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Is Opposing FATCA Supporting Tax Evasion?

FATCA is 4 years old but is still ramping up for its rollout July 1, 2014. Discussing it generates vigorous responses. Over the last few years, IRS subpoenas and prosecutions have made foreign banks hand over the names of U.S. citizens and residents holding accounts. But even against this backdrop, FATCA is a sea change.

Foreign banks everywhere are lining up to hand over American account holder details. They face serious repercussions if they don't. Whether FATCA is a grand idea or a travesty, the IRS and Treasury Department have made Herculean efforts to implement it. Although foreign institutions may not like it, especially the price tag for the new IT systems, they are complying all the same.

FATCA requires foreign banks to report U.S. account holders to the IRS. After identifying them, institutions must impose a 30% tax on payments or transfers to any who refuse to step up. At first, Foreign financial institutions (FFIs) must report account numbers, balances, names, addresses, and U.S. taxpayer identification numbers. For U.S.-owned foreign entities, they must report the name, address, and U.S. [TIN](#) of each substantial U.S. owner.



A largely symbolic repeal effort is underway now that the [Republican Party Backs a FATCA Repeal Resolution](#). And there is a more longstanding repeal effort mounted at [RepealFatca.com](#). Nevertheless, FATCA is almost surely here to stay.

A voice against FATCA can be labeled as a voice for tax evasion. Some media sources are spinning any repeal effort as promoting tax evasion or giving large Republican account holders like Mitt Romney a pass. It's a clever spin.

Yet many Americans abroad feel caught in the crosshairs. Many cannot open legitimate new accounts or face closure of old ones. Mortgages are being denied or called, and the squeeze is getting worse. [American Citizens Abroad](#) complains that expatriates face an impossible position.

On top of annual FBAR [TD F 90-22.1](#) filings for foreign accounts and reporting worldwide income on your taxes, [FATCA's Section 6038D](#) requires U.S. taxpayers to report foreign accounts and assets of a certain size, including:

- Any financial account maintained by an FFI;
- Any stock or security issued by a non-U.S. person;
- Any financial interest or contract held for investment that has a non-U.S. issuer or counterparty; and
- Any interest in a foreign entity. That means taxpayers who purchase foreign real estate through an entity are covered by FATCA as well. For updates and further information on the IRS FATCA page, click [here](#).

The U.S. Taxpayer Advocate's 2013 report to Congress noted the harsh treatment of Americans overseas. FATCA is only part of that harsh treatment, since the American system of worldwide taxation is nothing new. But FATCA hit expats especially hard. The organization called [American Citizens Abroad](#) has submitted a [Residence-Based Taxation Proposal](#) to the Senate Finance Committee.

Americans abroad complain that they face serious employment problems from FATCA, including discrimination by foreign company employers. An American signature on corporate accounts triggers a reporting obligation to the IRS. In effect, they say, American competitiveness is being hurt. Job opportunities and promotions for Americans in multi-national corporations are at risk.

There can be other significant impacts too. One of the most obvious is the inability to open new financial accounts or the forced closure of existing ones. There can be scrutiny of non-U.S. spouses, making the decision to file a joint tax return often a mistake. For all but the very sophisticated, compliance isn't simple, and the penalties for transgressions can be exorbitant.

Despite the recent rhetoric, it seems quite possible to be anti-FATCA and to be decided not a supporter of tax evasion. But given the enormous push behind FATCA, the likelihood of repeal seems almost nil. It may be that the best the expat community can hope for would be an expansion of the IRS Streamlined Program for offshore compliance.

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.