Howard M. Liebman
30 avenue de Boetendael
1180 Brussels
Belgium

December 23, 2010

Mr. Gerald Shields
U.S. Internal Revenue Service
Room 6129
1111 Constitution Avenue, N.W.
Washington, D.C. 20224
U.S.A.

Re: **Proposed IRS Form 8938**

Dear Mr. Shields:

I am writing in response to the kind request of the Internal Revenue Service for comments on its draft of a new tax form 8938. I have obtained a copy of this form and, as a U.S. citizen resident abroad, I took great interest in reviewing it.

As per your invitation, my comments are as follows:

(i) First of all, I think that it is a good idea that you have used larger-sized boxes in Part A. I have always had problems in completing Form TD 90.22-1 because some of the boxes are too small.

That being said, I wonder if the information in Part A is not redundant to what we already have to report. It may not be all that good an idea to require essentially duplicative reporting.

(ii) Reporting ownership of stock and securities is also potentially redundant. If an individual owns a substantial amount of privately-traded securities, then the entity in which the securities are held would presumably be a "controlled foreign corporation", triggering reporting on IRS Form 5471.

Taxpayers are also already required to report foreign-source dividends and capital gains, whether from publicly-traded or private corporations.

(iii) The scope of Part C is not clear. The term, "contract", is especially broad. Presumably, you are trying to get at financial contracts such as swaps, options or derivatives. If so, this should be better explained and delimited. Obviously, there will be quite some difficulty in obtaining valuations for various investments which are not otherwise publicly traded. This will be time-consuming and potentially unduly burdensome, let alone expensive for the taxpayers involved.

(iv) What is the difference between Schedule D and Schedule B? Certainly, if someone owns stock or security in a person other than a "U.S. person", that should also constitute a "interest in a foreign entity". Shouldn't you eliminate this redundancy? Perhaps you were trying to get solely at foreign partnerships or trusts?

(v) Although the draft form applies to "specified foreign financial assets having an aggregate value of more than $ 50,000", the result is that it can also apply to interests with a very small amount at stake, as long as everything taken together exceeds the $ 50,000 limit. This can also be triggered solely by exchange rate fluctuations. Perhaps consideration should be given to setting a de minimis limit of $ 10,000, this time for each interest to be reported on.

(vi) Clearly, any individual living overseas will have one or more bank accounts and may invest in several types of securities in the country where they live or elsewhere (if only for purposes of spreading out asset allocations and hence risk). Thus, the burden of this new form should not be underestimated. It will certainly take several hours to pull together the information, and perhaps even more if research is required into the highest valuation for the year.

Thank you very much for your attention to these comments.

Sincerely,

Howard M. Liebman