

A FATCA REMEDY FOR AMERICANS ABROAD

What is the Foreign Account Tax Compliance Act (FATCA) and why is it a problem for Americans abroad?

FATCA was passed by Congress and signed into law by President Obama in 2010 to discourage tax fraud and money laundering, and to apprehend offenders. The Act requires both US citizens and their banks to report detailed information to the IRS on accounts in Foreign Financial Institutions (FFIs). **The laudable intent was to make it much more difficult for wealthy Americans living in the US to use offshore accounts to hide untaxed earnings from the IRS. But the bill applies to all accounts outside the US—even when they are held by Americans who live abroad.** As a result, FATCA is causing grave hardship for Americans living outside the country. Their financial accounts are being closed; for some their relationships with their non-American spouses are under serious strain; and some Americans are being denied positions, promotion or partnership in business. For some, the consequences of FATCA reporting¹ are so severe that they are renouncing or contemplating renouncing their US citizenship.

Why are overseas banks and brokerage houses closing the accounts of Americans?

FATCA requires Americans with financial accounts in FFIs to disclose them to the IRS. It requires their banks and brokerage houses to report them as well, or else face a penalty of 30 per cent withholding on US sourced income. FATCA's penalties would jeopardize the viability of all business FFIs conduct with US-based counterparts. No financial institution that does business with US counterparts can afford to ignore the risk of getting their FATCA compliance wrong when the penalty is this severe.

We believe that FFIs are withholding financial services from American customers because of: 1) the high cost to FFIs of implementing FATCA reporting regimes and 2) the risk of the severe penalties for FATCA compliance failures. Some FFIs have, therefore, elected to cease doing business with Americans altogether rather than comply with the Act.

Not that FFIs are game to admit that their FATCA compliance and risk manage frameworks include the cessation of business with American citizens. But Democrats Abroad and other organisations representing Americans abroad have managed to collect many pieces of bank correspondence that attribute service denial to FATCA. We know also that Treasury possesses copies of letters from FFIs to US citizens abroad notifying them that their business is no longer welcome.

FATCA Same Country Safe Harbor: Americans abroad are in near universal agreement on a remedy

Democrats Abroad and others support the establishment of an exemption from FATCA reporting for law-abiding Americans abroad for accounts in their countries of bona fide residence: the *FATCA Same Country Safe Harbor for Americans abroad*.

- No American living legally abroad would have to file a FATCA report on accounts held in his or her country of residence; and
- No FFI would have to file FATCA reports on the accounts of US-tax compliant Americans residing legally in the same country.

We believe the **FATCA Same Country Safe Harbor** for Americans abroad will greatly reduce FATCA-related financial account closures, expand tax compliance and improve FATCA's effectiveness. It will preserve the original intent of FATCA to fight illegal tax avoidance by Americans using overseas accounts to hide assessable earnings from the IRS, but alleviate the useless reporting, by Americans and by their banks, of ordinary accounts that law-abiding US citizens living abroad use to pay their bills and save for the future.

This remedy is endorsed by the National Taxpayer Advocate as well as these non-partisan organisations representing Americans abroad: American Citizens Abroad, Association of Americans Resident Overseas and Federation of American Women's Clubs Overseas. The House Americans Abroad Caucus also supports the FATCA Same Country Safe Harbor as a remedy for resolving the law's unintended adverse consequences for law-abiding, tax compliant Americans abroad, while preserving its original strengths for tax and law enforcement.

April 2017

¹ "FATCA reporting" means the submission by qualifying taxpayers of IRS Form 8938 – Statement of Specified Foreign Assets and the submission by Foreign Financial Institutions of reports on the accounts of US Persons.