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Facts About FATCA, America's Global Disclosure Law

[FATCA](#)—the Foreign Account Tax Compliance Act—is America’s global tax law, called [an American tax nightmare](#) by the New York Times. That is an apt description. It was quietly enacted in 2010, and after a four-year ramp up, it’s finally in effect. Never before has an American tax law attempted such an astounding reach. And it’s clear FATCA has succeeded, after shrewd diplomacy by President Obama and his Treasury Department. (Perhaps there are some congratulatory emails on Hillary Clinton’s personal server, or not on Lois Lerner’s computer?)

FATCA requires foreign banks to reveal Americans with accounts over \$50,000. Non-compliant institutions could be frozen out of U.S. markets, so everyone is complying. 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. In 2014, Credit Suisse took a [guilty plea](#) and paid a record \$2.6 billion fine.



Since then, 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. FATCA was enacted in 2010, when only some of those developments were unfolding. The idea was to cut off companies from access to critical U.S. financial markets if they didn't pass along American data. And boy did that idea work.

More than 80 nations—including virtually all that matter—have agreed to the law. So far, over 77,000 foreign financial institutions (FFIs) have signed on too. Countries must throw their agreement behind the law or face dire repercussions. Even tax havens have joined up. The IRS has a [searchable list of financial institutions](#). Countries on board are at [FATCA – Archive](#).

If you think money anywhere can escape the IRS, think again. Even notoriously difficult China and Russia are on board. Which is more amazing? Probably Russia. The U.S. and Russia were negotiating a FATCA deal until March 2014, but Russia's annexation of Crimea caused the U.S. to suspend talks. That meant Russian financial institutions faced being frozen out of U.S. markets. Russia took last minute action to allow Russian banks to send American taxpayer data to the U.S. when [President Vladimir Putin signed a law in the 11th hour to satisfy the U.S. treasury](#).

Cleverly, FATCA's 30% tax and exclusion from U.S. markets would be so catastrophic that everyone has opted to comply. FFIs must withhold a 30% tax if the recipient isn't providing information about U.S. account holders. The choice is simple, and that's why everyone is complying. 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. And in what is a kind of global witch hunt, American indicia will likely mean a letter. Don't ignore it.

FATCA *adds* Form 8938, but it doesn't replace FBARs. The latter have been in the law since 1970 but have taken on huge importance since 2009. U.S. persons with foreign bank accounts exceeding \$10,000 must file an FBAR by each June 30. These forms are serious, and so are the criminal and civil penalties. FBAR failures can mean fines up to \$500,000 and prison up to ten years. Even a 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 [add up fast](#).

U.S. account holders who aren't compliant have limited time to get to the IRS. The IRS changed its programs, making its [Offshore Voluntary Disclosure Program](#) a little harsher. Yet for those not willing to pay the 27.5% penalty—which rose to 50% August 4, 2014 for some banks—the 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. With [Swiss bank deals](#),

prosecutions, summonses, and FATCA, the IRS has quicker, better and more complete information than ever.

Republicans mounted a repeal effort, but repeal isn't likely. Some say FATCA will be like prohibition. Canadians [filed suit to block FATCA and prohibit handover of U.S. names to the IRS](#). The suit claims the Inter-Governmental Agreement under which Canada can turn over private bank account information is illegal. The legal [claim](#) challenges the constitutionality of the agreement the Canadian government struck with the U.S.

Some dual nationals or U.S. Green Card holders think they can bypass FATCA—and other U.S. tax rules—by using a non-U.S. passport and non-U.S. address with their foreign bank. Don't. You may just make it worse, handing the IRS another badge of willfulness. Your bank and the IRS will likely find out eventually, even if not right away.

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