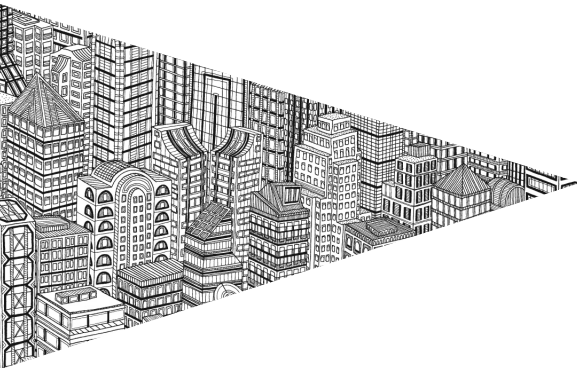


International Tax Alert



IRS issues temporary and proposed regulations on Form 8938 foreign financial asset reporting under Section 6038D

Executive summary

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On 14 December 2011, Treasury issued temporary and proposed regulations under the foreign financial asset reporting rules of Section 6038D. These rules generally require US *individuals* to report information ownership of a broad array of foreign financial assets, including foreign financial accounts, foreign securities, interests in foreign entities and trusts, and interests in foreign pension plans. Although the statute gives the government power to extend reporting to certain US domestic entities, the rules on this are only proposed, and are not proposed to apply for tax years beginning before 2012.

Notice 2011-55 suspended the obligation to file under Section 6038D until Form 8938, "Statement of Foreign Financial Assets," was issued. A final version of Form 8938 was released on 17 December 2011, and final instructions were released on 19 December 2011.

Although Section 6038D reporting is in addition to reporting under the foreign bank account rules, the temporary regulations contain a number of provisions to eliminate reporting on assets that are also reported on certain other IRS forms, such as Forms 8621 (passive foreign investment companies), and raise the amount of reportable assets that one must own before one must report above the statutory minimum. A special higher reporting threshold applies to individuals living abroad.

The temporary regulations (applying to specified individuals) apply to taxable years ending after 19 December 2011. Taxpayers may elect to apply the rules of this section to taxable years ending prior to 19 December 2011. An individual's obligation to file the Form 8938 in 2011 is deferred to 2012, if the individual:

- ▶ Had a tax year that began after 18 March 2010
- ▶ Was required to file Form 8938
- ▶ Filed an annual return before Form 8938 was released

The proposed regulations, which would extend Section 6038D reporting to certain specified domestic entities are proposed to apply to taxable years beginning after 31 December 2011.

Background

The foreign financial asset rules of Section 6038D expand the existing requirement under non-tax law to report a financial interest in or signature over a "foreign financial account" on Form TD F 90-22.1. Importantly, the government's position is that reporting on Form 8938 and Form TD F 90-22.1 is not duplicative. *Both forms must be filed if required.*

The government deliberately chose to make Form TD F 90-22.1 a non-tax filing so that the information obtained could be used for non-tax law enforcement purposes, such as combating money laundering, and would not be subject to the Section 6103 restrictions on disclosing

tax return information. However, in 2010 Congress decided that there should be a parallel income tax requirement to report interests in certain foreign financial assets, and Section 6038D was enacted as Section 511(a) of the *Hiring Incentives to Restore Employment Act*, P.L. 111-147.

Section 6038D requires individuals who own interests in "specified foreign financial assets" to include a report of such assets with their tax returns, effective for tax years beginning after 18 March 2010. (There is no requirement to report signatory or other such authority over assets that one does not own, unlike the TD F 90-22.1 rules.) Assets to be reported include financial accounts at foreign financial institutions, and financial assets not held in an account at any financial institution, domestic or foreign. Reporting is waived if the aggregate value of such assets does not exceed \$50,000, or any higher threshold that the Secretary might prescribe. Information to be reported includes identifying information about the account or asset, and the maximum value during the year. Penalties are provided for failure to report, which may be waived on a showing of reasonable cause. In addition, Section 6501(b)(6) provides that failure to perform reporting under Section 6038D for a year can keep the statute of limitations for the entire return for that year open until three years after the missing information is supplied, unless the failure is due to reasonable cause.

Entities are generally not required to report, except that, to the extent provided in regulations, a domestic entity that was formed or availed of to hold, directly or indirectly, specified foreign financial assets must report. The statute grants wide regulatory and dispensing powers to the government.

