

# TREASURY INSPECTOR GENERAL FOR TAX ADMINISTRATION



## **The IRS Has Not Successfully Addressed the Highest Balance Foreign Account Tax Compliance Act Nonfilers**

April 8, 2026

Report Number: 2026-308-009

This report has cleared the Treasury Inspector General for Tax Administration disclosure review process and information determined to be restricted from public release has been redacted from this document.

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# HIGHLIGHTS: The IRS Has Not Successfully Addressed the Highest Balance Foreign Account Tax Compliance Act Nonfilers

Final Audit Report issued on April 8, 2026

Report Number 2026-308-009

## Why TIGTA Did This Audit

The Foreign Account Tax Compliance Act (FATCA) was enacted to help reduce the Tax Gap by identifying income associated with foreign bank accounts. FATCA was designed to create greater transparency and accountability of foreign assets held by U.S. taxpayers. Under FATCA, taxpayers with specified foreign financial assets that meet a certain dollar threshold should report this information to the Internal Revenue Service (IRS) by filing Form 8938, *Statement of Specified Foreign Financial Assets*, with their income tax return.

Failure to file Form 8938 can result in a \$10,000 per month penalty up to a maximum of \$60,000. We previously reported that the IRS rarely uses the penalty for FATCA nonfilers. This audit determined the effectiveness of the IRS's enforcement against egregious FATCA nonfilers.

## Impact on Tax Administration

While taxpayers can hold offshore banking accounts for a number of legitimate reasons, some taxpayers have also used them to hide income and evade taxes.

The IRS established an Offshore Private Banking Campaign (Campaign 896), to address tax noncompliance related to taxpayers' failure to file Form 8938 and information reporting associated with offshore banking accounts.

## What TIGTA Found

Despite identifying hundreds of individual taxpayers with significant foreign bank account deposits who failed to file Forms 8938, IRS Campaign 896 activity only resulted in a few taxpayer examinations and few nonfiling penalties. The campaign identified 405 taxpayers with significant foreign account balances who appeared to be noncompliant with their FATCA reporting requirements.

The IRS used two methods to address the 405 noncompliant taxpayers: referral for examinations and letter issuance.

- 164 taxpayers (who had an average unreported foreign account balance of \$1.3 billion) were referred for possible examination. However, only 12 of the 164 were examined, with five having \$39.7 million in additional tax and \$80,000 in penalties assessed.
- 241 noncompliant taxpayers (who had an average unreported account balance of \$377 million) were sent a combination of 225 educational letters (requiring no response from the taxpayers) and 16 soft letters (requiring taxpayers to respond). None of the 241 taxpayers were assessed the initial \$10,000 FATCA nonfiling penalty.

Significant assets and income are factors considered when assessing whether taxpayers intentionally evaded their tax responsibilities. Given the large average unreported foreign account balances, these taxpayers likely have higher levels of sophistication and an awareness of their obligation to comply with the law.

We also found that the IRS needs to establish specific performance measures to determine the effectiveness of the FATCA program. If the IRS does not plan to enforce the FATCA provisions even where obvious noncompliance is identified, it should at least quantify the enforcement impact of its efforts. This will ensure that IRS decision makers have the information they need to determine if the FATCA program is worth the investment and improves taxpayer compliance.

## What TIGTA Recommended

We made three recommendations including: revising Campaign 896 processes to include assessing FATCA failure to file penalties; assessing the viability of using Form 1099 data to identify Form 8938 nonfilers; and implementing additional performance measures to give decision makers comprehensive information about the effectiveness of the FATCA program.

The IRS disagreed with two recommendations and partially agreed with the remaining recommendation. IRS management did not agree to assess penalties in Campaign 896 or with implementing performance measures to assess the effectiveness of the FATCA program. While the IRS agreed to evaluate the utility of adding Form 1099 data to Campaign 896, it did not agree to consider [REDACTED]



**TREASURY INSPECTOR GENERAL  
FOR TAX ADMINISTRATION**

**U.S. DEPARTMENT OF THE TREASURY  
WASHINGTON, D.C. 20024**

April 8, 2026

**MEMORANDUM FOR:** COMMISSIONER OF INTERNAL REVENUE

**FROM:** Diana M. Tengesdal  
Deputy Inspector General for Audit

**SUBJECT:** Final Audit Report – The IRS Has Not Successfully Addressed the  
Highest Balance Foreign Account Tax Compliance Act Nonfilers  
(Audit No.: 2024308028)

This report presents the results of our review to determine the effectiveness of Internal Revenue Service's enforcement against egregious Foreign Account Tax Compliance Act nonfilers. This review was part of our Fiscal Year 2025 Annual Audit Plan and addresses the major management and performance challenge of *Ensuring Tax Compliance*.

Management's complete response to the draft report is included as Appendix III. If you have any questions, please contact me or Matthew A. Weir, Assistant Inspector General for Audit (Compliance and Enforcement Operations).

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## **Background**

U.S. taxpayers, residing domestically or abroad, must report and pay U.S. income taxes on their global earnings, including income from offshore holding accounts. Despite this requirement, some taxpayers use offshore accounts to hide income and evade U.S. taxes. As of October 2024, the Internal Revenue Service (IRS) estimated the gross Tax Gap at \$696 billion for Tax Year (TY) 2022, with approximately \$593 billion attributable to taxpayers underreporting their income.<sup>1</sup> The IRS does not have an estimate of what portion of the Tax Gap may be attributed to revenue lost due to offshore accounts that U.S. taxpayers may have established to hide income and evade U.S. taxes.

In March 2010, Congress passed the Foreign Account Tax Compliance Act (FATCA) into law as part of the Hiring Incentives to Restore Employment Act.<sup>2</sup> Congress' intent was to reduce the Tax Gap by creating greater transparency and accountability for offshore accounts and other foreign assets held by U.S. taxpayers. The Congressional Joint Committee on Taxation projected \$8 billion in FATCA revenue for Fiscal Years (FY) 2010 through 2020.<sup>3</sup>

In July 2018, we reported that despite spending almost \$380 million on FATCA compliance, the IRS had taken limited or no action on most of the planned activities outlined in the FATCA Compliance Roadmap.<sup>4</sup> We also reported that the records filed by the Foreign Financial Institutions (FFI) did not include (or included invalid) Taxpayer Identification Numbers. As a result, the IRS's efforts to match FFI and individual taxpayer data were unsuccessful. This affected the IRS's ability to identify noncompliance and enforce FATCA requirements against individual taxpayers.

