**International Forms & Penalties**

Tax professionals advising U.S. taxpayers with international connections must be familiar with a range of international information returns. These forms are required under specific circumstances involving foreign assets, accounts, entities, and transactions. Below is a summary of the most common international forms, when and under what circumstances they must be filed, and the penalties for failing to file them.

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**1. Form 3520: Annual Return to Report Transactions with Foreign Trusts and Receipt of Certain Foreign Gifts**

**When and Under What Circumstances to File**

- **Foreign Trust Transactions:** U.S. persons (including executors of U.S. estates) must file if they:
  - Create a foreign trust.
  - Transfer money or property to a foreign trust.
  - Receive distributions (including loans or uncompensated use of trust property) from a foreign trust.
  - Are treated as owners of a foreign trust under IRC §§ 671–679.
- **Foreign Gifts:** U.S. persons must file if they receive:
  - More than $100,000 from a nonresident alien individual or foreign estate (including related persons) treated as gifts or bequests.
  - More than the annual threshold (adjusted for inflation) from foreign corporations or partnerships treated as gifts.

**Due Date**

- 15th day of the 4th month after the end of the taxpayer's tax year (April 15 for calendar-year individuals).
- If living and working abroad, the due date is June 15.
- If an extension for the income tax return is filed, Form 3520 is due by October 15.

**Penalties for Failure to File**

- **Part I (Transfers to Foreign Trusts):** Greater of $10,000 or 35% of the gross value of property transferred.

- **Part II (Ownership of Foreign Trust):** Greater of $10,000 or 5% of the gross value of the portion of trust assets owned.
- **Part III (Distributions from Foreign Trusts):** Greater of $10,000 or 35% of the gross value of distributions received.
- **Part IV (Foreign Gifts):** 5% of the value of the unreported gift per month, up to 25% total.
- **Continuation Penalty:** If not filed within 90 days after IRS notice, an additional $10,000 for each 30-day period (or fraction thereof), up to the gross reportable amount.
- **Reasonable Cause Exception:** No penalty if failure was due to reasonable cause and not willful neglect. The fact that a foreign country would impose penalties for disclosure is not reasonable cause [5] [4].

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**2. Form 3520-A: Annual Information Return of Foreign Trust With a U.S. Owner**

**When and Under What Circumstances to File**

- Required annually for any foreign trust with at least one U.S. owner under the grantor trust rules (IRC §§ 671–679).
- The foreign trust must file, but if it does not, the U.S. owner must file a substitute Form 3520-A attached to their Form 3520.

**Due Date**

- 15th day of the 3rd month after the end of the trust's tax year (March 15 for calendar-year trusts).
- Substitute Form 3520-A is due with the U.S. owner's Form 3520.

**Penalties for Failure to File**

- Greater of $10,000 or 5% of the gross value of the portion of trust assets owned by the U.S. person.
- Continuation penalty: $10,000 for each 30-day period after 90 days from IRS notice, up to the value of the trust assets.
- Reasonable cause exception applies [5].

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**3. Form 5471: Information Return of U.S. Persons With Respect to Certain Foreign Corporations**

**When and Under What Circumstances to File**

- U.S. persons who are officers, directors, or shareholders in certain foreign corporations must file if they:
  - Acquire or dispose of stock, or
  - Own at least 10% of the total value or voting power, or
  - Are U.S. shareholders in a controlled foreign corporation (CFC).

**Due Date**

- With the U.S. person's income tax return (including extensions).

**Penalties for Failure to File**

- $10,000 for each annual accounting period for which the form is required.
- Continuation penalty: $10,000 for each 30-day period after 90 days from IRS notice, up to $50,000.
- Reasonable cause exception applies [5].

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**4. Form 5472: Information Return of a 25% Foreign-Owned U.S. Corporation or a Foreign Corporation Engaged in a U.S. Trade or Business**

**When and Under What Circumstances to File**

- U.S. corporations with at least 25% foreign ownership, or foreign corporations engaged in a U.S. trade or business, must file to report certain transactions with related parties.