Persons Required to Report - Temp. Treas. Reg. Sections 1.6038D-1T and -2T

Specified persons who must report
The regulations provide that any "specified person" (which, for years beginning before 2012 only comprises "specified individuals," as discussed below) with any interest in a "specified foreign financial asset" during the taxable year must attach Form 8938, "Statement of Specified Foreign Financial Assets," to that person's annual return for the taxable year if the aggregate value of all such assets exceeds:

- ▶ \$50,000 on the last day of the taxable year; or
- ▶ \$75,000 at any time during the taxable year.

For married specified individuals filing a joint return, the minimum amount of assets before one must report is:

- ▶ \$100,000 on the last day of the taxable year; or
- ▶ \$150,000 at any time during the taxable year.

There are special thresholds for US citizens or residents living abroad who are qualified individuals under

Section 911(d)(1) for the taxable year (e.g., whose tax home is in a foreign country and who have been a resident of the foreign country for a year or have been abroad for 330 days in 12 consecutive months). For specified individuals in this situation, the minimum amount of assets before one must report is:

- ▶ \$200,000 on the last day of the taxable year; or
- ▶ \$300,000 at any time during the taxable year.

For married specified individuals in this situation filing a joint return, the minimum amount of assets before one must report is:

- ▶ \$400,000 on the last day of the taxable year; or
- ▶ \$600,000 at any time during the taxable year.

A “specified individual” is a US citizen, a resident alien of the United States for any portion of the taxable year, or a nonresident alien with a US citizen or resident spouse who has elected under Section 6013(g) or (h) to be taxed as a US resident. An individual who otherwise would be a resident alien but who elects to be taxed as a resident of a foreign country pursuant to a US income tax treaty’s residency tie-breaker rules (sometimes referred to as a half-resident alien) is a specified individual for this purpose.

Although “specified domestic entities” can be “specified persons” required to report, the definition of “specified domestic entities”

has only been issued in proposed form, as discussed below, and is not proposed to be effective for taxable years beginning before 2012.

Individuals who are not required to file a US tax return for a year are not specified individuals for the year. Thus, bona fide residents of the U.S. Virgin Islands, Guam and the Northern Mariana Islands are not specified individuals, since they are not required to file US tax returns. Bona fide residents of Puerto Rico and American Samoa are only specified residents if they have income from outside Puerto Rico/American Samoa, as the case may be. There are other special rules for residents of possessions who nevertheless are specified individuals, which will not be discussed in detail here.

Joint owners; computing the reporting threshold

A specified foreign financial asset that is jointly owned by married specified individuals filing jointly is only counted once for purposes of the reporting threshold. A married specified individual who files a separate annual return for the taxable year must report all of the specified foreign financial assets in which that individual has an interest, including assets jointly owned with a spouse. A married specified individual that files a separate annual return and whose spouse is also a specified individual includes only *one-half* of the value of a jointly owned specified foreign financial asset in determining whether he

has an interest in specified foreign financial assets the aggregate value of which exceeds the reporting thresholds above.

For other situations where specified individuals own assets jointly (e.g., unmarried individuals who jointly own assets), each joint owner includes the *full* value of the jointly owned asset for purposes of determining whether the aggregate value of all specified foreign financial assets in which the joint owner has an interest exceeds the reporting thresholds above.

One must take into account for the purpose of determining the reporting threshold assets that need not be reported separately on Form 8938 because they are reported on certain other IRS forms, as discussed below. Thus, if all of one’s foreign financial assets must be so reported on specified other IRS forms, one may need to file Form 8938, even though it merely will indicate that the assets are reported on other forms.

Interest in a specified foreign financial asset

A specified person is generally considered to have an interest in a specified foreign financial asset if any income, gains, losses, deductions, credits, gross proceeds, or distributions attributable to the holding or disposition of the asset are *or would be* required to be reported, included, or otherwise reflected on the specified person’s annual tax return (even if there are no such income, gains, etc., attributable to the asset for a

particular taxable year, and even if the asset does not have a positive value). As a corollary, assets owned by a disregarded entity are treated as owned by its owner for these purposes.

A parent that makes an election under Section 1(g)(7) to include certain unearned income of a child in the parent's gross income required to be reported for the taxable year has an interest in any specified foreign financial asset held by the child.