In April 2022, we reported that the IRS had:

- Spent nearly \$574 million on FATCA while only assessing approximately \$14 million in FATCA nonfiling penalties.
- Limited enforcement efforts and no impact on FFI noncompliance.<sup>5</sup>

In their response, IRS management asserted that while compliance programs are important, FATCA is a data source and not a compliance program. IRS officials explained that FATCA data are included in its enforcement framework and used throughout the IRS.

### **FATCA filing requirements**

U.S. taxpayers who hold foreign accounts and the FFIs that maintain the accounts must file specific forms with the IRS.

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<sup>1</sup> See Appendix III for a glossary of terms.

<sup>2</sup> Pub. L. No. 111-147, 124 Stat. 71 (2010) (codified in scattered sections of 16, 23, 26, and 49 U.S.C.).

<sup>3</sup> Joint Committee on Taxation, JCX-6-10 (March 4, 2010).

<sup>4</sup> TIGTA, Report No. 2018-30-040, *Despite Spending Nearly \$380 Million, the Internal Revenue Service Is Still Not Prepared to Enforce Compliance With the Foreign Account Tax Compliance Act*, p. 5, (July 2018).

<sup>5</sup> TIGTA, Report No. 2022-30-019, *Additional Actions Are Needed to Address Non-Filing and Non-Reporting Compliance Under the Foreign Account Tax Compliance Act* (April 2022).

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**Taxpayers:** “Specified persons” (taxpayers) must report specified foreign financial assets as codified under Internal Revenue Code (I.R.C.) Section (§) 6038D. In general, the law requires these taxpayers to file Form 8938, *Statement of Specified Foreign Financial Assets*, with their income tax returns if the aggregate value of their foreign financial assets exceed certain dollar thresholds (starting at \$50,000).

**Foreign financial institutions:** Certain FFIs must register with the IRS and report information about U.S. taxpayers and their accounts if the account balance exceeds \$50,000 on December 31 of that year. FFIs’ reporting obligations also extend to accounts owned by foreign entities with substantial U.S. ownership. The FFIs generally report account information on Form 8966, *FATCA Report*.

The IRS issues each FFI a Global Intermediary Identification Number upon registration and approval. The FFIs use Global Intermediary Identification Numbers to identify themselves as FATCA compliant with withholding agents and the IRS (via Form 8966).

FFIs may also elect to be subject to U.S. financial institutions reporting requirements. In this case, the FFI would file the appropriate Form 1099 series information return in lieu of Form 8966 using an Employer Identification Number to identify themselves.<sup>6</sup> Figure 1 provides the number of unique FFI filers by form and TYs (TY 2024 data as of September 2025). Filing deadlines vary and several large filers were not due to file until later in Calendar Year 2025, which will increase the totals for TY 2024.

**Figure 1: FFI Filing Peaked in Tax Year 2022**

TY	Form 8966	Form 1099	Total
2019	89,736	4,781	94,517
2020	107,791	10,417	118,208
2021	105,815	2,710	108,525
2022	121,530	1,808	123,338
2023	117,934	2,073	120,007
2024	23,007	3,155	26,162
Total	565,813	24,944	590,757
6 Year Averages	94,302	4,157	98,450

*Source: Analysis of information received from the IRS.*

FFIs that do not comply with FATCA may face a 30 percent withholding on payments received from U.S. payers (e.g., banks or investment firms). The IRS reported that during TY 2014 through TY 2022, these payers withheld over \$4 billion from nonparticipating FFIs.

<sup>6</sup> The following Forms 1099 may contain foreign financial account information: Form 1099-B, *Proceeds From Broker and Barter Exchange Transactions*; Form 1099-DIV, *Dividends and Distributions*; Form 1099-INT, *Interest Income*; Form 1099-MISC, *Miscellaneous Information*; Form 1099-OID, *Original Issue Discount*; and Form 1099-R, *Distributions From Pensions, Annuities, Retirement or Profit-Sharing Plans, IRAs, Insurance Contracts, etc.*

## The IRS established a FATCA compliance campaign

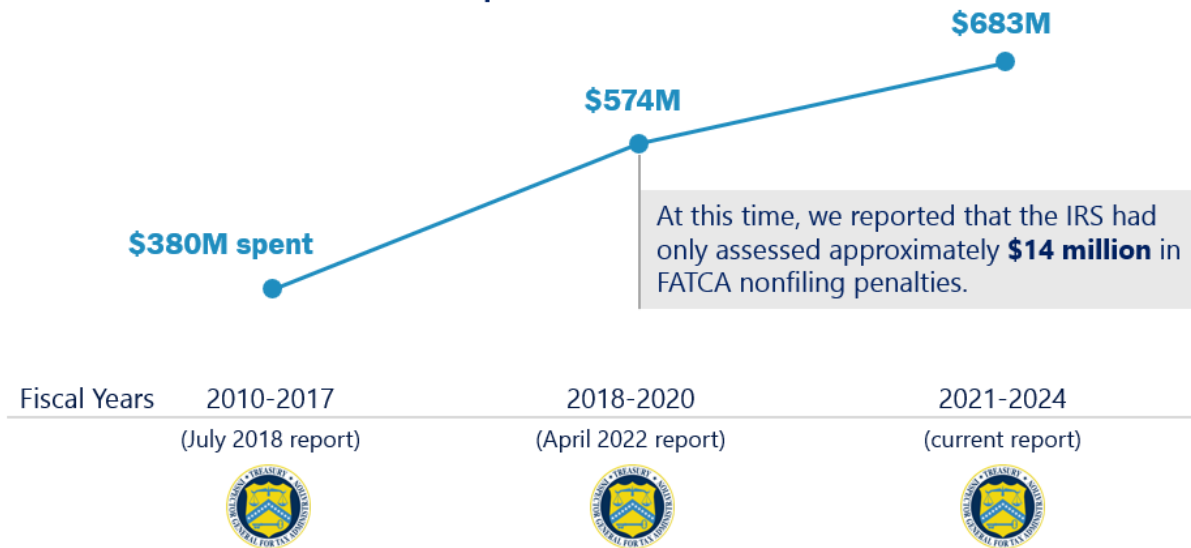
The Large Business and International (LB&I) Division is primarily responsible for administering FATCA. One element of the LB&I Division’s FATCA administration involves the Offshore Private Banking Campaign (Campaign 896). The IRS uses campaigns to address specific compliance areas. Internal Revenue Manual procedures provide a multi-step process for campaigns including proposal, framework, monitoring/assessment and conclusion. Campaign 896 was established in March 2019 to address tax noncompliance related to the failure to report income generated and information reporting associated with offshore bank accounts. This includes identifying U.S. taxpayers who failed to file Form 8938.

