



7 Station Passage,
South Woodford,
London, E18 1JL
Tel: 020 8989 0088
Fax: 020 8989 5527

Liz@BritishAmericanTax.com

29 December 2010

Gerald Shields
IRS
Room 6129
1111 Constitution Avenue NW
Washington DC 20224
USA

Re: Proposed Form 8938

Dear Mr. Shields,

I write to you with three hats on, that of a US taxpayer living abroad, that of an Enrolled Agent representing other US taxpayers living abroad, and as a representative of the Association of Independent Expatriate Tax Practitioners (AIETP). I am also active in the NAEA Government Relations Committee, and have cc'd a copy of this letter to NAEA's Bob Kerr for his consideration in NAEA's official response.

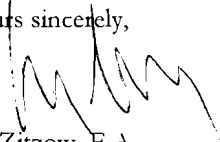
The form in its current incarnation will have many problems in compliance. There is also the matter of duplication of effort which does not make any sense.

Starting at the top of the form:

- 1) The initial information section is basically acceptable, except:
 - a. "All information must be in English."
 - i. The lack of sensitivity for Spanish speaking taxpayers, especially when so many taxpayers have assets in Mexico, is appalling.
 - ii. It is not clear whether names of assets such as Banco de Espania must be translated. This should be made clear.
- 2) Section A seems relatively straightforward, and not too difficult for the typical taxpayer having access to funds offshore.
 - a. It appears however to duplicate information required on Form TD F 90-22.1. This is excessive duplication. As the information is being reported to the Secretary of the Treasury on two different forms, then one or the other is unnecessary duplication of effort and one or the other should be abolished immediately.
- 3) Section B is duplicating information in Section A.
 - a. In section A, one would list one's offshore securities account.
 - b. Then, in Section B, one appears to be required to list each asset within the securities account.
 - i. This will confuse most taxpayers.
 - ii. There is no way to link any of the assets in Section B to their respective accounts in Section A.
- 4) Section B requires the highest value the asset attained during the calendar year.
 - a. Obtaining the value of a typical small business owner's offshore company (for example, my own company British American Tax), will be expensive and time consuming.

- i. Business valuation experts charge between 1% and 5% of the final valuation, and can take months to give a final report.
 - ii. Obtaining an annual valuation will be a costly and time consuming outlay.
 - iii. Because the US owner of a US unlisted corporation does not face this burden annually, this is inequitable.
 - b. Many people who work receive shares in company stock as part of their compensation package. If the company is an offshore entity and is unlisted, minority US shareholders will not have enough influence to demand an annual valuation.
 - i. This will reduce competitiveness and compensation for Americans as some will opt out of receiving stock and some companies will no longer offer stock options to American employees.
 - c. For a portfolio holder with a typical well-diversified portfolio, obtaining the highest value during the year for each offshore entity held within their portfolio will be difficult at best.
 - i. US brokerage houses are not set up to provide this type of information.
 - ii. Neither are offshore brokerage houses.
 - d. It is unclear whether ADRs should be listed here. They should be specifically excluded in the instructions.
 - e. We feel it would be fairer to list the average value or the year-end and/or sale value.
- 5) Section C requires maximum value of "any other instrument, contract, or interest."
 - a. We have been told that this would include offshore rental properties.
 - i. Asking taxpayers to obtain a valuation of their property annually will be a great cost to taxpayers with no tangible benefit to either the taxpayer or to the IRS.
 - ii. It will take weeks to obtain a professional valuation.
 - iii. Because the owner of US real estate does not face this burden annually, this is inequitable.
 - b. It is unclear just exactly what accounts and assets must be listed.
 - i. Is an offshore employer pension plan required to be listed?
 - 1. If yes, is it still required to be listed if it counts as a US pension plan under an income tax treaty with the US?
 - ii. Are normal insurance policies such as auto insurance, home insurance, etc. to be listed?
- 6) One hour to compile all the data is unrealistic.
 - a. For people with an asset requiring a valuation, it will take weeks and hundreds of dollars to obtain valuations for rental real estate and unlisted offshore entities.
 - b. For people with stock portfolios, I estimate it will take an average of 15 minutes per asset to research the historical values online. It takes longer than a US asset because many foreign listings do not have the easily searchable databases that NYSE and NASDAQ have. A typical well-diversified portfolio will have twenty investments. The total time estimate should therefore be much longer.

Yours sincerely,



Liz Zitzow, E.A.
Managing Director

Cc: Rob Kerr, NAEA GRC