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> *Are You Keeping Secrets from Uncle Sam Overseas?*

# Are You Keeping Secrets from Uncle Sam Overseas?

POSTED BY Sheryl Nance-Nash (https://web.archive.org/web/20161024213536/https://www.depositaccounts.com/members/sheryl.html)

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If you think Uncle Sam has too many other problems to worry about what assets you may be hiding overseas, think again.

"Governments are catching up to the fact that there is now a global economy and are requiring increasing reporting to ensure they collect 'their fair share' of tax on your assets and income," says Laura Zwicker, a tax and wealth planning partner at Greenberg Glusker.

If you hold interests in foreign assets, they likely have reporting requirements in addition to reporting the income generated by those assets on your individual income tax returns. "Depending on the nature of the foreign asset, there may be more than one set of reporting requirements to comply with and the reporting may be due at different times during the year," explains Zwicker.

Under FATCA (Foreign Account Tax Compliance Act), individuals need to file Form 8938 to report foreign assets if they are worth more than $50,000. There is also an FBAR filing requirement to report foreign bank accounts on FinCen Form 114, if the accounts are worth more than $10,000. You will also need to answer the questions on Form 1040 Schedule B, Part III, about foreign accounts and trusts, says Mark Luscombe, principal analyst, tax and accounting with Wolters Kluwer.

FATCA Form 8938 is due with your federal tax return April 15, though you can apply for a six month extension. The FBAR form is to be filed by June 30. As of next year, it will be due with your tax return.

## Know what matters

The types of assets reportable under FATCA include: financial accounts held at foreign financial institutions, foreign stock or securities not held in a financial account, foreign partnership interests, foreign mutual funds, foreign accounts and foreign non-account investment assets held by foreign or domestic grantor trust for which you are the grantor, and foreign private equity and hedge funds.

## Understand this is serious business

If you’re inclined to dismiss these regulations and choose not to comply, be ready to pay the price. Under FATCA, penalties could be up to $10,000 for each 30 days in non-compliance, up to a maximum of $50,000 for each year of non-compliance. A 40 percent accuracy related penalty could apply. Under FBAR, a penalty of the greater of $100,000 or 50% of the account balances, or the IRS may set the penalty at $10,000 if not willful. There could also be some threat of criminal prosecution, warns Luscombe.

## Don’t think you can keep assets secret

"The IRS is gaining increasing cooperation from the vast majority of foreign banks to provide information on U.S. account holders," says Luscombe.

It’s better to fess up. There is a voluntary disclosure program to come forward and avoid some penalties or criminal prosecution if you come forward and into compliance before the IRS busts you.

"The IRS is gaining increasing cooperation from the vast majority of foreign banks to provide information on U.S. account holders," says Luscombe.

One of the best known offshore account cases involved the founder of Beanie Babies Ty Warner. In that situation the IRS found in excess of $93 million in offshore accounts that were not disclosed to the U.S. government. "Miraculously, he was able to avoid any jail time in that situation due to the specific facts of his case. He apparently paid $53 million in penalties. Nonetheless, whether it’s $50 million or $50,000, the requirement and potential penalty factors remain the same," says Eric Kalnins, a partner with Handler Thayer.

You’ll only dig yourself deeper in a hole if you do things to avoid detection. "You’re building a case for the IRS for willful tax evasion. How does one explain the continuous movement and structuring of accounts throughout the world? In addition, how do you eventually get the assets back to the U.S.? Every transaction now creates a paper, or digital trail," says Kalnins.

What would be your game plan? If you transfer $1 million from your foreign account to your U.S. account in order to repatriate the assets, how do you explain where the assets came from if you never disclosed an offshore account? Are you going to fly overseas, and illegally bring back a briefcase full of cash or purchase expensive jewelry or other items?

"Now you're potentially breaking additional laws in an attempt to cover your failure to comply with FATCA and FinCen requirements. Now the government is potentially pursuing all types of claims against you. What went from a simple disclosure and penalty matter, has arisen to a criminal proceeding," says Kalnins.