## Total costs associated with implementing and complying with FATCA

Since the release of our April 2022 report, the IRS has spent an additional \$109 million on FATCA for FYs 2021 through 2024, bringing the total spent to almost \$683 million (Figure 2).

**Figure 2: Total FATCA Costs Approached Nearly \$700 million**

**The IRS continues to spend money on FATCA despite previous TIGTA reports showing that it has made limited enforcement impacts.**



Source: Cost information provided by the IRS.

The IRS initially received \$79.4 billion from the Inflation Reduction Act.<sup>7</sup> However, as of March 2025, Congress reduced this funding to \$37.6 billion.<sup>8</sup> Since January 2025, the IRS has taken steps to reduce the size of its workforce to comply with the President’s executive orders and Office of Personnel Management guidance. The LB&I Division lost 742 revenue agents

<sup>7</sup> Pub. L. No. 117-169, 136 Stat. 1818.

<sup>8</sup> The Fiscal Responsibility Act of 2023 (Pub. L. No. 118-5, 137 Stat. 10) rescinded \$1.4 billion; the Further Consolidated Appropriations Act, 2024 (Pub. L. No. 118-47, 138 Stat. 460) rescinded \$20.2 billion; and the Full-Year Continuing Appropriations and Extensions Act, 2025 (Pub. L. No. 119-4) rescinded another \$20.2 billion.

during FY 2025. Although the exact impact of these workforce reductions is unknown, it will likely impact the IRS’s ability to address FATCA noncompliance in future years.

## Results of Review

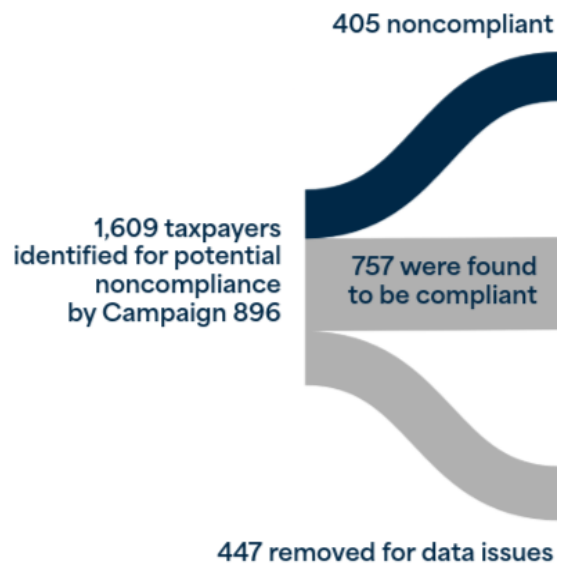
### The IRS Examined and Penalized Few Foreign Account Tax Compliance Act Nonfilers

Despite identifying more than 400 taxpayers with significant foreign bank account deposits who failed to file Forms 8938, the results of Campaign 896 were a combination of educational and soft letters to 241 taxpayers and 12 taxpayer examinations. Although these efforts assessed additional taxes and/or penalties totaling approximately \$41 million, the IRS could assess failure to file penalties totaling \$4 million on the remaining noncompliant taxpayers.

The LB&I Division designed Campaign 896 to address FATCA noncompliance among high-dollar foreign account holders. The IRS believes that taxpayers with significant offshore account balances indicate the presence of unreported foreign assets and income. Furthermore, a research paper published by the National Bureau of Economic Research suggests a correlation between higher net worth and greater offshore activity.<sup>9</sup> Therefore, a taxpayer’s failure to file Form 8938 to report high balance offshore bank accounts suggests they may be concealing foreign assets and income from the IRS.

The IRS’s campaign efforts identified taxpayers meeting certain high-dollar account balance thresholds [REDACTED]

Campaign 896 filters identified 1,609 taxpayers for potential noncompliance. Campaign personnel removed 447 taxpayers for data integrity issues (e.g., invalid Taxpayer Identification Numbers) and determined that 757 taxpayers were compliant (i.e., the taxpayer reported their foreign account on another form). The remaining 405 taxpayers appeared to be noncompliant with their FATCA reporting requirements.



### Campaign 896 did not examine or assess penalties on high-dollar FATCA nonfilers

The 405 taxpayers that the IRS deemed noncompliant had foreign account balances totaling nearly \$6.2 trillion. Campaign personnel referred 122 taxpayers with the highest unreported dollar balances (hereinafter egregious nonfilers) for examination.<sup>10</sup> The campaign identified

<sup>9</sup> National Bureau of Economic Research, *The Offshore World According to FATCA: New Evidence on the Foreign Wealth of U.S. Households*, 2024.

<sup>10</sup> [REDACTED]

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these taxpayers as having a higher compliance risk due to their significantly higher foreign account balances, with an average unreported foreign account balance of nearly \$1.7 billion.<sup>11</sup> The campaign also referred 42 taxpayers to the Small Business/Self-Employed Division High Income Initiative.<sup>12</sup> These 164 taxpayers had an average unreported foreign account balance of \$1.3 billion.

The IRS examined only 12 of the 164 taxpayers (less than five percent of the 405 nonfiler taxpayers identified), most of which were closed as no change. Campaign officials cited limited resources and competing priorities within the examination function as reasons why only 12 taxpayers were examined. Figure 3 provides details on these examinations.