A specified person that is treated as the owner of a trust or any portion of a trust under the "grantor trust" rules of Sections 671 through 679 is treated as having an interest in any specified foreign financial assets held by the trust or by the portion of the trust that the specified person owns, *except* for certain domestic liquidating trusts and widely-held fixed investment trusts. However, the preamble makes it clear that there are no other indirect ownership rules, i.e., a specified person is not treated as having an interest in any specified foreign financial assets held by a partnership, corporation, trust (except as noted above), or estate solely as a result of the specified person's status as a partner, shareholder, or beneficiary. One corollary of this is that if one owns an interest in an investment entity, or has an interest in a pension plan, one might have to report one's interest in the entity or plan, under the rules discussed below, but one does not have to report assets owned by the entity or plan. Note that this rule is different from the TD F 90-22.1

rules, which deem one to have a reportable interest in assets held by a more than 50% subsidiary.

Definition of a Reportable "Specified Foreign Financial Asset" and Exceptions - Temp. Treas. Reg. Sections 1.6038D-3T and -7T

Although the definition of a "specified foreign financial asset" is broad, there are a number of exceptions that may eliminate reporting in many circumstances. In general, "specified foreign financial assets" include the following:

- ▶ Financial accounts, such as depository or custody accounts, with foreign financial institutions, *unless* the institution is a subsidiary of a US entity or is otherwise a "US payor" under Reg. Section 1.6049-5(c)(5)(i), and
- ▶ Any of the following, when held for investment:
 - Stock or securities issued by non-US entities;
 - Financial instruments or contracts, such as swaps and options, that have a non-US issuer or counterparty (regardless of whether the instrument has a negative value, as discussed below);¹
 - An interest in a non-US entity;
 - An interest in a foreign trust or estate; and
 - An interest in a foreign pension or deferred compensation plan.

Because Code Section 6038D was enacted as part of the same legislation as the *Foreign Account*

Tax Compliance Act (FATCA), key definitional terms for this provision leverage terminology set forth in FATCA. "Accounts" and "foreign financial institutions" are defined by cross-reference to the FATCA rules of Sections 1471-1474 except that, unlike the FATCA rules, accounts at financial institutions in US possessions are "foreign" for these purposes.²

Note that although one must own foreign financial assets with a minimum aggregate value before one has to report, as discussed above, once one has passed that threshold, one must report all such assets, regardless of their value.³

For this purpose, an asset is held for investment if it is not held in connection with the present conduct of, or to meet the present needs of, a trade or business. For example, working capital assets in excess of a reasonable amount for the business would be treated as held for investment. The rules are similar to, but not quite the same as, the rules for determining when investment income of foreign persons with a US trade or business is "effectively connected" with that business under the "asset use" test of Section 864.

If one does not know or have reason to know, based on readily accessible information, that one is a beneficiary of a foreign trust or estate, one need not report it. However, if one receives distributions from such a trust or estate, one is deemed to know that the trust/estate exists.

There are a number of helpful exceptions, however.

Assets held through an account with a US or foreign financial institution such as a custody account, are not "specified foreign financial assets." One may have to report the account in some cases, as discussed above, but one does not have to report assets held in the account. Note that this rule is very different from the TD F 90-22.1 rules, which can require reporting of investments held through financial accounts.

An asset that is marked to market under Section 475 (all dealers must do so under Section 475(a); certain traders may elect to do so under Sections 475(e) or 475(f)) need not be reported. The same rule applies for accounts all of the assets of which are marked to market under Section 475.

Assets which must be reported on any of the following forms need not be reported on Form 8938 (although such assets must be taken into account for purposes of the reporting threshold, as discussed above, and the existence of such forms must be noted on Form 8938, as discussed below):

- ▶ 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 US Owner;"
- ▶ Form 5471, "Information Return of US Persons With Respect To Certain Foreign Corporations;"

- ▶ Form 8621, "Return by a Shareholder of a Passive Foreign Investment Company or a Qualified Electing Fund;"
- ▶ Form 8865, "Return of US Persons With Respect To Certain Foreign Partnerships;" or
- ▶ Form 8891, "US Information Return for Beneficiaries of Certain Canadian Registered Retirement Plans."

One need not report an interest in a social security, social insurance, or similar plan of a foreign government.

Information to be Reported - Temp. Treas. Reg. Section 1.6038D-4T

The temporary regulations list information that must be provided with respect to each specified foreign financial asset being reported.

Some types of information must be reported for all types of foreign financial assets, and others need only be reported for certain types of assets.

