

International Taxation: The Rules Have Changed, and What You Don't Know... Can Hurt You

How Washington's Fierce Campaign Against Tax Evasion Has Gone Too Far

By Chris Matthai, Research Director, The Oxford Club

In case you missed it, Credit Suisse recently became the first financial institution in a decade to plead guilty to U.S. criminal charges. *The settlement involved a \$2.6 billion penalty.*

The charges filed by the IRS: conspiring to help Americans evade taxes.

To find out what's going on, a group of Oxford Club Members recently sat down and listened to a presentation from Kenneth Ahl – partner at Archer & Greiner P.C. Archer & Greiner specializes in taxation and tax litigation. Ken's expertise is in foreign trusts and estates, asset protection, tax planning for dual citizenship and taxation of U.S. citizens residing abroad.

According to Ken, what's happening is because of FATCA, or the Foreign Account Tax Compliance Act. The law was passed in 2010 to crack down on the use of offshore banks to hide taxable assets.

If you've never heard of FATCA, you're not alone. As with so many other new taxes, tax-related laws and tax-code changes, most Americans aren't aware of what's happening. But, as Ken reminded us, this isn't any small matter. If you're an investor with any kind of noteworthy portfolio offshore or plan to retire overseas... these changes are dramatic.

Many free market proponents and global investing advocates are outraged. They consider FATCA to be one of the most insidious measures ever approved to keep your capital from moving overseas. *They claim that this is essentially de facto exchange control without the government having to impose direct sanctions.*

I'M FROM THE IRS AND I'M HERE TO GET YOU

Think back to the beginning of President Obama's first term when he came down hard on U.S.

investors with out-of-country bank accounts in Switzerland, the Cayman Islands and other such hotspots. During that time, the White House directed the IRS to essentially “search and destroy” those investors deemed to be dodging their due tax burdens.

The weapon created by the IRS to achieve that goal was FATCA, signed into law on March 18, 2010. (To make sure it got congressional approval it was tucked into a “jobs bill.”)

The phased-in law – another part of which took effect on July 1 – is the most important and controversial development in decades in the international fight against tax evasion. It is feared and loathed by financial institutions because of its complexity, its global reach and the high cost of compliance.

FATCA has expanded U.S. tentacles almost worldwide. And now that a bank in Switzerland – once the bastion of bank secrecy – has “cracked,” expect more banks and more countries to cooperate with FATCA requirements... or avoid U.S. citizen accounts altogether.

DISCLOSURE OR CLOSURE

Another weapon in the IRS search for tax revenue is the Offshore Voluntary Disclosure Program (OVDP). The forms for the OVDP program include “snitch” questions asking the account holders to reveal the names of advisors, managers or anyone else who helped them set up the foreign accounts. This is an obvious effort by the U.S. government to gather as much information as it can on advisors and institutions promoting offshore protection for U.S. citizens and residents.

In addition, the IRS has broadened the language

on Schedule B's (where interest and dividends are declared) so that there are new terms for declaring any financial account offshore, including trusts, and any gifts received from a foreign entity. You also have to submit FinCEN Form 114, otherwise known as a Foreign Bank and Financial Account Report, or FBAR, to the U.S. Treasury and complete Form 8938 as part of your 1040 return.

The new rules require financial institutions to "automatically" report any income paid to a U.S. citizen or resident. No longer does the IRS have to request account information and present evidence or justification for its need.

In essence, FATCA turns foreign banks and other financial institutions into enforcement arms of the IRS. They must choose between turning over information on clients who are "U.S. persons" or face a 30% withholding tax *on their entire source of U.S. revenues*.

The IRS also expanded its scrutiny beyond Switzerland, the Cayman Islands and other traditional offshore banking havens. It's putting pressure on thousands of European and Asian financial institutions as well.

The threat is working. More than 80 countries and 77,000 financial firms have signed up.

Naturally, most foreign banks don't want to spend time and money complying with all the reporting measures, so they just close their services to Americans.

Thousands of Americans who live abroad have been told by their local banks and investment advisors that they no longer want them as customers because it is too much hassle.

The list of foreign banks that simply refuse to open accounts for U.S. citizens is growing.

In addition, individuals are backing off from opening foreign accounts because of the regulatory paperwork they are now required to comply with.

This certainly makes it hard for any retirees who

want to live part time outside the U.S. and open a bank account where they live. In fact, we are already seeing – whether intended or not – more money staying in the U.S.

If there is any "silver lining" in this tale of woe, it's that U.S. citizens can still hold assets offshore in the following three, non-reportable – until you sell and repatriate the funds – forms:

1. A small bank account. You can still keep a foreign bank account (assuming you can find a foreign bank that will take your money). As long as your total "foreign financial assets" are \$10,000 or less, it's not reportable for FBAR purposes although income from the account is taxable.
2. Foreign real estate. This does not qualify as a "foreign financial asset." There is no tax or reporting rules other than those that apply to your ownership of property stateside.
3. Gold and precious metals. If you keep it in a safe deposit box in an overseas bank, this does not qualify as a "foreign financial asset" either, as long as it is not part of a financial account.

If you own an offshore account or are considering opening one and want further information about how to facilitate that within FATCA requirements, contact either Kenneth Ahl or Pillar One Advisor Rich Checkan. ■

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