

Internal Revenue Code Section 6038D

Information with respect to foreign financial assets.

(a) In general. Any individual who, during any taxable year, holds any interest in a specified foreign financial asset shall attach to such person's return of tax imposed by subtitle A for such taxable year the information described in subsection (c) with respect to each such asset if the aggregate value of all such assets exceeds \$ 50,000 (or such higher dollar amount as the Secretary may prescribe).

(b) Specified foreign financial assets. For purposes of this section, the term "specified foreign financial asset" means—

(1) any financial account (as defined in section 1471(d)(2)) maintained by a foreign financial institution (as defined in section 1471(d)(4)), and

(2) any of the following assets which are not held in an account maintained by a financial institution (as defined in section 1471(d)(5))—

(A) any stock or security issued by a person other than a United States person,

(B) any financial instrument or contract held for investment that has an issuer or counterparty which is other than a United States person, and

(C) any interest in a foreign entity (as defined in section 1473).

(c) Required information. The information described in this subsection with respect to any asset is:

(1) In the case of any account, the name and address of the financial institution in which such account is maintained and the number of such account.

(2) In the case of any stock or security, the name and address of the issuer and such information as is necessary to identify the class or issue of which such stock or security is a part.

(3) In the case of any other instrument, contract, or interest—

(A) such information as is necessary to identify such instrument, contract, or interest, and

(B) the names and addresses of all issuers and counterparties with respect to such instrument, contract, or interest.

(4) The maximum value of the asset during the taxable year.

(d) Penalty for failure to disclose.

(1) In general. If any individual fails to furnish the information described in subsection (c) with respect to any taxable year at the time and in the manner described in subsection (a), such person shall pay a penalty of \$ 10,000.

(2) Increase in penalty where failure continues after notification. If any failure described in paragraph (1) continues for more than 90 days after the day on which the Secretary mails notice of such failure to the individual, such individual shall pay a penalty (in addition to the penalties under paragraph (1)) of \$ 10,000 for each 30-day period (or fraction thereof) during which such failure continues after the expiration of such 90-day period. The penalty imposed under this paragraph with respect to any failure shall not exceed \$ 50,000.

(e) Presumption that value of specified foreign financial assets exceeds dollar threshold. If—

(1) the Secretary determines that an individual has an interest in one or more specified foreign financial assets, and

(2) such individual does not provide sufficient information to demonstrate the aggregate value of such assets, then the aggregate value of such assets shall be treated as being in excess of \$ 50,000 (or such higher dollar amount as the Secretary prescribes for purposes of subsection (a)) for purposes of assessing the penalties imposed under this section.

(f) Application to certain entities. To the extent provided by the Secretary in regulations or other guidance, the provisions of this section shall apply to any domestic entity which is formed or availed of for purposes of holding, directly or indirectly, specified foreign financial assets, in the same manner as if such entity were an individual.

(g) Reasonable cause exception. No penalty shall be imposed by this section on any failure which is shown to be due to reasonable cause and not due to willful neglect. The fact that a foreign jurisdiction would impose a civil or criminal penalty on the taxpayer (or any other person) for disclosing the required information is not reasonable cause.

(h) Regulations. The Secretary shall prescribe such regulations or other guidance as may be necessary or appropriate to carry out the purposes of this section, including regulations or other guidance which provide appropriate exceptions from the application of this section in the case of—

(1) classes of assets identified by the Secretary, including any assets with respect to which the Secretary determines that disclosure under this section would be duplicative of other disclosures,

(2) nonresident aliens, and

(3) bona fide residents of any possession of the United States.