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Will IRS Get Fat Off FATCA?

I was hoping we might see a bill trimming the Foreign Account Tax Compliance Act (FATCA) down to size so I could pun its name, but no such luck. The IRS, Treasury Department, and Congress are sticking to their guns about implementing the dreaded law. They appear to have high expectations—***Just think of all of that tax information!***

A Treasury official says the U.S. hopes agreements with other governments to implement FATCA will ramp up information exchanges. Speaking at a New York State Bar meeting, Treasury Acting Assistant Secretary for Tax Policy [Emily S. McMahan](#) said: “We believe that our optimism in this regard is justified in view of the very significant progress that has been made just in the last couple of years on facilitating global exchange of information.”

Why Care About FATCA? It’s effective January 1, 2013, but the IRS and Treasury Department are phasing it in to smooth out a bumpy road. [Notice 2011-53](#) is the third guidance on FATCA. See [Notice 2010-60](#), [2010-37 IRB 329](#) and [Notice 2011-34](#), [2011-19 IRB 765](#).



Institutional Reporting. 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 account holders who refuse to step up. Foreign financial institutions (FFIs) must file IRS reports by September 30, 2014. At first, FFIs must report only:

- Name, address, and U.S. taxpayer identification number of U.S. account holder. For U.S.-owned foreign entities, the name, address, and U.S. **TIN** of each substantial U.S. owner is required.
- Account balance as of December 31, 2013.
- Account number.

Withholding isn't required if the payee or beneficial owner provides the withholding agent with a certification that the foreign entity does not have a substantial U.S. owner, or provides the withholding agent with the name, address and taxpayer identification number (TIN) of each substantial U.S. owner.

Several exceptions apply. For example, withholding doesn't apply to any payment beneficially owned by a publicly traded corporation or member of an expanded affiliated group of a publicly traded corporation. There's also no withholding on payments the IRS identifies as posing a low risk of U.S. tax evasion.

The U.S. Treasury and various trading partners are discussing approaches to overcome legal impediments. FFIs may end up reporting the FATCA data **to their own government**, which will turn around and **send it to the IRS**—think tax treaty tax information exchange agreement. See [IRS Makes Swiss Cheese Of Swiss Banks](#).

Venues include the Global Forum on Transparency and Exchange of Information, a collaborative effort that could produce data swaps. The OECD Treaty Relief and Compliance Enhancement project is pushing too. Plus, the OECD Multilateral Convention on Mutual Administrative Assistance in Tax Matters was amended to allow non-OECD and non-Council of Europe members to join. Recent signatories include Argentina, Brazil and Japan. Expect more data in more places soon.

Taxpayer Reporting Too. On top of FBAR [TD F 90-22.1](#) filings, FATCA's [Section 6038D](#) requires U.S. taxpayers to report foreign accounts and assets with an aggregate value exceeding [\\$50,000](#). Required reporting includes:

- 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.

For more, see:

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

[IRS: Expect Even More Transparent Foreign Accounts](#)

[Happy FATCA Filing Season](#)

[IRS Exempts Many Expats From FACTA](#)

[FATCA Carries Fat Price Tag](#)

[IRS FATCA Guidance, Round 3](#)

[Oh Canada! Hating FBARs And FATCA](#)

[Expats Call For FATCA Repeal](#)

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