



## Robert W. Wood

THE TAX LAWYER

Apr. 10 2012 — 6:05 am

### FBARs & FATCA Form 8938: Maddening Duplication?

Confused about why the IRS is so interested in your foreign assets and accounts? Don't be. In fact, it's best not to think about it. Just get ready to disclose, disclose, disclose.

Check out [IRS Form 8938 Or FBAR?](#) and [More On IRS Form 8938 vs. FBAR](#) for differences between the forms, when to file and what to report. Still, it's hard to ignore the duplication, as a GAO study reveals. See [Reporting Foreign Accounts To IRS](#). The report will be worth studying for some, but here are its most general findings:



- **Tax v. Law Enforcement.** This may surprise some readers, but the [Form 8938](#) was designed to aid in tax administration, while the [FBAR](#) was designed to aid in law enforcement. Filing dates and administrative agencies are different, and the whole purpose of these forms as different. Does that preface sound like you'd better plan on slogging through both sets of filing rules? Yes, it does.
- **Duplication.** Yup, some of the information requested on Form 8938 and FBARs is duplicative. Still, Form 8938 asks for

additional information not required on an FBAR, including other foreign financial assets and income.

- **No Data.** This is the first year in which Form 8938 is being used, so no one even knows how many will be filed or by whom. Although there are reasonable FBAR data banks being developed, there's nothing about Forms 8938. For that reason, the GAO study says it can't tell how many people will be confused by the duplication or would benefit from streamlining or somehow integrating this information gathering.
- **Let's Wait.** Once Form 8938 data is available, it seems likely that the IRS, FinCEN (which administers FBARs) and the Treasury Department will be able to assess whether cost-effective steps could be taken. One of those steps in the future might—*that's might*—include allowing filers who would normally have to submit both forms to substitute the information reported on one to meet the requirements of the other.
- **Penalties.** Finally, the GAO study notes in a somewhat frightening table that the penalty structure for the two forms is also different. But both sets of penalties are doozies.

For more, see:

[Despite FATCA, FBAR Penalties Still Under Fire](#)

[Government Extends FBAR Filing Time](#)

[Got FBARs? But Which One?](#)

[5 Nations Join U.S. In Tax Evasion Crackdown](#)

[Will IRS Get Fat Off FATCA?](#)

[Happy FATCA Filing Season](#)

[Would Carlos Slim Trim FATCA? Fat Chance](#)

[Fat New Regs Trim FATCA Down to Size](#)

[Are Expats Derailing The FATCA Express?](#)

## [Celebrity Leavings: Bidding Stars Adieu](#)

*Robert W. Wood practices law with [Wood LLP](#), in San Francisco. The author of more than 30 books, including *Taxation of Damage Awards & Settlement Payments* (4th Ed. 2009 with 2012 Supplement, [Tax Institute](#)), he can be reached at [Wood@WoodLLP.com](mailto:Wood@WoodLLP.com). This discussion is not intended as legal advice, and cannot be relied upon for any purpose without the services of a qualified professional.*