## Take stock of your assets

An older relative or parent may have had an account overseas for his or her lifetime and thought nothing of it. If you inherit it, or you have a power of attorney over such an asset, you need to contact an attorney in order to figure out the best way to take title and to properly disclose such an account or asset.

"Most of the situations we assist with deal with individuals who did not know they had a disclosure requirement and the client is shocked when we tell them about the potential penalties that they are subject to," says Kalnins. Some people follow through and get him the information needed to make a proper disclosure to the IRS, others thank him for his time, say they will get back to him and he never hears from them again. "They decide to roll the dice and do nothing at all to remedy the situation. Eventually you will get caught and there will be a lot of explaining to do. The regulatory requirements and disclosures that banks now have to comply with are extensive and it is only a matter of time before the technology and information sharing that goes on between governments will catch up to you," warns Kalnins.

## What's the best advice?

"If you already have an offshore account, do not simply close it because you do not need it at this time. You may need it later and it will be much more difficult to set up in the future," says Kalnins.

However, make sure you properly disclose that account each year, pursuant to the FinCen and FATCA requirements. Says Kalnins, "Failure to do so will only open you up to potential IRS scrutiny and cause a lot of sleepless nights, wondering if, and more likely when, the IRS is going to come knocking. It's important, now more than ever, to have good, competent tax counsel for any offshore structures or planning."

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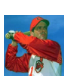

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After Dodd Frank legislation its harder to open an overseas account.. Foreign brokers often want nothing to do with account holders that are USA residents due to all the reporting requirements and special rules they have to follow. It leaves brokers open to lawsuits from the IRS.....

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If you don't live in U.S.A. and never plan to go there, tell I.R.S. to take a hike.

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**Anonymous** | Feb 21, 2016 | Comment #3 (https://web.archive.org/web/20161024213536/https://www.depositaccounts.com/blog/keeping-secrets-uncle-sam-overseas.html#3)

Not necessarily true. Look at the actions of others that impacted the US yet never set foot in the US...the jurisdiction of the US is "seemingly" limitless as compared to recent history!

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**Doubting Thomas** *(anonymous)* | Feb 21, 2016 | Comment #4 (https://web.archive.org/web/20161024213536/https://www.depositaccounts.com/blog/keeping-secrets-uncle-sam-overseas.html#4)

"Shock and awe" tactics by the IRS - but are they able to hold the ground!

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**Uncle Sam's Uncle** *(anonymous)* | Feb 22, 2016 | Comment #5 (https://web.archive.org/web/20161024213536/https://www.depositaccounts.com/blog/keeping-secrets-uncle-sam-overseas.html#5)

Great idea...except for the 8 million Americans who live and work abroad (and are definitely not an elite class of international jet-setting millionaires). These people, like myself, are getting kicked out of banks, refused mortgages, unable to open retirement investment accounts and subject to state-sanctioned discrimination just because of our nationality; all of which has been imposed by the IRS.
Meanwhile, if you're rich enough, you can easily shelter your assets in various tax havens across the globe. FATCA, while filled with good intentions, does the exact opposite of it's intended effects: it pushes the minority wealthy to more effectively hide their assets from the IRS while the majority middle-class Americans abroad (many of whom moved to live with their foreign spouses) are punished for simply just being American.

Throw in the fact that Americans residing outside the United States have no representation in congress (think taxation without representation to it's truest form) and that there would be a nation-wide revolt if every American was required to report everyone of their bank account balances to the IRS along with filing a disclosure with the department of treasury's financial crimes unit (aka the FBAR).

It's high-time congress revises this law that had good intentions but disastrous consequences. Americans abroad should be treated like every other expat on the planet and only be required to file tax returns in the country where they reside. Otherwise, we're going to continue to see proud US citizens painfully renounce their nationality and a world where Americans abroad are uniformly considered 2nd class members of society.

