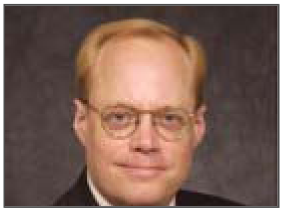

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IRS Starts Offshore Account Data Swaps Under FATCA

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 is in place and going well. So is your tax data being swapped, and is it safe? The IRS says it will only engage in reciprocal exchanges with foreign jurisdictions meeting the IRS's stringent safeguard, privacy, and technical standards.

- Development of a consistent data reporting format, or schema, and the agreement to use this format by all jurisdictions;
- Establishment of the details and procedures required to assure data confidentiality;
- Creation of a data transmission system to meet high standards for encryption and security; and
- Cooperation with foreign jurisdiction tax administrations to achieve the timely implementation of this exchange.

FATCA was passed in 2010 with staggered effective dates. Non-U.S. banks around the world must reveal American account details or risk big penalties. Much of the 2010 law took effect in 2015. 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.

FATCA requires foreign banks to reveal Americans with accounts over $50,000. 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 helps the IRS and the Justice Department to root out Americans holding foreign accounts everywhere. It isn't illegal to have offshore accounts, but they must be fully disclosed on money laundering forms known as FBARs. America taxes its citizens and permanent residents on their worldwide income regardless of where they live. Accounts must be reported on U.S. tax returns. Any interest, dividends or other income anywhere must be reported on U.S. tax returns too.

The IRS has a searchable financial institution list and download tool and a user guide. Countries on board are at FATCA – Archive. Foreign financial institutions must withhold a 30% tax if the recipient isn't providing information about U.S. account holders. Foreign Financial Institutions 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. Tax return reporting alone is not enough. FBARs are still required, and IRS Form 8938 may be too.

These forms are serious, and so are the criminal and civil penalties for failing to file them. In some cases, even civil penalties can exceed the offshore account balance. U.S. account holders who aren't compliant can enter the Offshore Voluntary Disclosure Program. But for those not willing to pay the 27.5% penalty, the new IRS's Streamlined Program can be a good option for those who qualify. Over the last 6 years, over 50,000 people have settled with the IRS, paying about $7 billion in back taxes, interest and penalties.

The OVDP involves 8 years of amended tax returns and FBARs. You pay taxes, interest and a 20% penalty on whatever you owe. For most people, there is also a 27.5% penalty on your highest offshore account balance. In some cases, that penalty may be 50% depending on the bank and timing.

Understandably, many people ask about the less expensive Streamlined program. It is not for everyone, and it is important to know the differences. For instance, the OVDP protects you from prosecution, while the Streamlined program does not. The OVDP costs more, but you get more. And if bad facts that you hope not to discuss come up, the OVDP absolves them.

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