- ▶ For a financial account maintained at a foreign financial institution, the name and address of the institution and the account number of the account.
- ▶ For stock or securities, the name and address of the issuer and "information that identifies the class or issue of which the stock or security is a part."
- ▶ For a financial instrument or contract, information to identify the instrument/contract, including the names and addresses of all issuers/counterparties.
- ▶ In the case of an interest in a foreign entity, information that identifies the interest, including the name and address of the issuer.
- ▶ In all cases, the maximum value (as discussed below) of the foreign financial asset/account for the portion of the year during which the specified person had an interest in the asset/account.
- ▶ In the case of a custodial or depository account, whether the account was opened or closed during the year.
- ▶ In the case of an asset other than a custodial or depository account, if the foreign financial asset was acquired or disposed of (or both) during the year, the date of acquisition or disposition (or both).
- ▶ In all cases, the amount of income, gain, loss, deduction or credit, if any, recognized for the year with respect to the foreign financial assets, and where the specified person reported this on his income tax return.
- ▶ In all cases, the exchange rate used to convert from a foreign currency to the US dollar in computing the value of a foreign financial asset (as discussed below). If the rate used is not obtained from the Department of the Treasury's Financial Management Services, the source of the rate must be disclosed.
- ▶ If one did not report a foreign financial asset because information with respect to it was reported on Forms 3520, 3520-A, 5471, 8621, 8865, or 8891, as discussed

above, the number of each type of form filed that relates to such a foreign financial asset.

Valuation of Assets for Reporting Purposes - Temp. Treas. Reg. Section 1.6038D-5T

One must report the maximum value of each reported asset during the year, converted into US dollars if necessary. The preamble to the temporary regulations states that one may determine value based on information publicly available from “reliable financial information sources” or from other “verifiable sources.” The preamble goes on to say that “even if there is no information from reliable financial information sources regarding the fair market value of a reported asset, the regulations do not require a specified person to obtain an appraisal by a third party in order to reasonably estimate the asset’s fair market value.”

For assets other than custodian or brokerage accounts, one may assume that the value of an asset as of the last day of the year is its maximum value, unless one knows or has reason to know based on readily accessible information that the value of the asset as of the end of the year does not reflect a reasonable estimate of maximum value. This could occur, for example, because readily available information indicates that the asset declined in value during the year.

For custodian and broker accounts, it would appear that the value of the account equals the gross value of

the holdings of the account, without reduction for margin indebtedness and the like; this may be clarified in future guidance. One may use periodic statements provided at least annually to determine this, unless one has actual knowledge or reason to know (based on readily accessible information) the statements do not reflect a reasonable estimate of maximum account value.

Although liabilities clearly are not assets, it is possible for a financial instrument or contract to have a negative value, i.e., one would have to make a payment to the counterparty to terminate the arrangement. If the “value” of such an asset is never greater than zero during the year, the value is deemed to be zero for reporting purposes.

If an asset is denominated in foreign currency, its value (including the maximum value for the year) must be determined in foreign currency and then translated into US dollars. The exchange rate used must be the rate for selling the foreign currency and buying US dollars as of the last day of the year, even if the asset was disposed of before then. The rate from the Department of the Treasury’s Financial Management Services, if available, must be used. If no such rate is available, one may use a rate from another publicly-available source, but, as noted above, the source must be disclosed.⁴

As noted above, if a specified person owns a reportable foreign financial asset jointly with someone else, that

person reports the entire value, and not just the value of his or her share of the asset. However, if a married couple filing a joint return with a joint Form 8938 owns an asset jointly, they would only report the value of the asset once.

The temporary and proposed regulations contain two simplifying rules that taxpayers may use in determining asset values to be reported on Form 8938.

- ▶ The reportable “value” of an interest in a foreign trust is deemed to equal the value of all property distributed to the specified person during the year, plus the value as of the last day of the year of the specified person’s right as a beneficiary to receive mandatory distributions, as computed under the principles, and using the prescribed rates and actuarial tables, of Section 7520.⁵
- ▶ The reportable “value” of an interest in a foreign estate, foreign pension plan or foreign deferred compensation plan equals the fair market value, as of the end of the year, of the person’s beneficial interest in the estate, etc., *if* such value is known, or can be determined using readily accessible information. Otherwise, the reportable “value” is deemed to be the value of all property distributed to the specified person during the year.

In both of the above cases (foreign trusts and foreign estates/pension plans/deferred compensation plans),

this deemed “value” is also to be used in determining whether the specified person meets the reporting thresholds discussed above if the person does not know or have reason to know the actual value of the person’s interest in the trust/estate/pension plan/deferred compensation plan), based on readily accessible information.