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**Anonymous** | Feb 22, 2016 | Comment #6 (https://web.archive.org/web/20161024213536/https://www.depositaccounts.com/blog/keeping-secrets-uncle-sam-overseas.html#6)

In an article written in Forbes in 2014 money collected by the government through 2013 from unreported overseas accounts only had reached over 6.5 billion.
Why should others pay more taxes to help those most able to pay their taxes so they can hide their money? If they don't like the rules go live someplace where they like the rules, or better yet use your
funds to buy an island and make your own rules.

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**Anonymous** | Feb 22, 2016 | Comment #7 (https://web.archive.org/web/20161024213536/https://www.depositaccounts.com/blog/keeping-secrets-uncle-sam-overseas.html#7)

I don't enjoy paying taxes either, but it is important to note that the IRS in not our enemy. It takes money to run a country, pave the roads, run the schools, build the infrastructure. I think the IRS should focus more on the high earners and those who cheat the system. One of the (many) things I find unfair in our taxation is the fact that we, as savers, are taxed at a higher rate than people earning dividends and capital gains. I don't want to risk ANY of my money any more in the stock market. My earned income is invested in CDs, mainly, and I am taxed at a higher rate than someone who "earns" capital gains on stocks that increase in value. This is not fair.

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**Anonymous** | Feb 22, 2016 | Comment #8 (https://web.archive.org/web/20161024213536/https://www.depositaccounts.com/blog/keeping-secrets-uncle-sam-overseas.html#8)

In my above comment about capital gains and dividends, I should have noted that it is the DIVIDENDS that are taxed at a lower rate than interest on savings. Capital gains are taxed at the same rate as interest, I believe.

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**Anonymous** | Feb 22, 2016 | Comment #9 (https://web.archive.org/web/20161024213536/https://www.depositaccounts.com/blog/keeping-secrets-uncle-sam-overseas.html#9)

Not quite - capital gains are also taxed at lower rates if you've held the security for over 18 months before selling.

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**Anonymous** | Feb 22, 2016 | Comment #10 (https://web.archive.org/web/20161024213536/https://www.depositaccounts.com/blog/keeping-secrets-uncle-sam-overseas.html#10)

What? Most interest and dividends are taxed each year as regular income. Capital gains on stocks are short term (less than 12 months) or long term (12 months or more) in nature. Short term are taxed as regular income; long term at 15%.

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**Anonymous** | Feb 26, 2016 | Comment #12
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15% is much less than the tax on regular income.

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Kemo Sabe, who is that masked man?

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This is a good topic to write on, especially for expat Americans. But the reporting triggers for foreign financial investments under FATCA are more complicated than what you've reported in this article:

"Under FATCA (Foreign Account Tax Compliance Act), individuals need to file Form 8938 to report foreign assets if they are worth more than $50,000."

In fact, there are a whole set of different financial triggers for FATCA reporting, depending on whether the accountholder is living inside or outside the U.S., and whether they're married filing jointly or single. There also are two different reporting triggers in each category, one for the value of assets on the last day of the tax year, and another higher amount if reached at any point during the tax year.

So, the $50,000 reporting trigger (as of the last day of the tax year) you mentioned applies to a single person living in the U.S., but they also would have to report if their assets reached more than $75,000 at any point during the tax year, regardless of the account value on the last day of the tax year.

And, if that same single person is instead living full-time outside the U.S., then their reporting triggers are foreign assets of more than $200,000 on the last day of the tax year, or more than $300,000 at any time during the tax year. And it's the same in each category, in that those living abroad full-time have higher (more lenient) trigger amounts compared to U.S. residents.

The FBAR requirement you mentioned relating to foreign bank account balances (that's the total balance of all one's foreign bank accounts, if exceeding $10,000 at any time during the year involved, even if for only one day, is probably the requirement that catches most expats. But FBAR and FATCA together can be a real complicated headache.

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