting corporation nor the related party is a U.S. person, and, in the year in question, a particular transaction will not generate U.S.-source gross income, income effectively connected with the conduct of a U.S. trade or business, or expenses, losses, or other deductions that would be allocable or apportionable to such U.S. gross income or business income, the transaction is not treated as a reportable transaction. Thus, this exception is relevant only if the reporting corporation is a foreign corporation engaged in a U.S. trade or business (as

opposed to a 25% foreign-owned domestic corporation), and the transaction in question does not affect the reporting corporation's U.S. income or deductions related thereto.

F. Form 926 (See Appendix 6)

Generally, a U.S. citizen or resident, a domestic corporation, or a domestic estate or trust must complete and file Form 926, *Return by a U.S. Transferor of Property to a Foreign Corporation*, to report certain transfers of property to a foreign corporation that are described in section 6038B(a)(1)(A), 367(d), or 367(e). These transfers usually involve transfers of property to a foreign corporation in certain specified nonrecognition transactions.

If the transferor is a partnership (domestic or foreign), the domestic partners of the partnership, not the partnership itself, are required to comply with section 6038B and file Form 926. Each domestic partner is treated as a transferor of its proportionate share of the property.

A husband and wife may file Form 926 jointly, but only if they file a joint income tax return.

A U.S. person that transfers cash to a foreign corporation must report the transfer on Form 926 if (a) immediately after the transfer the person holds directly or indirectly at least 10% of the total voting power or the total value of the foreign corporation or (b) the amount of cash transferred by the person to the foreign corporation during the 12-month period ending on the date of the transfer exceeds \$100,000.

G. Form 8865 (See Appendix 7)

Form 8865, *Return of U.S. Persons With Respect to Certain Foreign Partnerships*, is used by U.S. persons to report information required under sections 6038 (reporting with respect to controlled foreign partnerships); 6038B (reporting of transfers to foreign partnerships); and 6046A (reporting of acquisitions, dispositions, and changes in foreign partnerships interests).

There are four categories of U.S. persons required to file Form 8865:

i. *Category 1 Filer*

A category 1 filer is a U.S. person who controlled the foreign partnership at any time during the partnership's tax year. For this purpose, control is ownership of more than 50% interest in the partnership. A 50% interest is defined as 50% of the capital, profits, deductions or losses. Constructive ownership rules of section 267(c) (excluding 267(c)(3)) apply.

ii. *Category 2 Filer*

A category 2 filer is a U.S. person who at any time during the tax year of the foreign partnership owned a 10% or greater interest in the partnership while the partnership was controlled by U.S. persons each owning at least 10% interests. However, if the partnership had a category 1 filer during the tax year, no person shall be considered a Category 2 filer. 10% interest is an interest equal to 10% of the capital, profits, or deductions or losses. Again, constructive ownership rules of section 267(c) (excluding 267(c)(3)) apply

iii. *Category 3 Filer*

A category 3 filer is a U.S. person who contributed property during that person's tax year to a foreign partnership in exchange for an interest in the partnership (i.e. a section 721 transaction) if that person either: (i) owned directly or constructively at least 10% interest in the foreign partnership immediately after the contribution or (ii) the value of the property contributed (when added to the value of any other property contributed to the partnership by such person, or any related person, during the 12 month period ending on the date of transfer) exceeded \$100,000.

Here, if a domestic partnership contributes property to a foreign partnership, the domestic partnership's partners are considered to have transferred a proportionate share of the contributed property to the foreign partnership. However, if the domestic partnership files Form 8865 and properly reports all the required information with respect to the contribution, its partners will not be required to report the transfer.

A U.S. person that previously transferred appreciated property to the partnership and was required to report that transfer under section 6038B, if the foreign partnership disposed of such property while the U.S. person remained a direct or indirect partner in the partnership, is also a category 3 filer.

iv. *Category 4 Filer*

A category 4 filer is a U.S. person that had a reportable event under section 6046A during that person's tax year. There are three kinds of

Reportable events under 6046A: (1) acquisitions, (2) dispositions, and (3) changes in proportional interests.

A U.S. person that acquires a foreign partnership interest has a reportable event if: the person didn't own 10% or greater direct interest in the partnership and as a result of the acquisition the person owns a 10% or greater direct interest in the partnership

For purposes of this rule, an acquisition includes an increase in a person's direct proportional interest. A reportable acquisition also includes the U.S. person's where after the acquisition, the direct interest of the U.S. person has increased by at least 10% since the last reportable event.

A U.S. person that disposes of a foreign partnership interest has a reportable event if: the person owned 10% or greater direct interest in the partnership before the disposition and as a result of the disposition the person owns less than 10% direct interest. Likewise, if after the disposition the person's direct interest has decreased by at least 10% since the last reportable event, this is a reportable disposition.

Finally, a U.S. person has a reportable event if compared to the person's direct proportional interest at the last time the person had a reportable event, the direct proportional interest has increased or decreased by at least the equivalent of a 10% interest in the partnership.

H. Form 8938 (See Appendix 8)

Title II of FATCA enacted by the HIRE Act introduces section 6038D to the Code. Under section 6038D(a), any *individual* who, during the taxable year, holds any interest in a specified foreign financial asset must make a report thereon with his or her personal income tax return if the aggregate value of all such assets exceeds \$50,000. For these purposes, a "specified foreign financial asset" means (i) any financial account, (ii) any stock or security issued by a foreign person, (iii) any instrument or contract that has a foreign person as a counterpart, and (iv) any interest in a foreign entity.

- i. For financial accounts, the taxpayer must report the name and address of the FFI at which the account is maintained, as well as the account number. For stock or securities of a foreign issuer, the taxpayer must report the name and address of the foreign issuer as well as the class or type of security involved. The taxpayer must also report the maximum value of the asset (regardless of type) during the taxable year.

- ii. A penalty of \$10,000 will be imposed against any Taxpayers who, without reasonable cause, fails to make the information filing required by Section 6038D. This penalty can be increased to up to \$50,000 where failure to report continues for more than 90 days after notification from the Secretary.
- iii. Section 6501(e) has also been amended to extend to six years the statute of limitations applicable to the assessment where the assessment exceeds \$5,000 and results from the taxpayer's omission of assets from a required Section 6038D report.

Section 6662 has also been amended to permit assessment of an accuracy related penalty to failures to report under Code Section 6038D.

A draft of Form 8938, *Statement of Specified Foreign Financial Assets*, drafted pursuant to the Secretary's authority under new section 6038D, is attached to the materials. It is contemplated that this form will be attached to the filer's income tax return, and due at that forms deadline, with reference to extensions.

IV. Other Forms

Enclosed for reference are the following other forms, which may be relevant for taxpayers engaged in an international transaction:

- Form 8621, *Return by a Shareholder of a Passive Foreign Investment Company or Qualified Electing Fund (See Appendix 9)*
- Form 8858, *Information Return of U.S. Persons with Respect to Foreign Disregarded Entities (See Appendix 10)*
- Form 8833, *Treaty-Based Return Position Disclosure under Section 6114 or 7701(b) (See Appendix 11)*