**Due Date**

- With the corporation's income tax return (including extensions).

**Penalties for Failure to File**

- $25,000 for each failure to file a complete and correct return.
- Continuation penalty: $25,000 for each 30-day period after 90 days from IRS notice; no maximum.
- Reasonable cause exception applies [5].

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**5. Form 8865: Return of U.S. Persons With Respect to Certain Foreign Partnerships**

**When and Under What Circumstances to File**

- U.S. persons with certain interests in foreign partnerships, including:
    - Control (more than 50% ownership),
    - 10% or more ownership with reportable events (acquisitions, dispositions, changes),
    - Transfers of property to a foreign partnership.

**Due Date**

- With the U.S. person's income tax return (including extensions).

**Penalties for Failure to File**

- $10,000 for each failure to file a complete and accurate return.
- Continuation penalty: $10,000 for each 30-day period after 90 days from IRS notice, up to $50,000.
- Additional penalty: 10% of the fair market value of property contributed, up to $100,000, for failure to report certain transfers.
- Reasonable cause exception applies [5].

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**6. Form 8938: Statement of Specified Foreign Financial Assets**

**When and Under What Circumstances to File**

- Individuals (and certain domestic entities) must file if the total value of specified foreign financial assets exceeds the reporting threshold (generally $50,000 for single filers, $100,000 for joint filers, with higher thresholds for those living abroad).

**Due Date**

- With the taxpayer's income tax return (including extensions).

**Penalties for Failure to File**

- $10,000 for failure to file.
- Continuation penalty: $10,000 for each 30-day period after 90 days from IRS notice, up to $50,000.
- Reasonable cause exception applies [5].

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**7. FinCEN Form 114 (FBAR): Report of Foreign Bank and Financial Accounts**

**When and Under What Circumstances to File**

- U.S. persons with a financial interest in, or signature authority over, foreign financial accounts with an aggregate value exceeding $10,000 at any time during the calendar year.

**Due Date**

- April 15 (automatic extension to October 15).

**Penalties for Failure to File**

- **Nonwillful violation:** Up to $10,000 per violation.
- **Willful violation:** Greater of $100,000 or 50% of the account balance at the time of the violation, per violation.
- Criminal penalties may also apply for willful violations.
- Reasonable cause exception applies if the violation was due to reasonable cause and the account was properly reported on the tax return [6].

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**8. Form 926: Return by a U.S. Transferor of Property to a Foreign Corporation**

**When Form 926 Applies**

- **Who Must File:** Any U.S. person (including U.S. citizens, residents, domestic corporations, partnerships, estates, and trusts) who transfers property to a foreign corporation in certain nonrecognition transactions.
- **Covered Transactions:** Transfers described in IRC §§ 332, 351, 354, 355, 356, 361, and 367, including certain liquidations, reorganizations, and contributions to capital.
- **Cash Transfers:** Must be reported if, immediately after the transfer, the U.S. person holds at least 10% of the total voting power or value of the foreign corporation, or if the amount of cash transferred during a 12-month period exceeds $100,000.
- **Partnerships:** If a partnership makes the transfer, each domestic partner is treated as a transferor and must file Form 926 for their proportionate share.
- **Exceptions:** Certain small transfers and transfers by tax-exempt entities may be exempt if specific conditions are met [3].

**When to File**

- **Due Date:** Attach Form 926 to the U.S. transferor's income tax return (or exempt organization return) for the tax year that includes the date of the transfer [3].

**Penalties for Failure to File**

- **Monetary Penalty:** 10% of the fair market value of the property at the time of the transfer, up to $100,000 per transfer, unless the failure was due to intentional disregard, in which case the cap does not apply.
- **Reasonable Cause Exception:** The penalty does not apply if the failure is due to reasonable cause and not willful neglect.
- **Additional Consequences:** The statute of limitations for assessing tax on the transfer is extended until 3 years after the required information is provided [1].