**Figure 3: Campaign 896 Generated  
Limited Examination Results**

Results of Field Examinations	
Taxpayers Examined	12
Taxpayers Assessed Penalties and/or Additional Tax	5
Tax Assessments	\$39,700,000
Form 8938 Nonfiling Penalties	\$30,000
Other Penalties (e.g., Report on Foreign Bank and Financial Accounts nonfiling)	\$50,000

*Source: Information provided by the LB&I Division.*

**The campaign sent letters to high-dollar FATCA nonfilers instead of assessing penalties**

Enforcement efforts taken by the campaign included a combination of educational and soft letters sent to the remaining 241 noncompliant taxpayers. Even though these taxpayers were also considered egregious nonfilers, with an average unreported foreign account balance of \$377 million, none were examined or assessed the initial \$10,000 FATCA nonfiling penalty. Campaign 896 uses the following process for education and soft letters:

1. First Action: The campaign team issues the noncompliant taxpayer an educational letter. Although these letters do not require a response, the campaign team uses them to inform taxpayers that the IRS has information indicating that they failed to file forms required by FATCA. The IRS issued an educational letter to 225 taxpayers.
2. Second Action: The campaign team issues soft letters to taxpayers who received an educational letter in the previous year and appear on the current year's list of nonfilers after the annual threshold is applied. Unlike an educational letter, the soft letter requires a response. The IRS issued a soft letter to 16 taxpayers.

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<sup>11</sup> Before calculating the average account balance, we removed three outliers that accounted for nearly \$6 trillion to avoid unfairly skewing the figure.

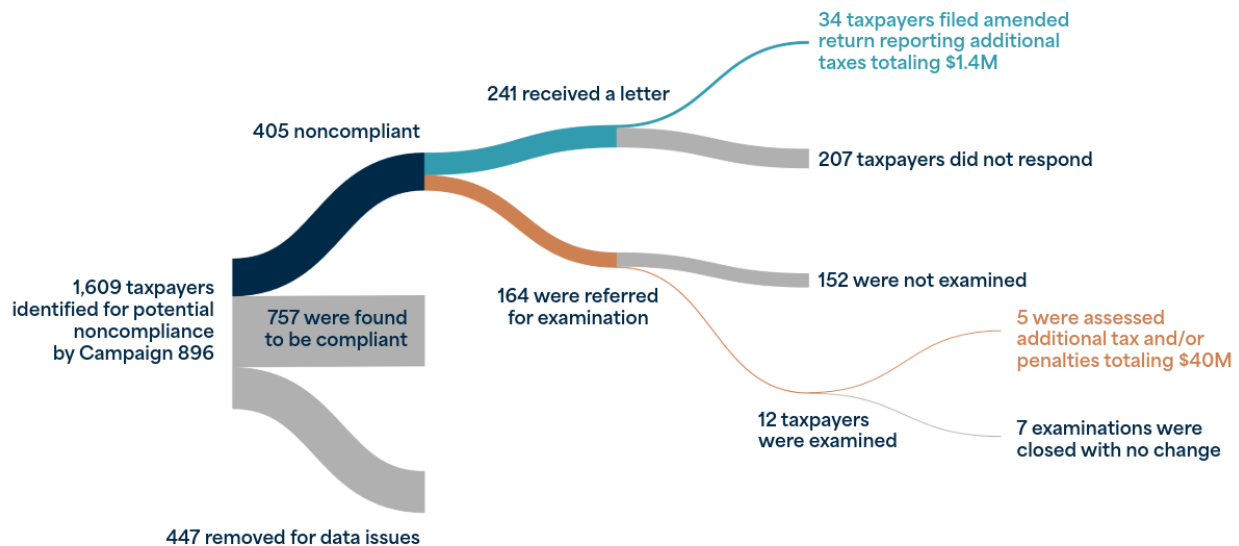
<sup>12</sup> An initiative launched in February 2024 to pursue 125,000 high-income, high-wealth taxpayers who have not filed taxes since 2017.

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3. Third Action: Taxpayers who fail to respond or provide an insufficient response to a soft letter should be referred to classification for a possible examination. However, IRS records indicate that this did not occur.

The letters may have had some effect, as 34 of the 241 taxpayers filed an amended return (31 education letter and 3 soft letter recipients). These amended returns reported nearly \$1.4 million in additional tax (Figure 4).

**Figure 4: Campaign 896 Activity and Results**



Source: Analysis of Data Provided by the IRS.

### The IRS missed opportunities to assess failure to file penalties

The IRS should have assessed the failure to file penalty on the 393 (405 noncompliant minus the 12 examined) unexamined taxpayers that did not file Form 8938 and were deemed as having significant compliance risks. This could have resulted in penalty assessments of nearly \$4 million from the initial failure to file penalty.

Significant assets and income are factors considered when assessing whether taxpayers intentionally evaded their tax responsibilities. Given the large average unreported foreign account balances, these taxpayers likely have higher levels of sophistication and an awareness of their obligation to comply with the law. Although the campaign identified these egregious nonfilers, campaign officials advised us that failure to file penalty assessments are not part of the campaign enforcement strategy.

The purpose of assessing penalties is to encourage and increase taxpayer compliance by:

- Demonstrating the fairness of the tax system to compliant taxpayers.
- Increasing the cost of noncompliance.

The failure to file penalty under I.R.C. § 6038D(d) is a significant component of FATCA's approach to encourage reporting of foreign accounts. The nonfiling penalty incentivizes the

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reporting of information. Congress specifically included I.R.C. § 6038D(d) in the FATCA provisions, giving the IRS the authority to assess a \$10,000 penalty on taxpayers that fail to file Form 8938. If the failure to file continues more than 90 days after the IRS notifies the taxpayer, an additional \$10,000 penalty is assessed for each 30-day period the failure to file continues, up to \$50,000. An assessed failure to file penalty can total \$60,000 (initial penalty and continuation penalties). Applying failure to file penalties would help reduce noncompliance by imposing financial consequences on taxpayers.

The IRS should assess penalties to encourage compliance with the FATCA reporting requirements, and its own procedures require penalty consideration in each case. Furthermore, IRS officials confirmed that an examination is not necessary to assess a FATCA nonfiling penalty and that there is no legal or procedural obstacle to assessment. We also confirmed that taxpayers subject to the failure to file penalty have an opportunity to request an abatement by demonstrating reasonable cause.

### The IRS is not considering all potential FATCA nonfilers in its campaign

Campaigns are designed to identify compliance risks that impact material segments of all LB&I Division taxpayers, rather than just those at the individual taxpayer level. This approach allows the LB&I Division to assign its limited resources to the greatest compliance risks. Campaign 896 focuses on [REDACTED] Form 8938 nonfilers exclusively, even though [REDACTED] represented most of the potential nonfilers that analysts identified. In TY 2019, the campaign identified almost 4,700 potential nonfilers above [REDACTED]. Just over 4,100 (87 percent) of the potential nonfilers were [REDACTED] (*i.e.*, they were [REDACTED]). However, because the campaign [REDACTED] prior to analysis, none of them were ever reviewed in the nonfiler workflow.

