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# FATCA's Bleak Choices For Accounts, Income, Disclosure

Is *any* offshore income, account or trust still secret? The only safe assumption is no. And contrary to public opinion, it is not merely a *prospective* problem. Many equate the question solely to FATCA, the pervasive U.S. law enacted in 2010 that is now unfurling to impact global banks and depositors in 2014.



(Photo credit: Images\_of\_Money)

But even before FATCA is fully implemented, the U.S. is gathering stockpiles of information from whistleblowers, banks under investigation and cooperative witnesses that make the timeline oblique. Most U.S. taxpayers have known since 2009's UBS scandal that the world was becoming smaller.

Many seemed to think only Switzerland would capitulate to the U.S. But now many countries—and soon it will not an overstatement to say virtually *all*—will have broad disclosure policies as reported here: [Offshore Accounts: No Place to Hide?](#) Already, nearly 20 jurisdictions are on board or soon will be.

They include obvious locales such as Switzerland, the Caymans, Jersey and more. Count France, Germany, Italy, Spain, the U.K. Guernsey, Gibraltar and the British Virgin Islands. Nearly 30 more nations are expected, including eventually such unlikely prospects as China. It has become a kind of global landslide.

The original target of the initiative was clearly not law-abiding U.S. citizens abroad. Yet they have their own worries now too. The State Department estimates there are 7.2 million U.S. citizens abroad. It seems safe to assume that most have non-U.S. bank accounts. The fact that only 825,000 FBARs were filed for 2012 suggests that this group too is under-complying.

Expat or not, for many U.S. persons with foreign income and accounts, it's clear that compliance is required and well-advised. But a primary fear is precisely how to begin in a way that is least expensive and least risky. Here's a refresher:

**Report Worldwide Income.** You must report [worldwide income](#) on your U.S. income tax return. If you have an interest in a foreign bank or financial account you must check "yes" (on Schedule B). This is true even if you live outside the U.S. or pay foreign taxes.

**FBARs Too.** Tax return filing alone isn't enough. U.S. persons with foreign bank accounts exceeding \$10,000 in the aggregate at any time during the year must file an FBAR by each June 30. See [Primer For First Time FBAR Filers](#).

**FATCA Form.** With your tax return, you may also need to file an IRS [Form 8938](#) to report foreign accounts and assets.

**Big Penalties.** Tax return failures are serious and carry penalties. Plus, the [penalty](#) for failing to file an FBAR is \$10,000 for each non-willful violation. If willful, the penalty is the greater of \$100,000 or 50% of the amount in the account for each violation. Each year you didn't file is a separate violation. See [Despite FATCA, FBAR Penalties Still Under Fire](#).

**Criminal Penalties.** Tax evasion can carry a prison term of up to five years and a fine of up to \$250,000. Filing a false return can mean up to three years in prison and a fine of up to \$250,000. Failing to file a tax return can mean a one year prison term and a fine of up to \$100,000. Failing to file FBARs can be criminal too with monetary penalties up to \$500,000 and prison for up to ten years. See [IRS May Find "Innocent" FBAR Violation Willful](#).

**Voluntary Disclosure.** If you admit your failures to the IRS and say you want to make it right, you've made a "voluntary disclosure." You will pay back taxes and penalties but not be prosecuted. See [Revised IRS Voluntary Disclosure Practice](#). There are two IRS programs, and each is worth a look.

**“Quiet Disclosures.”** A “quiet” disclosure is a correction of past tax returns and FBARs without drawing attention to what you are doing. The IRS warns against it. See [“Quiet” Foreign Account Disclosure Not Enough](#).

**Prospective Compliance Only.** Can you start filing complete tax returns and FBARs prospectively, but not try to fix the past? Maybe, but the risk is that past non-compliance will be noticed and it may then be too late to make a voluntary disclosure.

You can have money and investments anywhere in the world as long as you disclose them. Get some professional advice and try to get your situation resolved in a way that makes sense for your facts and risk profile.

*You can reach me 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.*