

BRIEFING NOTE

FOREIGN ACCOUNTS TAX COMPLIANCE ACT (“FATCA”)

FATCA was enacted by Congress in 2010 for the purpose of providing information to the IRS that it will use to identify and apprehend Americans making use of illicit schemes, structures, accounts and facilities to hide untaxed earnings in offshore accounts.

The Two Principal Provisions of FATCA

FATCA is a complicated piece of legislation with two basic components.

1. Reporting Requirement for Foreign Financial Institutions (FFIs)

Most Foreign Financial Institutions—such as banks and brokerage houses—are required to enter into an agreement with the IRS to identify their U.S. account holders, disclosing their names, addresses and account details. Any U.S. financial institution making a payment to a non-compliant FFI must withhold 30% of the gross payment.

2. Reporting requirement for individual U.S. citizens and their families

A U.S. citizen living outside the U.S. must file the FATCA Form 8938 if he or she holds or has signatory control over funds in FFIs totaling \$200,000 in aggregate at the end of the year or \$300,000 in aggregate at any time during the year. The thresholds for couples filing jointly are \$400,000 and \$600,000, respectively. There are severe penalties for under-reporting income in any FFI. The thresholds for U.S.-based citizens are much lower and U.S. residents with signature power over jointly held overseas accounts may have to report even though the overseas citizen may not have to.

Americans living abroad now find their financial lives exposed to a degree of scrutiny – under threat of severe penalties, fines and even imprisonment – to which Americans living stateside are not subjected. Implicit in this stringent reporting regulation is the unfair and unjustified suspicion that Americans living abroad are tax cheats and/or money launderers, which clearly the vast majority is not.

FATCA’s unintended adverse impacts

These are some of the issues raised by overseas Americans in addressing the challenge of meeting FATCA compliance:

Impacts on employment opportunity:

- Discriminatory impact on U.S. senior managers in foreign companies where an American signature on corporate accounts triggers a reporting obligation to the IRS;
- Loss of job opportunities at all levels for Americans in multi-national corporations due to the cost of compensating for U.S. tax reporting;
- Weakening of entrepreneurial opportunities for overseas Americans due to onerous reporting obligations imposed on them and sometimes their non-American business partners.

Impacts on personal affairs and privacy:

- Inability to open new financial accounts or forced closure of existing accounts;
- Assets and accounts held jointly with non-nationals subject to IRS scrutiny, putting severe stress on personal relationships and business relationships;
- Escalation in tax filing complexity and cost;
- Exorbitant and confiscatory penalties for non-compliance.

The community of overseas Americans is united in their concern for the excessive burden that FATCA has placed upon them now and into the future. A solution that addresses these issues is urgently needed.