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**9. Form 8621: Information Return by a Shareholder of a Passive Foreign Investment Company or Qualified Electing Fund**

**When Form 8621 Applies**

- **Who Must File:** Any U.S. person (individual, corporation, partnership, trust, or estate) who is a direct or indirect shareholder of a Passive Foreign Investment Company (PFIC).
- **PFIC Definition:** A foreign corporation is a PFIC if either (1) 75% or more of its gross income is passive, or (2) at least 50% of its assets produce or are held for the production of passive income.
- **Triggering Events:** Filing is required if the U.S. person:
  - Receives a direct or indirect distribution from a PFIC,
  - Recognizes gain on a direct or indirect disposition of PFIC stock,
  - Is making certain elections (e.g., QEF or mark-to-market),
  - Or is otherwise required to report under IRC § 1298(f) [5].

**When to File**

- **Due Date:** Attach Form 8621 to the U.S. person's income tax return for each year the person is required to file [5].

**Penalties for Failure to File**

- **No Specific Monetary Penalty:** The Code does not impose a specific monetary penalty for failure to file Form 8621.
- **Statute of Limitations:** The statute of limitations for the entire tax return remains open until the required Form 8621 is filed.
- **Other Consequences:** Failure to file may result in loss of certain tax benefits and increased IRS scrutiny [5].

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**10. Form 8858: Information Return of U.S. Persons With Respect to Foreign Disregarded Entities (FDEs) and Foreign Branches (FBs)**

**When Form 8858 Applies**

- **Who Must File:** U.S. persons (citizens, residents, domestic corporations, partnerships, and certain trusts and estates) who are tax owners of a foreign disregarded entity (FDE) or who operate a foreign branch (FB), either directly or indirectly.
- **FDE Definition:** An entity not created or organized in the U.S. that is disregarded as separate from its owner for U.S. tax purposes under Treas. Reg. §§ 301.7701-2 and 301.7701-3.
- **FB Definition:** A qualified business unit (QBU) that is a branch, division, or similar business unit of a taxpayer that maintains separate books and records.
- **Indirect Ownership:** U.S. persons who own interests in FDEs or FBs through controlled foreign corporations (CFCs) or controlled foreign partnerships (CFPs) may also have a filing requirement.
- **Schedule M:** Must be filed to report transactions between the FDE/FB and the filer or other related entities [4].

**When to File**

- **Due Date:** Attach Form 8858 (and Schedule M, if required) to the U.S. person's income tax return or, if applicable, to Form 5471 or Form 8865, by the due date (including extensions) [4].

**Penalties for Failure to File**

- **Monetary Penalty:** $10,000 for each annual accounting period of each FDE or FB for which the information is not filed on time.
- **Additional Penalties:** If the failure continues for more than 90 days after IRS notice, an additional $10,000 penalty applies for each 30-day period (or fraction thereof), up to a maximum of $50,000 per failure.
- **Foreign Tax Credit Reduction:** A 10% reduction in the foreign tax credit for taxes paid or accrued to foreign countries may apply, with further reductions for continued noncompliance.
- **Criminal Penalties:** May apply for willful failure to file [4].

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## 11. Form 8938: Statement of Specified Foreign Financial Assets

### When Form 8938 Applies

- **Who Must File:** Specified individuals (U.S. citizens, resident aliens, and certain nonresidents who elect to be treated as residents) and certain domestic entities that hold an interest in specified foreign financial assets.
- **Specified Foreign Financial Assets:** Includes foreign financial accounts, stock or securities issued by non-U.S. persons, interests in foreign entities, and certain financial instruments or contracts with non-U.S. counterparties.
- **Thresholds:** Filing is required if the aggregate value of all specified foreign financial assets exceeds $50,000 on the last day of the tax year or $75,000 at any time during the year for single filers living in the U.S. (higher thresholds apply for married filers and those living abroad).
- **Exceptions:** Assets reported on other forms (e.g., Forms 3520, 5471, 8621, 8865) do not need to be duplicated on Form 8938, but the forms must be identified on Form 8938 [2].

