Robert W. Wood
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America Is A Tax Haven, And It's Not Ben Carson's Fault

The Huffington Post has commented that one of Ben Carson's craziest ideas is coming true. The candidate told CNBC last October that he wanted to slash U.S. tax rates so dramatically that America "become[s] a tax haven for people because it also becomes an opportunity haven for people." Some said that it was hard to take Dr. Carson's plan to turn the U.S. into a tax haven too seriously. But maybe they were wrong. and the IRS now admits your audit chance is small, and dropping.

Over the last eight years, America has flexed its muscles at tax havens everywhere. Today, the IRS and Justice Department are feared worldwide. The U.S. has crushed Swiss banks and rooted out U.S. account holders across the globe. With FATCA, the Foreign Account Tax Compliance Act, we have cowed the world into submission. making foreign banks and foreign governments hand over secret bank data about depositors.

But ironically, a strange turn of events makes America the top tax haven. Numerous reports say that the world's favorite tax haven is the United States.

It started with FATCA, enacted in 2010, followed by an enormously successful launch orchestrated by President Obama's Treasury Department. Today, it spans the globe with a network of reporting that is unparalleled in the world.

FATCA was passed to require non-U.S. banks and financial institutions around the world to reveal American account details or risk big penalties. The big penalties on offshore banks who do not hand over Americans are withholding at 30% on most transactions. There has already been some withholding, but more is on the way. Non-compliant institutions are frozen out of U.S. markets, so there is little choice but to comply. FATCA cuts off companies from access to critical U.S. financial markets if they fail to pass along American data. More than 100 nations have agreed to the law. Countries must agree to the law or face dire repercussions.

FATCA also helped fuel efforts by the OECD to adopt Common Reporting Standards for nations around the world. The OECD has been designing and implementing the system to target tax evasion. Given the IRS fixation on that topic, you might think that the U.S. would join in. With nearly 100 nations around the world agreeing to the OECD pact, it is noteworthy that the U.S. has not.

More than a few observers say that the U.S. does not practice what it preaches. Indeed, a report by the Tax Justice Network ranks America as one of the *worst nations in the world*, worse than the Cayman Islands. The report claims that America has refused to participate in the OECD's global automatic information exchange for bank data.

It turns out that the United States jealously guards its information. The Tax Justice Network says the IRS is stingy with data. Of course, with FATCA, America has more data than anyone else. FATCA, the Foreign Account Tax Compliance Act is up and running. The IRS says it is now swapping taxpayer data reciprocally with other countries. The IRS says it will only engage in reciprocal exchanges with foreign jurisdictions meeting the IRS's stringent safeguard, privacy, and technical standards.

The Tax Justice Network report blasts the U.S. for being a one-way street: "Though the U.S. has been a pioneer in defending itself from foreign secrecy jurisdictions, aggressively taking on the Swiss banking establishment and setting up its technically quite strong Foreign Account Tax Compliance Act (FATCA) – it provides little information in return to other countries, making it a formidable, harmful and irresponsible secrecy jurisdiction at both the

Federal and state levels."

Although FATCA hits banks, there are repercussions for depositors too. The IRS has warned offshore account holders to disclose before it's too late. Under FATCA, banks everywhere want to know if you are compliant with the IRS. And the cost of compliance for many people is growing. The IRS updated its list of foreign banks where accounts trigger a 50% (rather than 27.5%) penalty in the IRS's long-running Offshore Voluntary Disclosure Program (OVDP).

The OVDP remains the safest and most foolproof program, with amnesty even for willful acts. But for those with the right facts, the IRS Streamlined program continues to grow in popularity. It is only for non-willful violations, but it is far simpler and much less costly.

For alerts to future tax articles, email me at Wood@WoodLLP.com. This discussion is not legal advice.