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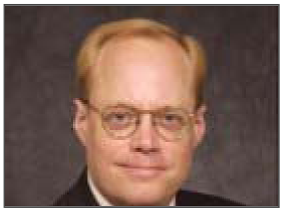

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Stripping FATCA From Our Diet

Foreign financial institutions and governments aren't happy with the Foreign Account Tax Compliance Act (FATCA). They are hoping President Obama will agree it should go. Adding to the cacophony of boos is American Citizens Abroad (ACA), an organization of U.S. citizens living overseas. It has released a report warning that FATCA threatens trillions (yes, with a T) of investment in the U.S.

FATCA makes it difficult if not impossible, the report asserts, for American companies and financial institutions to compete globally. See Why FATCA is Bad for America and Why It Should be Repealed Now. Meantime, the IRS released guidance on July 14, 2011 phasing in FATCA, with key bank to IRS agreements required by June 30, 2013. But some say the delay does not prevent FATCA from being toxic.

FATCA is on top of the Report of Foreign Bank and Financial Accounts (also known as Treasury Form TD F 90-22.1) rules that generally already require disclosure. 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. FATCA generally applies to calendar 2011 and thereafter, so your due date is April 15, 2012.

Bigger Controversy. A more controversial part of FATCA is the burden 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 repeal. See Banks Battle Over U.S. Tax Laws.

Foreign financial institutions must identify U.S. persons having accounts with them, and that's not as easy as it sounds. Then they must impose a 30% tax on payments or money transfers to those account holders who refuse to identify themselves. An increasing number of institutions will no longer want any involvement with Americans and will start closing accounts.

In the wake of the UBS scandal, of course, the IRS has sought to compel enhanced transparency with foreign accounts, pushing institutions and governments to reveal accounts owned by or for Americans. See Switzerland, U.S. Discuss Tax Pact. The IRS 2009 and 2011 voluntary disclosure initiatives are also netting significant rewards for the IRS. See It's Not Too Late For IRS Amnesty.

FATCA gives the IRS even more potent weapons, but one of the question is at what price. When FATCA reporting commences in early 2012 the scrutiny can be expected to be much higher. Not only is there the administrative nightmare for banks, but there are reporting burdens on American businesses and residents abroad. See U.S. Tax Crackdown Hits Canadian Residents.

Some banks may close accounts of U.S. citizens and sell off U.S. holdings rather than comply. With total foreign investment in the U.S. currently exceeding $21 trillion, the ACA report warns that even a partial sale of such holdings would hit U.S. markets hard.

For more, see:

FBAR And FATCA Haters Unite

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

Beware Foreign Trust Reporting to IRS

Are You Getting Enough FBAR?

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