

# Overseas Filing for US Taxpayers

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*The information contained in this presentation is current as of the date it was presented. It should not be considered official guidance.*



## Do You Have to File a U.S. Income Tax Return for 2015?

	With U.S. Source Income	With Foreign Source Income	Form	Due Date
U.S. Citizen	Yes	Yes	1040	April 18, 2016 or June 15, 2016
U.S. Resident Aliens	Yes	Yes	1040	April 18, 2016 or June 15, 2016
Nonresident Alien	Yes*	No* – if you are not engaged in a U.S. trade or business and all income is foreign sourced	1040NR	April 18, 2016 or June 15, 2016

\* Some limited exceptions apply



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## Tax Year 2015 Filing Requirements

If your filing status is...	And at the end of 2015 your age was....	You are required to file return if your gross income was at least...
Single	• Under 65	• \$10,300
	• 65 or older	• \$11,850
Married Filing Jointly	• Under 65 (both spouses)	• \$20,600
	• 65 or older (one spouse)	• \$21,850
	• 65 or older (both spouses)	• \$23,100
Married Filing Separately	• Any Age	• \$4,000
Head of Household	• Under 65	• \$13,250
	• 65 or older	• \$14,800
Qualifying Widow(er) with dependent child	• Under 65	• \$16,600
	• 65 or older	• \$17,850



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## Exemption and Standard Deduction Amounts for Tax Years 2013-2015

Year	Personal and/or Dependent Exemption	Std Ded Single	Std Ded MFJ	Std Ded MFS	Std Ded HOH
2015	\$4,000	\$6,300	\$12,600	\$6,300	\$9,250
2014	\$3,950	\$6,200	\$12,400	\$6,200	\$9,100
2013	\$3,900	\$6,100	\$12,200	\$6,100	\$8,950



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## U.S. Citizen or Resident Married to a Nonresident Alien (NRA)

### Election to treat the NRA spouse as a U.S resident

- You and your spouse are treated, for U.S. income tax purposes, as U.S. residents for all tax years that the election is in effect.
- You must file a joint U.S. income tax return for the first year you make the election.
- Neither you nor your spouse can claim under any tax treaty not to be a U.S. resident for any tax year that the election is in effect.



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## What's New?

- **Additional Child Tax Credit**
  - Cannot be taken if you claim the foreign earned income or housing exclusion, or foreign housing deduction.
- **Self-employment Tax**
  - 2015 Maximum earnings subject to SE tax is \$118,500
- **Due Dates for FinCEN Form 114**
  - Calendar year 2015 reporting deadline June 30, 2016
  - New for calendar year 2016 and thereafter the reporting deadline is April 15th



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## Topics Important to U.S. Citizens and Resident Aliens Living Abroad

- Foreign Earned Income Exclusion (FEIE)
- Foreign Tax Credit (FTC)
- Foreign Bank Account Reporting (FBAR)
- Foreign Financial Asset Reporting (FATCA)



## Foreign Earned Income Exclusion Requirements

To claim the foreign earned income exclusion, foreign housing exclusion, or foreign housing deduction, you must make a valid election on your tax return and you must:

- be a U.S. citizen or resident alien, and
- have foreign earned income, and
- have a foreign tax home, and
- meet either the Bona Fide Residence Test or the Physical Presence Test.

## Foreign Earned Income and Foreign Tax Home Requirements

- **Foreign Earned Income**
  - Income received for services you perform in a foreign country
- **Foreign Tax Home**
  - Your regular or main place of business, employment or post of duty must be in a foreign country(s), **and**
  - You cannot have an abode in the United States during the same period



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## Bona Fide Residence Test or Physical Presence Test Requirement

- **Bona Fide Residence Test**
  - You must be a bona fide resident of a foreign country(s) for an uninterrupted period that includes an entire tax year.
- **Physical Presence Test**
  - You must be physically present in a foreign country(s) for 330 full days during a period of 12 consecutive months.



