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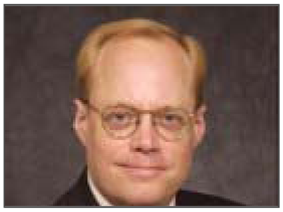

Robert W. Wood

THE TAX LAWYER

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Please Sir, Can I Have Some More FATCA?

Americans may be too fat, but it's foreign financial institutions (FFIs) that are hoping to shed pounds of IRS disclosure and tax withholding problems. Why are FFIs FATCA haters? See Stripping FATCA From Our Diet. FATCA puts new filing and disclosure obligations on Americans, but imposes direct and controversial enforcement mechanisms on FFIs—whether or not they have connections with the U.S.

FATCA Hitting the Fan. Foreign banks are required to report—directly 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. After identifying U.S. account holders, the institutions must impose a 30% tax on payments or transfers to account holders who refuse to identify themselves.

To soften the blow, the IRS issued Notice 2011-53, phasing in the law. FFIs and U.S. withholding agents are given extra time listed below to implement systems to comply. IRS Commissioner Doug Shulman announced that FACTA is needed, but sounded sympathetic to the FATCA haters out there:

> "Today's notice is a reflection of our serious commitment to implementation of the statute, but also a serious commitment to listen to the implementation challenges of affected financial institutions and make appropriate adjustments to ensure a smooth and timely roll-out."

FATCA requires foreign institutions to report to tell the IRS about accounts held by U.S. taxpayers or foreign entities in which U.S. taxpayers hold substantial ownership. To avoid withholding, a participating institution must enter into an agreement with the IRS to:

- Identify U.S. accounts;
- Report certain information to the IRS regarding U.S. accounts; and
- Withhold a 30% tax on certain payments to non-participating FFIs and account holders unwilling to provide the required information.

Foreign institutions that don't sign an agreement with the IRS will face withholding on certain payments, including U.S. source interest and dividends, gross proceeds from the disposition of U.S. securities, and pass-through payments.

Notice 2011-53 provides this timeline for FFIs and U.S. withholding agents to implement FATCA:

- An FFI must enter an agreement with the IRS by June 30, 2013, to ensure that it will be identified as a participating FFI in sufficient time to allow withholding agents to refrain from withholding beginning on Jan. 1, 2014.
- Withholding on U.S. source dividends and interest paid to non-participating FFIs will begin on Jan. 1, 2014, and withholding on all withholdable payments (including on gross proceeds) will be fully phased in on Jan. 1, 2015.
- Due diligence requirements for identifying new and pre-existing U.S. accounts (including certain high-risk accounts) will begin in 2013. Reporting requirements will begin in 2014.
- "High risk accounts" include private banking accounts with a balance that is equal to or greater than $500,000.

FATCA vs. FBAR? The account holders also face obligations. Separate and apart from FBAR TD F 90-22.1 filings, Internal Revenue Code Section 6038D requires U.S. taxpayers to report foreign accounts and assets with an aggregate value exceeding $50,000. Required reporting includes:

- Any financial account maintained by an FFI;
- 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.

More FATCA? Please sir, can I have some more? You haven't read the last word about FATCA. The IRS will begin accepting FFI applications through its electronic submissions process no later than Jan. 1, 2013.

For more, see:

FBAR And FATCA Haters Unite

Beware Foreign Trust Reporting to IRS

Are You Getting Enough FBAR?

IRS Issues Guidance to Foreign Banks on FATCA Compliance

Why Obama's FATCA Law Is A Threat To Business Growth

FATCA: Giving More Tools to the IRS

Understand FATCA: Taxing Americans living abroad

The Foreign Account Tax Compliance Act

New Legislation Could Affect Filers of the FBAR

Preparing Your Company for FATCA

Robert W. Wood practices law with Wood LLP, in San Francisco. The author of more than 30 books, including Taxation of Damage Awards & Settlement Payments (4th Ed. 2009, Tax Institute), he can be reached 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.