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FATCA, IRS Global Tax Law, Is Everywhere -- Even Russia & China

[FATCA](#)—the Foreign Account Tax Compliance Act—is America’s global tax law. And it’s finally here after a four-year ramp up. It requires foreign banks to reveal American accounts holding over \$50,000. Bank secrecy? Forget it. Non-compliant institutions could be frozen out of U.S. markets, so everyone is complying.

So far, 77,000 financial institutions have registered and 80 countries have too. Countries must throw their agreement behind the law or face dire repercussions. Tax havens have joined up. Even China and Russia are getting on board. The IRS has a searchable list of financial institutions. See [FFI List Search and Download Tool](#) and a [User Guide](#). Countries on board are at [FATCA – Archive](#).

FATCA grew out of a controversial rule. America taxes its citizens—and even permanent residents—on their [worldwide income](#) regardless of where they live. In 2009, the IRS struck a groundbreaking deal with UBS for \$780 million in penalties and American names. Yet today, that huge deal seems only a drop in the bucket of what has happened since. Credit Suisse took a guilty plea and paid a record \$2.6 billion fine.



(Photo credit: shaire productions)

With over a hundred Swiss banks taking a DOJ deal and many other developments, banking is now more transparent than could ever have been imagined. But in 2010, when only some of those developments were unfolding, FATCA was enacted. The idea was to cut off companies from access to critical U.S. financial markets if they didn't pass along American data.

Cleverly, FATCA's tax would be so catastrophic to those affected that everyone has opted to comply. Foreign financial institutions must withhold a 30% tax if the recipient isn't providing information about U.S. account holders. Now, it seems unlikely that virtually anyone will pay the 30%. They will provide the data instead.

The U.S. even announced an agreement in principle with China. And amazingly, Russia too has just come aboard, with President Vladimir [Putin Signing Law in 11th Hour to Satisfy U.S. Treasury](#). The U.S. and Russia were negotiating a FATCA deal until March, 2014, but Russia's annexation of Crimea caused the U.S. to walk. That meant Russian financial institutions faced being frozen out of U.S. markets. Fortunately for them, President Putin signed a law allowing Russian banks to send American taxpayer data to the U.S.

Foreign Financial Institutions (FFIs) must report account numbers, balances, names, addresses, and U.S. identification numbers. For U.S.-owned foreign entities, they must report the name, address, and U.S. [TIN](#) of each substantial U.S. owner. Of course, apart from taxes, U.S. persons with foreign bank accounts exceeding \$10,000 must file an FBAR by each June 30.

These forms too are serious. FBAR failures can mean fines up to \$500,000 and prison up to ten years. Even non-willful civil FBAR [penalty](#) can mean a \$10,000 fine. Willful FBAR violations can

draw the greater of \$100,000 or 50% of the account for each violation (and each year is separate). The numbers can add up fast. [Court Upholds Record FBAR Penalties, Exceeding Offshore Account Balance](#).

U.S. account holders who aren't compliant have limited time to get to the IRS. The IRS recently changed its programs, making its [Offshore Voluntary Disclosure Program](#) a little harsher. Yet for those not willing to pay the 27.5% penalty—which goes to 50% for some named banks August 4, 2014—the new IRS's [Streamlined Program](#) may be a good option for those who qualify.

The latter applies now to both foreign and U.S.-based Americans. Some still want to amend their taxes and file FBARs in a “[quiet disclosure](#)” which could bring civil FBAR penalties or even prosecution. Thus, caution is clearly in order.

Indeed, FATCA is making banking transparent virtually worldwide. With Swiss bank deals, prosecutions, summonses, and now FATCA, the IRS has quicker, better and more complete information than ever.

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