In 2024, the IRS and National Bureau of Economic Research reported that, for TY 2018, [REDACTED] represented 46 percent of the total account balance and 3 percent of all reported accounts. Whereas [REDACTED] represented 16 percent of the total account balance and 55 percent of all reported accounts. Therefore, based on the TY 2018 FATCA filings and campaign's TY 2019 data, high-dollar [REDACTED] are likely disproportionately represented.

Campaign 896 officials acknowledged the increased compliance risk posed by [REDACTED]. They also noted the challenges associated with addressing [REDACTED] and the resources required to expand the scope of current efforts. For instance, LB&I Division officials said they are aware that taxpayers may use [REDACTED]. Currently, the campaign is not built to effectively pursue [REDACTED] and would need to collaborate with other groups to review complex [REDACTED]. We believe the IRS should assess the risk of [REDACTED] refer egregious [REDACTED] for examination and assess the I.R.C. § 6038D(d) nonfiler penalty, when appropriate.

In addition, Campaign 896 does not consider available information from FFIs that elected to file Forms 1099 instead of Forms 8966. There are six different Forms 1099 that FFIs can use, each having a FATCA indicator, to satisfy their requirement to report on U.S. taxpayer income. The absence of a Form 8938 associated with a taxpayer who had a corresponding Form 1099 with a FATCA indicator could suggest a missed filing requirement.

According to Figure 1 above, from TY 2019 through TY 2024, FFIs filed an average of over 4,100 Forms 1099 instead of Form 8966. Campaign 896 officials said that they do not currently

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use Forms 1099 to identify Form 8938 nonfilers because of concerns about the likelihood of false positive leads. However, the campaign encounters false positives in its existing approach and has no data to substantiate its assertion. We believe the campaign should test the feasibility of using Form 1099 data to identify additional FATCA nonfilers.

The Commissioner, LB&I Division, should:

**Recommendation 1:** Revise the Campaign 896 processes to include assessing I.R.C. § 6038D(d) failure to file penalties when taxpayers fail to file Form 8938.

**Management's Response:** IRS management disagreed with this recommendation. They stated that the IRS already evaluates and develops penalties in examinations, consistent with IRS penalty procedures, as part of the Campaign.

**Office of Audit Comment:** In conducting Campaign 896, which is the only ongoing compliance effort that seeks to identify FATCA individual nonfilers, the IRS undertook a process to identify FATCA individual nonfilers with significant potential foreign account balances. In their response, management stated they needed to examine the taxpayers to weigh the facts and circumstances of each case. However, as noted in our report, the IRS did not conduct examinations on any of the 393 noncompliant taxpayers identified in this campaign. Further, the IRS acknowledged during our review that an examination is not legally necessary to impose the FATCA failure to file penalty. In addition, the IRS could have opened field examinations or correspondence examinations (*i.e.*, a single-issue examination where the IRS only sends a letter asking for an explanation on an issue) but did not. We believe these high balance FATCA nonfilers present the types of situations that Congress intended for the IRS to address as part of the FATCA provisions.

**Recommendation 2:** Assess the compliance risk of [REDACTED] and the viability of using Form 1099 data to identify Form 8938 nonfilers to improve the compliance efforts of Campaign 896.

**Management's Response:** IRS management partially agreed with this recommendation. They stated that they will evaluate the utility of adding Form 1099 data to Campaign 896; however, the IRS did not agree to consider [REDACTED]

**Office of Audit Comment:** Campaigns allow the LB&I Division to focus its limited resources on the greatest compliance risks among its taxpayers. As noted in our report, [REDACTED] represent the largest dollar amount of potential FATCA Form 8938 nonfilers and in TY 2019, the campaign found that 87 percent of the potential nonfilers were [REDACTED]. Campaign 896 officials acknowledged the increased compliance risk and LB&I officials stated they are aware that taxpayers use certain arrangements to obscure ownership. By not including [REDACTED] in the nonfiler workstream, the IRS is overlooking a known compliance risk.

## **The IRS Does Not Measure the Impact of Its Foreign Account Tax Compliance Act Program on Compliance**

We found that the IRS has not established specific performance metrics to measure the effectiveness of its FATCA program, despite significant costs. The goal of FATCA is to encourage information reporting by U.S. taxpayers of their foreign bank and brokerage accounts. The IRS maintains that FATCA is a data source program, which it has integrated into its enforcement functions. For example, IRS officials state that the Small Business/Self-Employed Division Examination and Collection functions and Criminal Investigation use FATCA data for compliance purposes. However, IRS officials could not provide any data supporting this claim. IRS officials also continue to defend the deterrent value of the FATCA compliance campaigns, but can only provide subjective evidence, and not measurable statistics, to show the impact of its FATCA program.

Various statutory and regulatory provisions require the IRS to set performance goals for organizational units and measure the achieved results. To fulfill these requirements, the IRS has established a balanced performance measurement system composed of three elements: customer satisfaction (via feedback forms, surveys, *etc.*), employee engagement, and business results.<sup>13</sup> Measuring performance also involves regular monitoring and reporting of program effectiveness and progression toward achieving established goals and objectives. The IRS uses the following metrics to track the results of the FATCA campaigns:

- The volume of letters transmitted, and responses received from taxpayers and representatives.
- Analytics comparing the information reported on Forms 8938 and 8966.
- The number of examinations opened and closed.
- Examination timelines and results.
- Feedback received from employees, impacted taxpayers, and their representatives.

While important, these metrics do not gauge the overall effectiveness of the FATCA program. For example, the IRS does not track increases in tax associated with the foreign source income or changes in FATCA compliance rates. The following list provides some examples of ways the IRS can improve measuring the effectiveness of the FATCA program:

- Track the enforcement results (*e.g.*, assessments, penalties, balance due collections, criminal investigations, *etc.*) associated with foreign source income reporting.
- Track the non-FATCA forms that compliant taxpayers timely file to report specified foreign financial assets.
- Collect compliance results from the Small Business/Self-Employed Division Examination and Collection functions, Criminal Investigation, and other areas pertaining to the use of FATCA data.
- Assess the impact of FATCA reporting on overall offshore asset reporting patterns and the associated income.

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<sup>13</sup> Treas. Reg. § 801.1(a)(2).

