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The Impact of the Foreign Account Tax Compliance Act (FATCA)

FATCA, the Foreign Account Tax Compliance Act, targets those who evade paying taxes by hiding assets in undisclosed foreign bank accounts but negatively impacts and penalizes American citizens overseas and US economic interests.

FATCA requires Foreign Financial Institutions (FFIs) to provide annual reports to the IRS, either directly or through Intergovernmental Agreements (IGA), on the accounts owned by a U.S. person. The U.S. will impose a 30% withholding tax on all U.S. source transfers to non-complying FFIs. FFIs and their clients are liquidating their investments in the U.S. to minimize exposure.

FATCA requires overseas Americans who have financial assets held by an FFI with an aggregate value in excess of $200,000 to complete a new Form 8938 to be filed with their annual tax return. Compliance is time-consuming and costly due to the complexity of the new law and the difficulty in determining what must be reported. Penalties for incorrect filing are excessively harsh, even confiscatory and discriminatory.

FATCA requires any non-listed foreign company or foreign partnership with 10% U.S. person ownership to report to the IRS. This creates major handicaps for U.S. businesses in establishing foreign banking accounts for exports and cuts American businessmen off from entrepreneurial opportunities abroad.

Americans overseas are penalized by FATCA:

- FFIs are refusing Americans as clients and this trend will continue as foreign banks take a conservative position on maintaining relationships with American clients.
- American businessmen and independent small businesses are being forced out of foreign start-up ventures and export opportunities.
- Americans overseas risk high penalties due to the overlap in reporting of Form 8938 and FBAR where some accounts need to be disclosed on both forms and others only on Form 8938. Financial accounts to be reported vary depending on country and can include items such as insurance plans and pension plans; this increases the risk for error and results in application of ruinous penalties under the assumption that all errors are related to tax evasion.

OAW recommends:

- Create an Advisory Council for taxpayers overseas where overseas organizations can inform and dialogue with the IRS. This would enable the IRS to receive regular input from those directly affected on the development and implementation of IRS policy concerning Americans abroad.
- Exempt from FATCA reporting requirements “same country” accounts belonging to *bona fide* American residents fiscally domiciled abroad.
- Institute an independent cost/benefit audit of FATCA’s impact on the IRS, Treasury and the U.S. economy.
- Exclude the reporting requirement on life insurance policies and pension funds.
- Increase the reporting requirement threshold for foreign corporations and partnerships from 10% to 50% ownership by a U.S. person.
- Change the filing deadline for FBARs so as to match the deadline for individuals’ Forms 1040 and 8938.
- Create a consolidated IRS website for overseas filers and more outreach from the IRS to inform and educate Americans who are filing from overseas.

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