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THE TAX LAWYER

India Signs Pact To Give IRS Account Data, Could End Black/White Money Too

India and the United States have moved a step closer, inking a tax information sharing agreement under FATCA, the Foreign Account Tax Compliance Act. It is no surprise that India has gotten on board. Virtually every nation worldwide is doing the same, helping the IRS and the Justice Department 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.

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. India may have its own agenda, apart from helping the U.S. root out tax cheats. India has huge problems with its own nationals keeping money offshore as well as undercutting sales and revenue figures with the rampant black money vs. white money dichotomy. Indians without U.S. connections may have more time to get their tax affairs in order. However, the template of global financial transparency is already being charted.

Indian Prime Minister Narendra Modi gestures as he speaks during the inauguration of a conference on Financial Inclusion in Mumbai on April 2, 2015. The conference was organised on the occasion of completion of 80 years of the Reserve Bank of India (Photo by Punit Paranjpe/AFP/Getty Images)

FATCA—the Foreign Account Tax Compliance Act—was quietly enacted in 2010. America's global tax law took effect after a four-year ramp up. Never before has an American tax law attempted such an astounding reach. 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 grew out of a controversial rule. America taxes its citizens and permanent residents on their worldwide income regardless of where they live. 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. Even tax havens have joined up.

The IRS has a searchable financial institution list and download tool and a user guide. Countries on board are at FATCA – Archive. Even notoriously difficult China and Russia are on board. FATCA's 30% tax and exclusion from U.S. markets would be so catastrophic that everyone has opted to comply. Foreign financial institutions 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.

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.

FBARs are still required. FATCA just *adds* to the burden, including Form 8938. 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—which rose to 50% August 4, 2014 for some banks—the new IRS's Streamlined Program can be a good option for those who qualify. The latter applies now to both foreign and U.S.-based Americans.

Some Americans still want to amend their taxes and file FBARs in a quiet disclosure which could bring civil penalties or even prosecution. Thus, caution is clearly in order.

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