### When to File

- **Due Date:** Attach Form 8938 to the taxpayer's annual income tax return (Form 1040, 1040-SR, 1041, etc.) by the due date (including extensions) [2].

### Penalties for Failure to File

- **Monetary Penalty:** $10,000 for failure to disclose.
- **Additional Penalties:** If the failure continues for more than 90 days after IRS notice, an additional $10,000 penalty applies for each 30-day period (or fraction thereof), up to a maximum of $50,000.
- **Presumption of Value:** If the IRS determines the taxpayer has an interest in foreign financial assets and the taxpayer does not provide sufficient information, the IRS may presume the value exceeds the reporting threshold for penalty purposes.
- **Reasonable Cause Exception:** No penalty if the failure is due to reasonable cause and not willful neglect [2].

**Summary of International Information Return Filing Requirements and Penalties**

| Form | Due Date | Penalties for Failure to File |
|---|---|---|
| **Form 3520** | April 15 (for calendar-year individuals); June 15 if living abroad; October 15 with an income tax return extension. | • **Transfers/Distributions:** Greater of $10,000 or 35% of the gross value.• **Ownership:** Greater of $10,000 or 5% of the gross value of trust assets.• **Gifts:** 5% of the value per month, up to 25%.• **Continuation Penalty:** Additional $10,000 per 30-day period after IRS notice. |
| **Form 3520-A** | March 15 (for calendar-year trusts). A substitute form is due with the U.S. owner's Form 3520 if the foreign trust does not file. | • Greater of $10,000 or 5% of the gross value of trust assets owned by the U.S. person.• **Continuation Penalty:** $10,000 per 30-day period after IRS notice. |
| **Form 5471** | With the U.S. person's income tax return (including extensions). | • $10,000 for each annual accounting period.• **Continuation Penalty:** $10,000 per 30-day period after IRS notice, up to $50,000. |
| **Form 5472** | With the corporation's income tax return (including extensions). | • $25,000 for each failure.• **Continuation Penalty:** $25,000 per 30-day period after IRS notice, with no maximum. |
| **Form 8865** | With the U.S. person's income tax return (including extensions). | • $10,000 for each failure.• **Continuation Penalty:** $10,000 per 30-day period after IRS notice, up to $50,000.• **Additional Penalty:** 10% of the FMV of contributed property (up to $100,000) for failure to report certain transfers. |
| **Form 8938** | With the taxpayer's income tax return (including extensions). | • $10,000 for failure to file.• **Continuation Penalty:** $10,000 per 30-day period after IRS notice, up to $50,000. |
| **FinCEN Form 114 (FBAR)** | April 15, with an automatic extension to October 15. | • **Nonwillful:** Up to $10,000 per violation.• **Willful:** Greater of $100,000 or 50% of the account balance at the time of the violation. Criminal penalties may also apply. |
| **Form 926** | With the transferor's income tax return for the tax year of the transfer. | • 10% of the fair market value of the property at the time of transfer, up to $100,000 (cap does not apply if |

| Form | Due Date | Penalties for Failure to File |
|---|---|---|
| | | intentional).• The statute of limitations for assessing tax on the transfer is extended. |
| **Form 8621** | With the U.S. person's income tax return for each required year. | • No specific monetary penalty.• The statute of limitations for the entire tax return remains open until the form is filed. |
| **Form 8858** | With the U.S. person's income tax return (or attached to Form 5471 or 8865). | • $10,000 for each annual accounting period of each FDE/FB.• **Continuation Penalty:** Additional $10,000 per 30-day period after IRS notice, up to $50,000.• 10% reduction in foreign tax credits.• Criminal penalties may apply for willful failure. |