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## Foreign Earned Income Exclusion -Filing Requirements

- You must file a return even if you have no tax liability after claiming the exclusion
- File Form 2555 or 2555-EZ with your U.S. Income Tax Return (Form 1040)



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## 2015 Maximum Foreign Earned Income Exclusion

If you qualify you could exclude the smaller of:

- \$100,800 (adjusted annually)
- or**
- Your foreign earned income for the tax year minus your foreign housing exclusion

*Note: Both spouses may claim a foreign earned income exclusion as long as both spouses meet the requirements. A separate Form 2555 or 2555-EZ must be filed for each spouse.*



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## Foreign Housing Costs

In addition to the foreign earned income exclusion you may be able to take a:

- Foreign housing exclusion (if an employee)
- or**
- Foreign housing deduction (if self-employed)

*Note: Complete Part VI of Form 2555 to claim the foreign housing exclusion or deduction.*



## Questions



## Foreign Tax Credit - Form 1116

- U.S. citizens and resident aliens are taxed by the United States on their worldwide income.
- Foreign source income can also be taxed by another country. This is referred to as double taxation.

What is the purpose of the foreign tax credit?

- *To avoid the double taxation of foreign source income.*



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## U.S. Source Income vs. Foreign Source Income

- **U.S.-source income**: income determined by tax law to be from within the U.S.



- **Foreign-source income**: income determined by tax law to be earned outside the U.S.



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## Limitations on FTC

The FTC limitation provides that the total amount of a taxpayer's FTC may not exceed the taxpayer's U.S. Income tax liability (determined without regard to the credit) attributable to foreign source income

The Maximum FTC is equal to...

$$\frac{\text{Foreign Source Taxable Income (Form 1116 Line 17)}}{\text{Worldwide Taxable Income before Exemptions (Form 1116 Line 18)}} \times \text{U.S. Tax Liability (Form 1116 Line 20)}$$



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## Categories of Income-Sourcing FTC Form 1116

Category	Item of Income	Factor Determining Source
Passive Category	Interest	Residence of payer – IRC § 861(a)(1); Treas. Reg. § 1.861-2
	Dividends*	Whether a U.S. or foreign corporation* – IRC § 861(a)(2); Treas. Reg. § 1.861-3
	Rents	Location of property – IRC § 861(a)(4); Treas. Reg. § 1.861-5
	Royalties: Natural resources Patents, copyrights, etc.	Location of property – IRC § 861(a)(4); Treas. Reg. § 1.861-5 Where property is used
	Sale of real property	Location of property – IRC § 861(a)(5); Treas. Reg. § 1.861-6
	Sale of personal property	Seller's tax home – IRC § 865(a), but see IRC § 865 (b) through (d) for exceptions; Treas. Reg. § 1.861-7
General Category	Salaries, wages, other compensation	Where services performed – IRC §§ 861(a)(3) and 862(a)(3); Treas. Reg. § 1.861-4
	Business income: Personal services Sale of inventory – purchased Sale of inventory – produced	Where services performed – IRC § 861(a)(3) and 862(a)(3); Treas. Reg. § 1.861-4 Where sold – IRC § 861(a)(6) Where produced (allocation may be necessary) – Treas. Reg. § 1.863-3(b)
	Pension distributions attributable to contributions	Where services were performed that earned the pension – Rev. Rul. 72-149

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## Creditable Foreign Taxes Form 1116

Generally, the following four tests must be met for **any foreign tax** to qualify for the credit:

1. It must be a tax **imposed on the taxpayer**,
2. Taxpayer must have **paid or accrued** the tax,
3. The tax must be the **legal and actual** foreign tax liability, and
4. The tax must be an **income tax** or a tax imposed **in lieu of an income tax**.



