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3 IRS Strikes? FATCA, FBARs, An 'Abode' In U.S. Although You Live Abroad

With over 7 million Americans living abroad, many have complained about the rigorous IRS enforcement of global tax reporting, the risk of draconian FBAR penalties for reporting foreign accounts, and FATCA discrimination. [FATCA](#), America's global tax enforcement law, applies virtually everywhere. It is easy for the IRS to find you, since banks worldwide are handing over American account details to the IRS. Some banks send [FATCA letters promising disclosure to IRS](#), while others just disclose with no warning.

The world is complying, so banks everywhere are turning in Americans. Many expats can't open accounts or get mortgages for non-US residences. Many banks don't want to deal with Americans. The IRS warns that it can pursue you even if you use a bank having no offices on U.S. soil. Moreover, the [courts have upheld FBAR penalties exceeding the offshore account balance](#).

These are all reasons the IRS offshore voluntary disclosure programs have processed over 50,000 cases, raking in over \$7 billion. That could increase, as the chances of being caught with undisclosed accounts are going up. Apart from those multi-pronged difficulties, just imagine if you *also* received a big tax bill from the IRS for something you thought was quite clear.

The foreign earned income exclusion allows U.S. persons living and working overseas to essentially skip U.S. taxes on their first \$100,800 of income. It is a generous benefit of working abroad, but this one-sentence description suggests it is automatic. It isn't. To begin with, you cannot just assume you are exempt from tax. You must claim the exclusion on your U.S. tax return.



That's only the beginning. If you are audited, you may fail one of several tests. The stakes often span several years, so the dollars at stake can be large. To be entitled to the exclusion, your "tax home" must be in a foreign country, you must have "foreign earned income," and you must be one of these:

1. A U.S. citizen who is a bona fide resident of a foreign country for the entire year;
2. A U.S. resident alien who is a citizen or national of a country with which the United States has an income tax treaty, and who is a bona fide resident of a foreign country for the entire year; or
3. A U.S. citizen or a U.S. resident alien who is physically present in a foreign country for at least 330 full days during any 12 consecutive months.

Each hurdle has traps. In a recent case, [*Evans v. Commissioner*](#), a man supervised oil rigs in Russia. His employer paid for his housing and transportation there, and he came back to the U.S. for a month at a time six times per year. He claimed the exclusion, the IRS said no, and he went to court.

Mr. Evans began working in the oil industry in 1988, and was regularly posted overseas. He used his parents' West Monroe, Louisiana residence to receive mail. When he married in 2003 and built a house in West Monroe LA, he came back there on leave to see his wife and daughter. He divorced in 2007, and remarried in 2009.

He alternated 30 days on, 30 days off. While on-duty, his employer provided housing, a car and driver. Three times a year, Mr. Evans spent one to three weeks on an off-shore drilling platform where he ate and slept. For each 30-days off, Evans returned to Louisiana to be with his family. The company paid for his flights.

He maintained his house in Louisiana and never rented it. Following his divorce, his daughter moved in with his parents, but when he remarried in 2009, he again lived in the home. He was registered to vote in Louisiana, had a Louisiana driver's license, had bank and credit card accounts in Louisiana, and cars in Louisiana. His tax returns listed his Louisiana address.

The Tax Court concluded that Mr. Evans' abode was in the U.S., so he did not qualify for the foreign earned income exclusion. A taxpayer's "abode" is in the country where he has the strongest economic, family, and personal ties. The court found that Mr. Evans' ties to Louisiana were strong, while his ties to Russia were transitory, just to perform his duties. His abode remained in the U.S., so he did not qualify for the foreign earned income exclusion.

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