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FBAR And FATCA Haters Unite

On this last day to dispatch a 2010 FBAR for [June 30 receipt](#), let's reflect. Think hate is too strong a word? In fairness, much of the international invective is launched at the yet-to-kick-in FATCA mess.

The [Foreign Account Tax Compliance Act](#)—the unfortunate acronym is FATCA—adds to filing requirements for foreign accounts and assets.

You must disclose foreign accounts on your tax return, report the income, and annually file a Form [TD F 90-22.1](#), Report of Foreign Bank and Financial Accounts—an [FBAR](#). But unlike the FBAR, the FATCA disclosure is attached to your [Form 1040](#). It does not obviate the FBAR. You might have to file both, or could be required to make a [FATCA](#) disclosure but not file an FBAR.

FATCA generally applies to calendar 2011 and thereafter, so your due date is April 15, 2012. Under FATCA, Internal Revenue Code [Section 6038D](#) requires U.S. taxpayers with foreign accounts and assets having an aggregate value exceeding [\\$50,000](#) to report them. The basic rule is that you must report “specified foreign financial assets,” including ownership of:

- Any financial account maintained by a foreign financial institution;
- Any stock or security issued by a non-U.S. person;
- Any financial interest or contract held for investment that has

a non-U.S. issuer or counterparty; and

- Any interest in a foreign entity. That means taxpayers who purchase foreign real estate through an entity are covered.

Bigger Controversy. As annoying as the above reporting may seem, that isn't the most controversial part of FATCA. A far larger burden is being placed on foreign banks. FATCA requires them to report to the IRS all their U.S. account holders starting in 2013. Many banks and foreign governments are lobbying for a repeal of this provision. See [Banks Battle Over U.S. Tax Laws](#).

Foreign financial institutions face a compliance nightmare. Apart from identifying U.S. persons who have accounts with them, the institutions must impose a 30% tax on payments or money transfers to their account holders who refuse to identify themselves.

Eventually these institutions will have to close the accounts. Yet drastic action may be required before then. Some institutions will presumably no longer want any involvement whatsoever with Americans.

All financial institutions doing business in the U.S. are required to comply, and "financial institutions" are broadly defined. They include banks, investment funds, insurance companies, pension funds, mutual funds, broker dealers, and private equity funds. Stay tuned as this international debate continues.

For more, see:

[Why Obama's FATCA Law Is A Threat To Business Growth](#)

[The Foreign Account Tax Compliance Act](#)

[New Legislation Could Affect Filers of the FBAR](#)

[Preparing Your Company for FATCA](#)

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