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51 Nations Swap Offshore Account & Tax Data, FATCA On Steroids

Is anything secret? Very little, it seems. And now, taxes, bank accounts, and identities will be shared in a [groundbreaking tax deal](#) between [51 nations](#). A cornucopia of countries will automatically swap tax information. The tax data free-for-all doesn't begin until 2017. Still, in our [FATCA](#) and IRS centric world, this is a big development.

The first signatories will prepare their tax departments to exchange a wide range of information on off-shore accounts, balances and ownership. Who signed? Most European Union nations, tax havens like Liechtenstein, the British Virgin Islands and the Cayman Islands, and more. The U.S. and Canada aren't yet signatories, but it's clear that the U.S. will share your data as part of the bilateral deals under FATCA.

FATCA was quietly enacted in 2010, and after a four-year ramp up, is in effect. Never before has an American tax law attempted such an astounding reach. FATCA requires foreign banks to reveal Americans with accounts over \$50,000.



Non-compliant institutions could be frozen out of U.S. markets, so everyone is complying. FATCA grew out of a controversial rule. America taxes its citizens—and even permanent residents—on their [worldwide income](#) regardless of where they live.

FATCA was enacted to cut off companies from access to critical U.S. financial markets if they didn't pass along American data. More than 80 nations agreed to the law, as have 77,000 financial institutions. Tax havens have joined up, China did too, and even Vladimir [Putin signed a law to satisfy the U.S. Treasury](#). The [FATCA – Archive](#) lists participating countries and a searchable list of financial institutions is: [FFI List Search and Download Tool](#) and a [User Guide](#).

Foreign financial institutions (FFIs) must withhold a 30% tax if the recipient isn't providing information about U.S. account holders. FFIs must report account numbers, balances, names, addresses, and U.S. identification numbers.

FBARs predate FATCA, which *adds* to new burdens, including [Form 8938](#). All these forms are serious, and so are the criminal and civil penalties. FBAR failures can mean fines up to \$500,000 and prison up to ten years. The numbers add up fast. See [Court Upholds Record FBAR Penalties, Exceeding Offshore Account Balance](#).

U.S. account holders who are not compliant have limited time to get to the IRS. The IRS [Offshore Voluntary Disclosure Program](#) or [Streamlined Program](#) should be considered, particularly when amending taxes and filing FBARs in a “[quiet disclosure](#)” could bring civil FBAR penalties or even prosecution. Caution is clearly in order.

America taxes its citizens and permanent residents on their [worldwide income](#) regardless of where they live. In 2009, the IRS and Department of Justice sliced through the Gordian knot of bank secrecy, [netting account holder names and a \\$780 million penalty](#) from UBS. Many other Swiss banks have fallen into line. A few closed their doors, and the rest now say Swiss bank secrecy really didn't mean what you thought it meant.

Credit Suisse paid a [\\$2.6 billion fine, and avoided death in U.S.](#), pleading guilty to a U.S. felony tax charge, an astounding hit. Americans are particularly unable to hide anywhere for any reason. FATCA is America's global tax law. It requires foreign banks to reveal American accounts holding over \$50,000. The world has agreed, with even Russian and China agreeing to hand over information to the IRS.

In the U.S. and elsewhere, cloaking one's identity is now much more suspect. In administrative cases before the IRS and in tax prosecutions, the use of trusts and companies have come under fire. The IRS and DOJ underscore these common devices to enhance the willfulness that may be present, suggesting that efforts to remain anonymous are suspect. In many ways, the cover-up is worse than the crime.

In some cases, such layers can make innocent activity '[willful](#)' triggering IRS penalties or jail. All of this comes at a time when secrecy itself is under attack. The U.K. is moving to make

company ownership entirely transparent. If current proposals pass into law, that may be replicated elsewhere. The topic of company ownership transparency is being discussed in Brussels too.

Nominee ownership used to be common. Nominees are straw-men listed as owners or directors of a company, but who are acting on behalf of someone else. As secrecy comes under attack, this once extremely common device is now more likely to be viewed as a problem. In our increasingly transparent world, keeping secrets from taxing authorities is largely a thing of the past.

You can reach me at Wood@WoodLLP.com. This discussion is not intended as legal advice, and cannot be relied upon for any purpose without the services of a qualified professional.