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- Establish a data compilation method to calculate FATCA's return on investment.
- Track increases in Forms 8966 and 8938 compliance rates.
- Analyze the connection between FATCA reporting and the volume of Financial Crimes Enforcement Network Form 114, *Report of Foreign Bank and Financial Accounts* (FBAR) filing (while accounting for differences in reporting requirements).<sup>14</sup>

As previously stated, the IRS spent over \$680 million on FATCA compliance and oversight and has taken limited enforcement actions, even when it has identified egregious noncompliance. If the IRS does not plan to enforce FATCA using the tools available under the law, it should at a minimum quantify the enforcement impact of its efforts. By improving its performance measures, IRS decision makers will have the information they need to determine whether the FATCA program is worth the investment and will improve taxpayer compliance.

**Recommendation 3:** The Chief Tax Compliance Officer should require the Commissioner, LB&I Division, in collaboration with all other applicable divisions, to implement additional performance measures that will give decision makers comprehensive information about the effectiveness of the FATCA program.

**Management's Response:** IRS management disagreed with this recommendation. They stated that FATCA reporting is required by statute and FATCA information is not treated differently than other third-party reporting regimes.

**Office of Audit Comment:** In their response, management claims its FATCA program successes are evidenced by enhanced reporting compliance with Foreign Bank and Financial Account reporting requirements, an entirely different statute (*i.e.*, Title 31, not Title 26). Further, the IRS could not show how the soft and educational letters in Campaign 896 yielded increased compliance with Foreign Bank Account Report reporting requirements.

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<sup>14</sup> A U.S. taxpayer with a financial interest in or signature authority over foreign financial accounts must file an FBAR if the aggregate value of the foreign financial accounts exceeds \$10,000 at any time during the calendar year. FBAR and FATCA (Form 8938) are both mandatory, separate annual reports for U.S. taxpayers with foreign assets. FATCA has higher thresholds and filed with the IRS (under Title 26) while the FBAR is filed with the Financial Crimes Enforcement Network (under Title 31).

## Appendix I

### **Detailed Objective, Scope, and Methodology**

The overall objective of this audit was to determine the effectiveness of IRS enforcement against egregious FATCA nonfilers. To accomplish our objective, we:

- Assessed the effectiveness of compliance efforts against nonfilers identified by the campaign through interviews, Internal Revenue Manual reviews, and analysis of campaign metrics and results of TYs 2019 through 2021.
- Evaluated the effectiveness of the campaign's use of Forms 1099 with FATCA indicators to identify Form 8938 nonfilers through a detailed analysis of campaign processes.
- Determined what changes, if any would be beneficial for the IRS to be able to better identify additional nonfilers through review of campaign population data, various information requests and detailed analysis of campaign procedures.

#### **Performance of This Review**

This review was performed with information obtained from the LB&I Division Headquarters located in Washington, D.C., during the period September 2024 through September 2025. We conducted this performance audit in accordance with generally accepted government auditing standards. Those standards require that we plan and perform the audit to obtain sufficient, appropriate evidence to provide a reasonable basis for our findings and conclusions based on our audit objective. We believe that the evidence obtained provides a reasonable basis for our findings and conclusions based on our audit objective.

#### **Data Validation Methodology**

We performed tests to assess the reliability of data from an IRS database with information on international compliance. We evaluated the data by (1) performing electronic testing of required data elements; (2) reviewing existing information about the data and the system that produced them; and (3) interviewing agency officials knowledgeable about the data. We determined that the data were sufficiently reliable for the purposes of this report.

#### **Internal Controls Methodology**

Internal controls relate to management's plans, methods, and procedures used to meet their mission, goals, and objectives. Internal controls include the processes and procedures for planning, organizing, directing, and controlling program operations. They include the systems for measuring, reporting, and monitoring program performance. We determined that the following internal controls were relevant to our audit objective: controls related to matching and analyzing Forms 8938 and 8966, issuing letters to noncompliant taxpayers, and referring cases to classification. We tested these controls by interviewing the appropriate IRS officials and performing data validations.

## Outcome Measure

This appendix presents detailed information on the measurable impact that our recommended corrective actions will have on tax administration. These benefits will be incorporated into our Semiannual Report to Congress.

### Type and Value of Outcome Measure:

- Taxpayers Impacted and Funds Put to Better Use – Potential; the IRS identified a total of 393 taxpayers who failed to report information associated with offshore banking accounts for TYs 2019 through 2021. The IRS could have assessed FATCA failure to file penalty on these taxpayers in the amount of \$3,930,000 (see Recommendation 1).

### Methodology Used to Measure the Reported Benefit:

Of the 405 taxpayers who failed to file Form 8938, only 12 were examined. We determined there were 393 unexamined (405 – 12), noncompliant taxpayers identified. The IRS should have assessed the initial \$10,000 Form 8938 nonfiling penalty on these 393 taxpayers. This would have resulted in \$3,930,000 (393 x \$10,000) worth of penalties during the three years reviewed.

**Management's Response:** In its response, IRS disagreed with our estimate of FATCA failure to file penalty assessments. Citing the need for sufficient review and consideration of relevant facts, IRS will not estimate the amount of penalties that would have been assessed.

**Office of Audit Comment:** As stated in our response to Recommendation 1, the IRS acknowledged during our review that an examination is not legally necessary to impose the FATCA failure to file penalty. In addition, the IRS could have opened field examinations or correspondence examinations (*i.e.*, a single-issue examination where the IRS only sends a letter asking for an explanation on an issue), but did not. We believe these high balance FATCA nonfilers present the types of situations that Congress intended for the IRS to address as part of the FATCA provisions.

## Management's Response to the Draft Report



DEPARTMENT OF THE TREASURY  
INTERNAL REVENUE SERVICE  
WASHINGTON, DC 20224

February 10, 2026

MEMORANDUM FOR DIANA M. TENGESDAL  
DEPUTY INSPECTOR GENERAL FOR AUDIT

FROM: Mabeline T. Baldwin **Mabeline T. Baldwin**  
Acting Commissioner, Large Business and International Division

SUBJECT: Draft Audit Report – The IRS Has Not Successfully Addressed  
the Highest Balance Foreign Account Tax Compliance Act  
Nonfilers (Audit # 2024308028)

Digitally signed by  
Mabeline T. Baldwin  
Date: 2026.02.10  
13:49:38 -0500

Thank you for the opportunity to review and comment on the draft report referenced above. The Foreign Account Tax Compliance Act (FATCA) was enacted to improve U.S. taxpayer reporting of foreign financial assets and offshore accounts. The IRS has long recognized the importance of utilizing FATCA data and promoting compliance with FATCA reporting. While the IRS continuously seeks to increase such compliance, we believe the report fails to consider fundamental aspects of the agency's enforcement efforts and our administration of FATCA.

