



## Taxation and Financial Reporting 2018

According to recent State Department estimates, there are now *8.7 million Americans living and working abroad* (equal to the 12<sup>th</sup> state in terms of population). Because they are far away and their representation in Congress is distributed across 435 districts, all too often they are forgotten when legislation is being crafted.

Our central mission is to inform Americans about their rights and responsibilities abroad and to inform Washington legislators and policymakers about the special situation of America's overseas population. Today, their main concerns relate to the loss of access to financial services at home and abroad and to the costly and burdensome financial reporting requirements imposed on them as "US persons" abroad.

### Taxation

- I) Our primary position concerns tax treatment and reporting requirements relating to income generated in the same country as that in which its recipient resides. The international norm is for the tax laws of that country alone to apply since that country's authorities have jurisdiction over both the activity generating the income and its own residents. The United States should adapt to the international norm and confine application of its tax system to where it has recognized jurisdiction.

Tax treatment of cross-border income flows is more complex since source and recipient countries are different. There has been much discussion during the last year or so, not always clear, about the relative merits of citizen-based (CBT), resident-based taxation (RBT) and territorial taxation for individuals (TTFI). AARO and FAWCO do not take a formal position on taxation of such cross-border income but believes that tax treaties can and should be designed to protect the positions of both host and source governments while ensuring fairness, i.e. avoiding double taxation, to individual taxpayers.

- II) The IRS has closed the last of its offices abroad. Now, US taxpayers overseas have to queue up on expensive and often unreliable international telephone lines, waiting to reach agents who are already, according to all reports, vastly overstretched. We advocate *additional funding for the IRS* and strongly support the recommendation on the part of the National Taxpayer Advocate for *Taxpayer Advocate offices in major US embassies around the world*. It is unreasonable to expect people navigating the complexities of foreign tax systems while trying to comply with IRS regulations to do so with no assistance whatsoever from the Internal Revenue Service.

### Foreign Account Tax Compliance Act (FATCA)

Foreign financial institutions have closed accounts of American clients because of their nationality, which is seemingly an easier and far less costly solution than risking the 30% withholding they would incur for non-compliance with FATCA.

Because, in addition, US financial institutions such as Fidelity Investments, National Financial Services, Wells Fargo Brokerage, and PNC Bank have closed the domestic accounts of Americans simply because they are living abroad, this is *leaving many Americans without access to financial services in the United States or abroad and, most particularly, to the investment and retirement accounts they would have if they still lived in the United States*.

FATCA Form 8938 is a tax reporting document filed with the IRS. Absent a move to Residency-Based Taxation, and absent a simple repeal of FATCA as is currently being proposed in various quarters, we strongly recommend:

- I) FATCA should only apply to 1) *US residents with foreign assets* and 2) *US persons abroad with assets in a country other than the US or their country of bona fide residence over the same aggregate threshold as now applies to US residents*, i.e. \$50,000.
- II) With respect to *reporting obligations imposed on foreign financial institutions*, only their clients' *income* should need to be reported, not their foreign financial assets (i.e. bank account balances).

### **Foreign Bank Account Report (FinCEN Form 114)**

The Foreign Bank Account Report (FBAR) was created in the 1970s to track possible money laundering.

- US persons are required to declare the full value of all accounts including those they jointly own with another, even when the other person is not an American. *This has led to foreign spouses/partners refusing to allow the declaration and to the closing of joint family or business accounts, often leaving the US citizen spouse/partner in a situation of serious financial distress.*
- The requirement to declare accounts over which an American has signature authority has caused foreign companies, associations and business persons to shy away from allowing Americans in positions where this condition would apply. *This severely handicaps the entrepreneur, in particular, and reduces the number of Americans in leadership positions in non-profit organizations abroad.*
- Many of those required to file are actually unaware that they are "US persons", not having lived in the United States since infancy. In the minds of these people, as for long-term residents abroad, *the very concept of "foreign account" does not apply* to the accounts they maintain and must have in their country of residence in order to pay taxes, save for retirement, finance their children's education, pay household bills and receive salaries.

The FBAR is not intended to be a revenue-producing document. *In addition to its damaging effects on marriages, small businesses, international NGOs and American entrepreneurship, the costs of administration and enforcement far outweigh any financial benefit derived from sanctions. It is revenue negative for the US Government.*

In order to alleviate an invasive and often complicated, lengthy reporting burden (given that foreign banking systems do not provide the same kind of information as US banks) and thereby *increase compliance while cutting back on enforcement costs*, we strongly recommend:

- I) Eliminating reporting requirements on *accounts held in the country of bona fide residence* abroad.
- II) *Raising the filing threshold* from the present \$10,000 aggregate in all accounts to the threshold for "FATCA filing" for US residents with foreign accounts, i.e. \$50,000 (a far more reasonable value in today's economy).
- III) Requiring filers to give *ranges of values* for foreign accounts rather than highest values, as was the case until 2003.
- IV) Those who file FATCA form 8938 should be *deemed to have filed* FinCEN Form 114.

In addition, at the very time that increasing numbers have learned of their obligation to file, the process itself has become more difficult.

Our organizations strongly support all efforts underway worldwide to eliminate tax fraud. In keeping with our mission, however, we also support all efforts to encourage U.S. citizens to represent their country abroad and be active participants in the global economy.

**Consequently, we are seeking solutions that will enable increasing numbers of US persons to come into compliance with US laws and regulations without fear of punitive sanctions, the risk of divorce or the loss of financial security, or impediments to US business and entrepreneurship abroad, while reducing unproductive enforcement costs for the US government.**