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## Only Legal and Actual Foreign Tax Liability Qualifies for the Credit

- The amount of foreign tax that qualifies is not necessarily the amount of tax withheld by the foreign country.
- Only the **legal and actual foreign tax liability** that the taxpayer paid or accrued during the year qualifies for the credit.
- A FTC **cannot** be taken for income taxes paid to a foreign country, if it is reasonably certain the amounts would be refunded, credited, abated, rebated, or forgiven if a claim was made.



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## Tax Treaties

- The U.S. has tax treaties with many countries.
- Tax treaties establish specific withholding tax rates for certain types of income.
- Treaty rates may be used by taxpayers to reduce the amount of foreign taxes they pay to the treaty country.
- The creditable foreign taxes are limited to **the lower treaty rate**, even if taxes were withheld at a higher statutory rate.



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## Example: Treaty vs. Statutory Withholding Rate

- A U.S. citizen receives \$10,000 in interest income from investment activities in a foreign country.
- \$3,000 (30%) of foreign taxes were withheld.
- Under the applicable treaty, the treaty tax rate for interest income is 0%.

**The amount of creditable tax is limited to the treaty rate of 0% or \$0.**



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## Questions



## Reporting Foreign Financial Assets

- Form 1040, Schedule B, Part III
- FBAR – FinCEN Form 114
- FATCA – Form 8938
- Other Foreign Information Returns

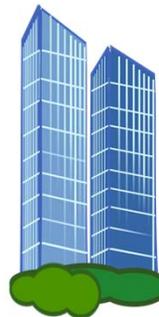


**Penalties for failure to file can be steep**

## Definition “Foreign Financial Account”

1. Typically, 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).
- Commodity futures or options account, an insurance policy with a cash value, an annuity policy with a cash value, and shares in a mutual fund or similar pooled funds.



## Definition Foreign Financial Account (cont'd)

2. Financial account located in a foreign country is an account physically located outside of the United States.

- 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.



## Definition Foreign Financial Account (cont'd)

3. **Signature authority** is the authority of an individual to **control the disposition** of assets held in a foreign financial account by direct communication to the bank or other financial institution that maintains the financial account.



## FinCEN

### Financial Crimes Enforcement Network (FinCEN)

- A bureau of the Treasury Department
- Authorized under the Bank Secrecy Act
- FinCEN Form 114 - commonly referred to as "FBAR"
- Delegates FBAR compliance to the IRS.
- The FBAR filing requirement is not part of filing a tax return.

## Who has to file FinCEN Form 114 (FBAR)?

### U.S. Person with:

- Financial Interest or Signatory Authority over
- Foreign Financial Accounts
  - Bank
  - Investment Brokerage Accounts
  - Mutual Funds
  - Pension Plans
  - Other
- Aggregate balance over \$10,000 on any day during the calendar year



## How to file FinCEN Form 114 (FBAR)

- Must be filed electronically (previous and current years) using the BSA E-Filing Systems Website:
  - <http://bsaefiling.fincen.treas.gov/main.html>
- Due on June 30<sup>th</sup> of the following calendar year
  - 2015 FBAR due on June 30, 2016
- Beginning for reporting year 2016, FBAR due date will be April 15<sup>th</sup>, but extensions will be allowed
- 2016 FBAR due on April 15, 2017

## Foreign Account Tax Compliance Act (FATCA)

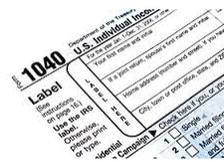
- Enacted March 18, 2010
- Requires filing of Form 8938
- The law addresses tax non-compliance by U.S. taxpayers with foreign accounts by focusing on reporting by U.S. taxpayers and foreign financial institutions.
- The FATCA requirement does not replace or otherwise affect a taxpayer's obligation to file an FinCEN Form 114.



## Who has to file Form 8938?

### U.S. Taxpayers Holding Foreign Financial Assets

- Assets Include bank accounts and entities
  - May include some of the same assets required to be reported on an FinCEN Form 114
- Reporting thresholds vary
- Filed with Form 1040
  - If Form 1040 is not required Form 8938 is not required.