FATCA, as noted in our management response to TIGTA's 2022 Audit report<sup>1</sup>, is a data source, not a compliance program, and FATCA data, like other information reporting data, is woven into our enforcement framework and used throughout the IRS. TIGTA continues to make broad characterizations about the IRS' FATCA enforcement efforts based on its review of a single LB&I campaign without adequately contemplating other compliance actions, including, for example, the dissemination and use of FATCA data on individual cases across all IRS examination functions, as well as by criminal investigation and collections, our certification compliance plan workstream that has resulted in the termination of the Global Intermediary Identification Numbers of thousands of foreign financial institutions (FFIs) or the use of this data source in modeling analytics to identify abusive arrangements.

Accordingly, the report's narrow focus should not be used to draw conclusions about the entirety of the IRS's enforcement efforts in this area. In addition, the report does not

<sup>1</sup> Additional Actions Are Needed to Address Non-Filing and Non-Reporting Compliance Under the Foreign Account Tax Compliance Act", TIGTA Report Number 2022-30-019.

## **The IRS Has Not Successfully Addressed the Highest Balance Foreign Account Tax Compliance Act Nonfilers**

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account for the significant impact FATCA has had on the Tax Gap through withholding and voluntary compliance.

From our perspective, TIGTA's conclusions regarding IRS Campaign 896 are based, in part, on a misguided premise and overgeneralizations, including the treatment of "potential noncompliance" as tantamount to "egregious noncompliance" that warrants a monetary penalty without contemplating the variety of justifications that may exempt a taxpayer from having to file Form 8938. Further, as explained below, TIGTA's findings regarding the imposition of penalties under section 6038D(d) do not properly reflect the procedural and substantive rules within which LB&I's examination function is required to operate. The report also drastically overstates the average account balance (i.e. \$1.3 billion) for the population of potentially noncompliant taxpayers, whereas (accounting for data quality and integrity issues), the correct average account balance is approximately \$270 million with the median balance being approximately \$181 million. Accordingly, we offer the following context to ensure the report's conclusions are considered in the broader context of the IRS' efforts in this area and FATCA's significant impact on voluntary compliance.

Since the inception of the campaign in 2020, the IRS has transmitted over thousands of soft letters to taxpayers where a discrepancy was identified between filed Forms 8938 and Forms 8966, including with respect to potential Form 8938 non-filers. These letters have resulted in a significant response rate, including communications indicating compliance, non-compliance, follow-up inquiries and/or amended return filings. Each response to a soft letter is tracked and analyzed, and taxpayers receiving soft letters requiring a response are reviewed for compliance follow-up, including potential examinations where warranted.

FATCA data is utilized widely in examinations across the IRS where revenue generation specific to FATCA data is not tracked such that the IRS cannot quantify the monetary benefits of its use of this data. The IRS has conducted civil and criminal examinations of taxpayers with FATCA reporting discrepancies and potential Form 8938 non-filers, including audits in the Global High Wealth footprint. Moreover, FATCA data was used in numerous cases that have led to a criminal indictment resulting in an aggregate total of \$1.5 billion in tax deficiencies as of April 2025.

TIGTA's report fails to recognize the voluntary compliance impact the FATCA regime has on its filing population, which should be the largest source of the regime's revenue generation. FATCA is an information reporting regime designed to encourage the disclosure of foreign bank and brokerage accounts held or controlled by U.S. taxpayers and the disclosure of ownership interests held by U.S. persons in certain foreign entities, as well as appropriate tax reporting by U.S. account holders that may lead to additional tax revenues through more accurate reporting. Third-party information reporting is a cornerstone of promoting voluntary tax compliance and enforcement of the Internal Revenue Code and has consistently shown in other contexts to increase voluntary compliance rates. Indeed, the enactment of FATCA created incentives for taxpayers to raise their hand for our various voluntary disclosure programs to come into

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compliance with their tax filing and reporting obligations. It is also significant that, since the enactment of FATCA, tax interest, and penalties totaling over \$10 billion have been assessed and collected on issues in which FATCA was the catalyst for driving voluntary compliance such as the Offshore Voluntary Disclosure and Streamlined Programs. We've also seen the approximate doubling of FBAR filings annually since the enactment of FATCA. For the tax year 2022, over 1.4 million FBARs with a corresponding Form 1040 Income Tax Return were filed reporting over 5.7 million financial accounts.

The report concludes that LB&I should have assessed penalties under I.R.C. § 6038D(d) on hundreds of taxpayers who had been identified as potential non-filers but who had not undergone examination. The report then recommends that Campaign 896 processes be revised to include assessment of FATCA non-filing penalties under I.R.C. § 6038D(d). The IRS disagrees with this recommendation, because it is based upon fundamental misunderstandings about IRS policies, procedures, and practices concerning the selection of cases for examination and the assertion of penalties. Campaign 896 does not exclude the assessment of penalties and operates consistent with IRS Policy Statement 20-1 which requires not only that examiners and their managers consider the applicability of penalties in each case, but that penalty issues "be fully develop[ed]...when the initial consideration indicates that penalties should apply. That is, examiners and their managers must consider the elements of each potentially applicable penalty and then fully develop the facts to support the application of the penalty, or to establish that the penalty does not apply, when the initial consideration indicates that penalties should apply." (IRM 1.2.1.12.1(4)).

And while initial identification may have indicated that hundreds of taxpayers were potentially non-compliant, the campaign intentionally contemplates a "full development" of such facts before assessment of penalties, entailing "full and fair consideration [being given] to evidence in favor of not imposing the penalty, even after the Service's initial consideration supports imposition of a penalty." (IRM 1.2.1.12.1(8)(b)). Such fulsome consideration takes place within the context of examination, which would entail each of these cases having been reviewed in classification and selected for examination, a decision that necessarily invokes many considerations, including availability of examination resources and the materiality of the issue to be pursued. In addition, taxpayers who are assessed the penalty would have an opportunity to have the penalty abated by demonstrating there was reasonable cause or demonstrating the penalty was incorrectly applied. In light of this, systemic application of penalties here would put a strain on taxpayers and tax administration. For example, it is not uncommon for a Form 8966 to be issued to both of two joint filer taxpayers and for those taxpayers to file only one joint Form 8938. In this situation, the penalty should not apply.