Reporting by Specified Domestic Entities - Prop. Treas. Reg. Section 1.6038D-6

The proposed regulations provide a rule under which certain domestic entities (specified domestic entities) would be considered “specified persons” and required to report specified foreign financial assets on Form 8938 as described above because they are deemed to have been formed or availed of for purposes of holding, directly or indirectly, specified foreign financial assets. The proposed effective date would require such reporting from affected domestic entities for taxable years beginning *after* 31 December 2011. These rules are capable of applying only to:

- ▶ Certain specified types of domestic entities
- ▶ That own a sufficient amount of specified foreign financial assets, and
- ▶ Meet an ownership or beneficiary test

The last two rules have two versions: one for domestic corporations and partnerships and a second for domestic trusts.

Entities capable of becoming specified domestic entities

The following entities are capable of being specified domestic entities if the other two tests are met:

- ▶ Domestic corporations;
- ▶ Domestic partnerships; and
- ▶ Domestic trusts, including charitable remainder trusts, except for:
 - Grantor trusts, and
 - Trusts that comply with all tax filing obligations and for which the trustee is:
 - * A federally registered bank,
 - * SEC- registered, or
 - * A publicly-traded corporation (or affiliate thereof)

The following domestic entities never can be specified domestic entities:

- ▶ Domestic estates; and
- ▶ Domestic entities (other than charitable remainder trusts) that are not “specified United States persons” for FATCA purposes, e.g., a domestic corporation the stock of which is regularly traded on an established securities market or is a member of the same expanded affiliated group as a regularly-traded corporation

With the exceptions identified, a US corporation, US partnership, or US trust is considered to be formed or availed of for purposes of holding (directly or indirectly) specified foreign financial assets, and thus is

required to report an interest in specified foreign assets, *if and only if* it meets the following conditions:

Additional requirements for Corporations and Partnerships

A domestic corporation or partnership that meets the above tests would be a specified domestic entity if:

- ▶ The entity has an interest in specified foreign financial assets with an aggregate value exceeding \$50,000 (as of last day of the year) / \$75,000 (at any time during the year);
- ▶ The entity is “closely held,” as described below, and
- ▶ Either of the following conditions is satisfied:
 - At least 50% of the entity’s gross income for the taxable year is passive income or at least 50% of the assets held by the corporation at any time during the year are assets that produce or are held for the production of passive income (passive assets); or
 - At least 10% of the entity’s gross income for the taxable year is passive income or at least 10% of the assets held by the corporation or partnership at any time during the taxable year are passive assets; *and* the corporation is formed or availed of by a specified individual with a principal purpose of avoiding the reporting obligations under Section 6038D, taking all facts and circumstances into account.

Passive income comprises dividends, interest, rents and royalties other than those derived in the active conduct of a trade or business conducted by the entity's employees, annuities, gain from the sale or exchange of passive assets; gain from transactions (including futures, forwards, and similar transactions in any commodity, excluding certain commodity hedging transactions), gain attributable to any Section 988 transaction (foreign currency gain) and net income from notional principal contracts.

A corporation is "closely held" by a specified individual if at least 80% of the total combined voting power of all classes of the corporation's voting stock, or at least 80% of the total value of the corporation's stock, is owned, directly, indirectly, or constructively, by one specified individual on the last day of the corporation's taxable year.

A partnership is "closely held" by a specified individual if at least 80% of the capital or profits interest in the partnership is held, directly, indirectly, or constructively, by one specified individual on the last day of the partnership's taxable year.

Constructive ownership is determined by attribution between family members under specific rules. Also, all domestic corporations and domestic partnerships that have an interest in any specified foreign financial asset and are closely held by the same specified individual are treated as a single entity; each such related corporation or partnership

will be treated as owning the specified foreign financial assets held by all such related corporations or partnerships. Further, for purposes of applying the passive income and asset thresholds described above, all domestic corporations and domestic partnerships that are closely held by the same specified individual and connected through stock or partnership interest ownership with a common parent corporation or partnership are treated as a single entity.

Domestic Trusts

A domestic trust that meets the above test is treated as a specified domestic entity if, but only if, the trust meets both of the following two conditions:

- ▶ The trust has an interest in reportable specified foreign financial assets with an aggregate value exceeding the reporting threshold of \$50,000 (last day of the year) / \$75,000 (any time during the year); and
- ▶ The trust has one or more specified persons as a current beneficiary, i.e., a person who at any time during the taxable year is entitled to, or at the discretion of any person may receive, a distribution from the principal or income of the trust (determined without regard to any power of appointment to the extent the power remains unexercised at the end of the taxable year).

