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Even Memorial Day, Some Americans Wish They Weren't

As with July 4th, it is hard not to feel patriotic and thankful on Memorial Day. The latter day is especially solemn given so many who have given all for their country. Yet some Americans caught in what they see as an expensive, unfair, and even frightening snarl feel burdened too. Some even find the costs so high and the issues so invasive that [Americans renouncing citizenship are up 221%](#).

Apart from expatriating, some people try to prove they aren't American after all. Perhaps they were by birth, but not anymore. Welcome to the strange world of [FATCA](#)—the Foreign Account Tax Compliance Act. Passed in 2010, the U.S. law is still being ramped up worldwide. Foreign banks must hand over American account holders with over \$50,000 on deposit or face serious repercussions. Non-compliant institutions could be frozen out of U.S. markets, so everyone is complying.

Getting some 70 countries and their banks on board is an astonishing accomplishment for the U.S. Treasury Department. The list is available at [FATCA – Archive](#). Already, with Swiss bank deals, amnesties, prosecutions and summonses, the IRS has quicker, better and more complete information than ever. Worldwide, FATCA directs even more of it to the IRS.



(Photo credit: medigirol)

At first, Foreign Financial Institutions (FFIs) must report account numbers, balances, names, addresses, and U.S. taxpayer identification numbers. Later, there is 30% withholding on anyone who doesn't report. Although the [Republican Party is backing a FATCA repeal resolution](#), and there is [RepealFATCA.com](#), FATCA seems here to stay.

More than 7 million Americans live abroad, and many others have overseas accounts. Many are receiving letters from banks asking for verification of tax compliance with the IRS. In many cases, banks close suspect accounts.

For dual and triple citizens, the lines are often blurred. Can you be American if you lived here only briefly and never had a passport? What if you moved to Canada 30 years ago? Or, what if you are clearly American and like traveling on a U.S. passport, but live abroad and have never filed tax returns with the IRS?

Often, there is no perfect answer. Americans must report [worldwide income](#) and may need to file an IRS [Form 8938](#) with Form 1040 to report foreign accounts and assets. Plus, U.S. persons with foreign bank accounts exceeding \$10,000 must file an FBAR by each June 30.

Tax return and FBAR violations can be serious. Tax evasion can mean five years in prison and a

\$250,000 fine. Filing a false return can mean three years and a \$250,000 fine. Failing to file FBARs can be criminal too, with fines up to \$500,000 and prison up to ten years.

Even civil *non-willful* FBAR violations can draw a \$10,000 fine. For willful FBAR violations, the penalty is the greater of \$100,000 or 50% of the account for each violation (and each year is separate). The numbers can add up, exceeding the 27.5% Offshore Voluntary Disclosure Program penalty.

Some deal with putative American status like a deer in the headlights, but eventually banks close accounts and may turn over names anyway. The safest choice is usually one of two IRS amnesty programs, but for someone who truly didn't think they were American, it may be better to seek to verify the details of a putative expatriation. Yet all of these issues are delicate and carry legal risks.

The main IRS amnesty program is the Offshore Voluntary Disclosure Program, under which participants pay back taxes and penalties. The IRS Streamlined program for U.S. persons abroad is less expensive for those who qualify. Outside these programs, some people file amended tax returns and FBARs, a "quiet" disclosure the IRS warns against. Some start filing tax returns and FBARs prospectively, but there is a risk past non-compliance will be noticed.

Plainly, one size doesn't fit all. The details matter, and no action should be taken without considering the facts, the dollars at stake, and your risk tolerance.

You can reach me at Wood@WoodLLP.com. This discussion is not intended as legal advice, and cannot be relied upon for any purpose without the services of a qualified professional.