As such, we disagree with the report's estimate of millions of potential penalties assessed. Given the need for sufficient review and consideration of relevant facts and circumstances in each potential non-filer case, we cannot estimate the amount of penalties that would have been assessed. However, we believe it would be significantly less given there are numerous situations where the taxpayer would not be required to file Form 8938.

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We will continue to enhance our compliance efforts highlighted both in the report and more comprehensively with respect to FATCA data. The attachment provides a response outlining our corrective actions for the recommendations.

If you have any questions, please contact me, or members of your staff may contact Judith A. McNamara, Acting Director, Withholding, Exchange and International Individual Compliance, Large Business and International Division.

Attachment

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**Attachment**

**RECOMMENDATION 1:**

The Commissioner, Large Business and International Division, should revise the Campaign 896 processes to include assessing I.R.C. § 6038D(d) failure to file penalties when taxpayers fail to file Form 8938.

**CORRECTIVE ACTIONS:** The IRS disagrees with this recommendation. As part of the Campaign, we already evaluate and develop penalties in examination, consistent with IRS penalty procedures.

**IMPLEMENTATION DATE:** N/A

**RESPONSIBLE OFFICIAL(S):** N/A

**CORRECTIVE ACTION(S) MONITORING PLAN:** N/A

**RECOMMENDATION 2:**

The Commissioner, Large Business and International Division, should assess the compliance risk of [REDACTED] and the viability of using Form 1099 data to identify Form 8938 nonfilers to improve the compliance efforts of Campaign 896.

**CORRECTIVE ACTIONS:** The IRS partially agrees with this recommendation. The IRS will evaluate the utility of adding Form 1099 data to Campaign 896.

**IMPLEMENTATION DATE:** 10/15/2027

**RESPONSIBLE OFFICIAL(S):** Director, Withholding, Exchange and International Individual Compliance.

**CORRECTIVE ACTION(S) MONITORING PLAN:**

The IRS will monitor this corrective action as part of our internal management system of controls.

**RECOMMENDATION 3:**

The Chief Tax Compliance Officer should require the Commissioner, LB&I Division, in collaboration with all other applicable divisions, to implement additional performance measures that will give decision makers comprehensive information about the effectiveness of the FATCA program.

**CORRECTIVE ACTIONS:** The IRS disagrees with this recommendation. FATCA is a statutory reporting requirement. The IRS does not treat the FATCA information reporting regime differently than other third-party information reporting regimes.

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**IMPLEMENTATION DATE: N/A**

**RESPONSIBLE OFFICIAL(S): N/A**

**CORRECTIVE ACTION(S) MONITORING PLAN: N/A**

## **Glossary of Terms**

<b>Term</b>	<b>Definition</b>
Campaign Threshold	Foreign account balance above which the campaign included in its workstream. [REDACTED]
Classification	Classification is the process of determining whether a return should be selected for audit, the initial issues to be audited, and who should conduct the audit. Returns are classified to identify those with issues likely to result in significant tax changes or that require audit to increase voluntary compliance.
Criminal Investigation	IRS Criminal Investigation has investigative jurisdiction over tax, money laundering and Bank Secrecy Act laws. IRS Criminal Investigation is the only federal agency that can investigate potential criminal violations of the Internal Revenue Code.
Employer Identification Number	A nine-digit number assigned and used by the IRS to identify the tax accounts of employers and certain others who are required to file various business tax returns.
Fiscal Year	Any yearly accounting period, regardless of its relationship to a calendar year. The federal government's fiscal year begins on October 1 and ends on September 30.
Foreign Financial Institution	Any foreign entity that 1) accepts deposits in the ordinary course of business; 2) holds financial assets for the account of others; or 3) is primarily engaged in the business of investing, reinvesting, or trading.
Global Intermediary Identification Number	The number that Foreign Financial Institutions use to identify themselves with withholding agents and tax administrators for FATCA reporting purposes.
Large Business and International Division	Serves corporations, subchapter S corporations, and partnerships with assets greater than \$10 million. These entities typically have large numbers of employees, deal with complicated issues involving tax law and accounting principles and conduct their operations in an expanding global environment.
Small Business/Self-Employed Division	The Small Business/Self-Employed Division serves 57 million taxpayers, which is roughly one-third of the overall taxpayer base. Its mission is to help small business and self-employed taxpayers understand and meet their tax obligations, while applying the tax law with integrity and fairness to all.
Soft Letter	A compliance and enforcement tool that is used to educate, inform, and encourage voluntary compliance.

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<b>Term</b>	<b>Definition</b>
Specified Domestic Entity	A closely held domestic corporation/partnership with at least half of its gross income from passive income or holds half of its assets for the production of passive income; or a domestic trust that has one or more specified persons as a current beneficiary.
Specified Person	A specified individual or a specified domestic entity, including U.S. citizens, and resident aliens.
Tax Gap	The estimated difference between the amount of tax that taxpayers should pay and the amount that is paid voluntarily and on time.
Tax Year	The 12-month accounting period that is the basis for calculating the annual taxes due.
Taxpayer Identification Number	A nine-digit number assigned to taxpayers for identification purposes.
Title 31	Title 31 contains the codified United States Federal laws and regulations that pertain to money and finance functions of the Department of the Treasury, including foreign assets control and financial crimes and investment security.

## **Abbreviations**

FATCA	Foreign Account Tax Compliance Act
FBAR	Report of Foreign Bank and Financial Accounts
FFI	Foreign Financial Institutions
FY	Fiscal Year
I.R.C.	Internal Revenue Code
IRS	Internal Revenue Service
LB&I	Large Business and International Division
TY	Tax Year



**To report fraud, waste, or abuse,  
contact our hotline on the web at  
<https://www.tigta.gov/reportcrime-misconduct>.**

**To make suggestions to improve IRS policies, processes, or systems  
affecting taxpayers, contact us at  
[TIGTACommunications@tigta.treas.gov](mailto:TIGTACommunications@tigta.treas.gov).**

Information you provide is confidential, and you may remain anonymous.