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## Seven Things Savvy Expat Investors Need to Know About FATCA

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The most common acronym in the U.S. expat vocabulary these days is FATCA. FATCA stands for "Foreign Account Tax Compliance Act" and it's surely one of the most controversial topics among U.S. citizens who live abroad. Let's take a closer look at FATCA, and the seven things savvy investors should know.

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### FATCA doesn't create a tax liability

FATCA was created as part of the 2010 HIRE Act and its true purpose is to uncover (and

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thwart) tax cheats who are hiding money in offshore accounts. In essence, FATCA is simply a reporting requirement, not one that brings about a tax liability. But, that doesn't mean it's not causing any issues for U.S. expats in particular!

While it originally started as an individual reporting requirement only, FATCA's reach has expanded to include foreign financial institutions—meaning, foreign banks are required to report on the accounts of their American clients to ensure full disclosure. This has reportedly caused major issues for honest U.S. citizens who are simply keeping money in foreign banks to support their day-to-day activities. Banks are closing American clients' accounts without notice or simply refusing to do business with them. This action is one of the primary reasons FATCA has received such a negative reaction from the expat community.



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## What are the most common assets expats need to report?

U.S. taxpayers must report a host of specified foreign assets on Form 8938—but only if they exceed certain thresholds. The following are the thresholds for residents and non-residents:

**Single taxpayers living abroad:** \$200,000 on the last day of the tax year or \$300,000 at any point during the year.

**Married taxpayers living abroad:** \$400,000 on the last day of the tax year and \$600,000 at any point during the year.

**Single taxpayers living in the United States:** \$50,000 on the last day of the tax year or \$75,000 at any point during the year.

**Married taxpayers living in the United States:** \$100,000 on the last day of the tax year or \$150,000 at any point during the year.

The most common assets expats need to report are foreign bank (depository) accounts; foreign investment accounts; and foreign retirement plan accounts.

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## What are the most commonly misunderstood reporting requirements?

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**Bank Accounts.** Taxpayers with signatory authority over but no direct financial interest in foreign accounts need to report those accounts on Foreign Bank Account Reports (FBARs), if the combined value of the accounts meet or exceed \$10,000 at any time during the calendar year. However, if the financial accounts over which you have signatory authority have balances that exceed the FATCA thresholds, you don't need to report them on Form 8938. If you have a direct financial interest or ownership over a foreign bank account whose balance exceeds the FATCA threshold, then that account needs to be reported on Form 8938. It's all about the direct financial interest in the account.

FBAR and FATCA have different reporting requirements. If you're confused on the differences, see "[A Comparison Guide for Form 8938 and the FBAR](#)" for details.

**Foreign Stocks and Securities.** Foreign stocks and securities held in the U.S. branch of a foreign financial institution aren't reportable on either the FBAR or Form 8938.

**Foreign Assets Held by an Entity.** Taxpayers need to report on the FBAR indirect interests in foreign financial assets held by an entity if there's sufficient ownership or beneficial interest (greater than 50 percent) in the entity.

**Trusts.** Trusts must file an FBAR if the threshold is met but trusts aren't required to be reported on Form 8938.



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### What kind of stock doesn't need to be reported?

Foreign stock or securities held in a financial account at a foreign financial institution don't have to be separately reported, but the account itself is subject to reporting. Foreign stock or securities held in a U.S. financial account don't have to be reported on the FBAR or Form 8938.

Certain investments (for example, those owned indirectly through another entity such as a publicly traded partnership) may be required to file Form 8621 and/or Form 926 based on the underlying assets held in the investment.

Foreign stock or securities not held in a financial account do not have to be reported on an FBAR, but they are reportable on Form 8938 unless another specified form is already being timely filed and reporting it on Form 8938 would constitute duplicative reporting.

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## What are the FATCA reporting requirements on gold?

Precious metals like gold held directly don't need to be reported on either an FBAR or Form 8938. This is also the rule for directly held foreign currency, real estate and personal property (such as art, antiques, jewelry, cars and other collectibles). If the precious metals were indirectly owned through an investment account, they would be reportable on both the FBAR and Form 8938.

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## What forms count as 'duplicate' forms?

If you file the following report(s) in a timely manner, you don't have to duplicate reporting on Form 8938:

- Form 3520 (Annual Return To Report Transactions With Foreign Trusts and Receipts of Certain Foreign Gifts)
- Form 5471 (Information Return of U.S. Persons With Respect to Certain Foreign Corporations)
- Form 8621 (Information Return by a Shareholder of a Passive Foreign Investment Company or Qualified Electing Fund)
- Form 8865 (Return of U.S. Persons With Respect to Certain Foreign Partnerships)

Instead, the taxpayer must report on Form 8938 which of the above forms are being filed and the number being filed of each.



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## What are the FATCA implications for repatriates?

The filing thresholds drop quite a bit when you move back to the United States. So, you may have assets that didn't trigger a filing requirement while you lived overseas, but those same assets now need to be reported.

As you can see, it can get a bit complicated when it comes to foreign bank account reporting! While it may be frustrating to file additional forms, remember that FATCA and FBAR are simply filing requirements and have no impact on your U.S. expat taxes. But, it's important to file if you're required to do so—if you are unsure about whether you need to file, it's best to contact an expat tax professional to avoid potential fees and penalties (which can be rather steep!).