## Specified Foreign Financial Asset - FATCA

- Any financial account maintained by a foreign financial institution, and
- Any of the following assets which are not held in an account maintained by a financial institution
  - Any stock or security issued by a person other than a United States person,
  - Any financial instrument or contract held for investment that has an issuer or counterparty which is other than a United States person, and
  - Any interest in a foreign entity



## Comparison FinCEN Form 114 and Form 8938

	Form 8938, Statement of Specified Foreign Financial Assets	FinCEN Form 114, Report of Foreign Bank and Financial Accounts (FBAR)
Who Must File?	Specified individuals, which include U.S. citizens, resident aliens, and certain non-resident aliens that have an interest in specified foreign financial assets and meet the reporting threshold	U.S. persons, which include U.S. citizens, resident aliens, trusts, estates, and domestic entities that have an interest in foreign financial accounts and meet the reporting threshold
Does the United States include U.S. territories?	No	Yes, resident aliens of U.S. territories and U.S. territory entities are subject to FBAR reporting
Reporting Threshold (Total Value of Assets)	<u>\$50,000 on the last day of the tax year or \$75,000 at any time during the tax year (higher threshold amounts apply to married individuals filing jointly and individuals living abroad).</u>	<u>\$10,000 at any time during the calendar year</u>
When do you have an interest in an account or asset?	If any income, gains, losses, deductions, credits, gross proceeds, or distributions from holding or disposing of the account or asset are or would be required to be reported, included, or otherwise reflected on your income tax return	Financial interest: you are the owner of record or holder of legal title; the owner of record or holder of legal title is your agent or representative; you have a sufficient interest in the entity that is the owner of record or holder of legal title. Signature authority: you have authority to control the disposition of the assets in the account by direct communication with the financial institution maintaining the account. See instructions for further details.
What is Reported?	<u>Maximum value of specified foreign financial assets, which include financial accounts with foreign financial institutions and certain other foreign non-account investment assets</u>	Maximum value of financial accounts maintained by a financial institution physically located in a foreign country

Comparison: <https://www.irs.gov/Businesses/Comparison-of-Form-8938-and-FBAR-Requirements>

## Comparison FinCEN Form 114 and Form 8938 (cont'd)

	Form 8938, Statement of Specified Foreign Financial Assets	FinCEN Form 114, Report of Foreign Bank and Financial Accounts (FBAR)
How are maximum account or asset values determined and reported?	Fair market value in U.S. dollars in accord with the Form 8938 instructions for each account and asset reported. Convert to U.S. dollars using the end of the taxable year exchange rate and report in U.S. dollars.	Use periodic account statements to determine the maximum value in the currency of the account. Convert to U.S. dollars using the end of the calendar year exchange rate and report in U.S. dollars.
When Due?	By due date, including extension, if any, for income tax return	Received by June 30 (no extensions of time granted)* (Changes in 2016)
Where to File?	File with income tax return pursuant to instructions for filing the return	File electronically through FinCEN's <a href="#">BSA E-Filing System</a> . The FBAR is not filed with a federal tax return.
Penalties	Up to \$10,000 for failure to disclose and an additional \$10,000 for each 30 days of non-filing after IRS notice of a failure to disclose, for a potential maximum penalty of \$60,000; criminal penalties may also apply	If non-willful, up to \$10,000; if willful, up to the greater of \$100,000 or 50 percent of account balances; criminal penalties may also apply

Comparison: <https://www.irs.gov/Businesses/Comparison-of-Form-8938-and-FBAR-Requirements> 35

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

## Other Potential Foreign Information Returns including but not limited to:

**\*\*\*Penalties for failure to file can be steep.\*\*\***

### Form 3520

- Annual Return to Report Transactions with Foreign Trusts and Receipt of Certain Foreign Gifts