Penalties for Failure to Disclose - Temp. Treas. Reg. Section 1.6038D-8T

If a specified person fails to file a Form 8938 a penalty of \$10,000 will apply. Married specified individuals filing a joint annual return are subject to penalties as if they are a single specified person, although the liability for such persons is joint and several.

If any failure to comply continues for more than 90 days after the IRS mails a notice of the failure to the specified person, an additional penalty of \$10,000 will apply for each 30-day period (or fraction thereof) during which the failure continues, up to a maximum of \$50,000 for each such failure.

If the failure to report the information required in Section 6038D(c) and Section 1.6038D-4T is shown to be due to reasonable cause and not due to willful neglect, no penalty will be imposed. The existence of reasonable cause is a facts and circumstances determination. The fact that a foreign jurisdiction would impose a civil or criminal penalty on the specified person (or any other person) for disclosing the required information is not reasonable cause.

In addition, accuracy-related penalties in the case of any portion of an underpayment attributable to any undisclosed foreign financial asset understatement under Section 6662(j) may apply, as may criminal penalties under Sections 7201, 7203, 7206, and related sections.

Effective date and request for comments

The temporary regulations (applying to specified individuals) apply to taxable years ending after 19 December 2011. Taxpayers may elect to apply the rules of this section to taxable years ending prior to 19 December 2011. The instructions to the Form 8938 provide that an individual's obligation to file the 8938 in 2011 is deferred to 2012 if the individual:

- ▶ Had a tax year that began after 18 March 2010
- ▶ Was required to file Form 8938
- ▶ Filed an annual return before Form 8938 was released (17 December 2011)

The proposed regulations (applying to specified domestic entities) would apply to taxable years beginning after 31 December 2011.

Written or electronic comments, including any request for a public hearing, must be received by the Service by 19 March 2012.

Implications

The legislative history to Section 6038D states that “[R]egulations [to be promulgated under Section 6038D] may include exceptions for nonresident aliens and classes of assets identified by the Secretary, including those assets which the Secretary determines are subject to reporting requirements under other provisions of the Code. In particular, regulatory exceptions to avoid duplicative reporting requirements are anticipated.”

The government appears to have made a diligent and sincere attempt to comply with this mandate. The government also has attempted to alleviate some of the problems that

arose in practice under the TD F 90-22.1 rules. Query whether more coordination between the Section 6038D rules and the TD F 90-22.1 rules is reasonably possible. In addition to the rules discussed in this Alert, the instructions to the Form 8938 contain specific examples to assist taxpayers in filing; the instructions also indicate that future developments affecting the form (such as legislation enacted after the form is released) will appear on a dedicated Form 8938 webpage, <http://www.irs.gov/form8938>.

Because the definition of specified foreign financial asset includes an interest in a foreign retirement plan or deferred compensation plan, we expect that many, if not most, inbound foreign nationals will meet the reporting threshold and have a Form 8938 filing requirement.

Endnotes

1. There is some uncertainty about whether a derivative financial contract with a foreign counterparty over something that is not a financial asset, such as a weather derivative, is a specified foreign financial asset.
2. Although stock in a foreign financial institution (including an investment fund) is capable of being an “account” for FATCA purposes, there is an exception from FATCA for a publicly-traded interest; however, such an interest nevertheless would appear to be reportable as an equity interest in a non-U.S. entity. Thus, such an interest would be a “specified foreign financial asset” even though it is publicly traded.
3. Certain types of accounts are meant to always have a balance of zero at the end of each day, such as “delivery versus payment”/“receive versus payment accounts” used by securities investors and traders. It is not entirely clear whether accounts of this type are reportable. Conversely, entities holding a substantially amount of cash might have it “swept” into a foreign account at the end of every day, and “swept” back the following morning, in order to earn a higher interest rate. The treatment of such “sweep” accounts is also not entirely free from doubt.
4. The Treasury Financial Management Services' exchange rate information can be found on the internet at www.fms.treas.gov/intn.html.
5. This rule enables taxpayers to bypass the problem of how to determine the value of interests in a trust that depend upon how the trustee exercises discretion, and so cannot be valued actuarially.

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