



## Robert W. Wood

THE TAX LAWYER

Mar. 12 2012 — 6:06 am

### Despite FATCA, FBAR Penalties Still Under Fire

Many Americans have voiced contempt for [FATCA](#)—the Foreign Account Tax Compliance Act. So have international and foreign banking institutions. See [FATCA Carries Fat Price Tag](#). More vocal than any other group are American [Expats Calling For FATCA Repeal](#).



Yet repeal looks unlikely.

See [5 Nations Join U.S. In Tax Evasion Crackdown](#). With detailed reporting and compliance requirements and withholding penalties, some foreign financial institutions shy away from doing **any** business with Americans. The IRS announced limited relief to dual citizens (see [Dual Citizen Tax Relief From IRS](#)) but some say it's not enough. See [IRS Relief To Canadian Dual Citizens](#).

FATCA has been the primary nemesis for many out to [strip FATCA from our diet](#), but FBAR penalties are in some ways worse. FBARs have been around since 1970 but there was virtually no enforcement until the last few years. See [Happy FATCA Filing Season](#). Now compliance is critical:

1. **Who Must File?** U.S. taxpayers including citizens, residents, and entities that have foreign financial accounts totaling more than \$10,000 at any point during the year.

2. **What's an Account?** Foreign bank and brokerage accounts are generally included, as are offshore mutual funds or pooled investments. However, hedge and private equity funds generally don't count. An account with a U.S. institution that holds foreign assets doesn't require a filing as long as you can't directly access foreign assets maintained in a foreign institution.
3. **FBAR Penalties.** The penalties for failure to file an FBAR are worse than tax penalties. Failing to file an FBAR can carry a civil penalty of \$10,000 for each non-willful violation. But if your violation is found to be **willful**, the penalty is the greater of \$100,000 or 50 percent of the amount in the account for **each** violation—and each year you didn't file is a **separate violation**.

**Going to Jail?** Criminal penalties for FBAR violations are even more frightening, including a fine of \$250,000 and 5 years of imprisonment. If the FBAR violation occurs while violating another law (such as tax law, which it often will) the penalties are increased to \$500,000 in fines and/or 10 years of imprisonment. Many violent felonies are punished less harshly. Moreover, the assessment of a civil penalty does not preclude criminal penalties or prosecution.

American Citizens Abroad (ACA) called FBAR penalties a world-wide problem for Americans residing overseas. See [American Citizens Abroad Letter to Gerald Shields](#) and [American Citizens Abroad Letter to Douglas Schulman](#).

For more, see:

[Washington's Assault on American Expats](#)

[New Tax Rules Harass Foreign Bankers for Little in Return](#)

[Law to Find Tax Evaders Denounced](#)

[Are Expats Derailing The FATCA Express?](#)

[Happy FATCA Filing Season](#)

[IRS Exempts Many Expats From FATCA](#)

[FBAR And FATCA Haters Unite](#)

[FACTA Further Erodes Taxpayer Protections Afforded By The Statute Of Limitations](#)

[IRS Criminal Investigations On Rise](#)

[Please Sir, Can I Have Some More FATCA?](#)

[Stripping FATCA From Our Diet](#)

[FBAR And FATCA Haters Unite](#)

*Robert W. Wood practices law with [Wood LLP](#), in San Francisco. The author of more than 30 books, including *Taxation of Damage Awards & Settlement Payments* (4th Ed. 2009 with 2012 Supplement, [Tax Institute](#)), he can be reached at [Wood@WoodLLP.com](mailto: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.*