### Form 3520-A

- Annual Information Return of Foreign Trust with a U.S. Owner

### Form 5471

- Information Return of U.S. Person with Respect to Certain Foreign Corporations

### Form 5472

- Information Return of a 25% Foreign –Owned U.S. Corporation or a Foreign Corporation Engaged in a U.S. Trade or Business

### Form 8865

- Return of U.S. Persons With Respect to Certain Foreign Partnerships



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## Options Available for Non-Compliance

1. OVDP
2. Streamlined Filing Compliance Procedures
  - Streamlined Foreign Offshore
  - Streamlined Domestic Offshore
3. Delinquent FBAR Submission Procedures
4. Delinquent International Information Return Submission Procedures

Search [www.irs.gov](http://www.irs.gov): “Options Available For U.S. Taxpayers with Undisclosed Foreign Financial Assets”

Taped Webinar: Streamlined Filing Compliance Procedures 3/9/16



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## Previously Taped Webcast May 11, 2016

### “Streamlined Filing Compliance Procedures”

To view, enter the following URL in your web browser;  
<https://www.webcaster4.com/Webcast/Page/490/14723>

Topics include:

- Brief outline four offshore compliance options
- Shows where to find information on www.IRS.gov
- Explains the Streamlined Filing Compliance Procedures
- Walks through of the Streamlined Certification Forms



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## How to Get Tax Help

Information for International Taxpayers

- <https://www.irs.gov/Individuals/International-Taxpayers>

Refund Status:

- [www.irs.gov/Refunds](http://www.irs.gov/Refunds)

Transcripts:

- [www.irs.gov/Individuals/Get-Transcript](http://www.irs.gov/Individuals/Get-Transcript)

Applying for an ITIN:

- <https://www.irs.gov/Individuals/International-Taxpayers/Obtaining-an-ITIN-from-Abroad>

Expatriation Tax:

- <https://www.irs.gov/Individuals/International-Taxpayers/Expatriation-Tax>



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## How to Get Tax Help

IRS Forms and Publications:

- <https://www.irs.gov/Forms-&-Pubs>

Tax Payments:

- <https://www.irs.gov/Payments>

Identity Theft Issues:

- <https://www.irs.gov/uac/Taxpayer-Guide-to-Identity-Theft>

Telephone Assistance for Taxpayers Outside the U.S.:

- 267-941-1000 (English-speaking only)

Taxpayer Advocate Service for Taxpayers Outside the U.S.:

- 787-522-8601 (English) or 787-522-8600 (Spanish)



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## IRS Publications

- Publication 54, *Tax Guide for U.S. Citizens and Resident Aliens Abroad*
- Publication 514, *Foreign Tax Credit for Individuals*
- Publication 901, *U.S. Tax Treaties*



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## Additional Resources for Foreign Tax Credit

- Form 1116
- Instructions for Form 1116
- <https://www.irs.gov/Individuals/International-Taxpayers/What-Foreign-Taxes-Qualify-For-The-Foreign-Tax-Credit%3F>



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## Additional FBAR Resources

FinCen (“Financial Crimes Enforcement Network”) website:

- [www.FinCEN.gov](http://www.FinCEN.gov)

FinCEN Resource Center:

- 1-800-767-2825 or (703) 905-3591 or [FRC@fincen.gov](mailto:FRC@fincen.gov)

One hour Webinar:

<http://www.irsvideos.gov/ElectronicFBAR/>



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## Additional Form 8938 Resources

Instructions for Form 8938 on irs.gov

[www.irs.gov/form8938](http://www.irs.gov/form8938)

Basic Question & Answer on Form 8938

<https://www.irs.gov/Businesses/Corporations/Basic-Questions-and-Answers-on-Form-8938>

Comparison of Form 8938 and FBAR Requirements

<https://www.irs.gov/Businesses/Corporations/Basic-Questions-and-Answers-on-Form-8938> DoT2



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## Questions



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**DoT2** This link is incorrect.  
Department of Treasury, 4/14/2016