



# IRS Offshore Reporting Requirements– FBARS and the Impact of FATCA

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# What is FATCA and What Do I Need to Know About Offshore Activity and the IRS

## **FATCA: The American Global Tax Law that Changed the World**

What is FATCA – the Foreign Account Tax Compliance Act? FATCA was enacted in 2010, requiring foreign banks to reveal U.S. taxpayers and residents with accounts whose balances exceed \$50,000. [FATCA, enacted in 2010, requires foreign banks to report certain information directly to the IRS. Such information includes Social Security numbers, individual taxpayer identification numbers (“ITINs”), bank account balances (both current and historical), and foreign entities associated with U.S. taxpayers. FATCA requires foreign banks to cooperate or be frozen out of the US marketplace. Almost every bank and financial institution in the world is now complying.

## **Swiss Banks were the First Targets of the US Justice Department**

The US Justice Department began with a few of the largest Swiss banks, taking them to court for violating FATCA and helping US taxpayers evade taxes. Switzerland’s largest bank, UBS, pled guilty to helping Americans evade taxes and paid a fine of \$780 million. Credit Suisse soon followed and pled guilty to helping Americans to evade taxes and pay a fine of \$2.6 billion.

## **Today, Over 200,000 Banks and Institutions in 200 Sovereignities Provide Bank Account Information About US Taxpayers to the IRS**

FATCA and the actions of the US Justice Department have changed the world. Since 2010, hundreds of thousands of banks and financial institutions around the world have agreed to provide information to the IRS about US taxpayers, including US foreign nationals as well as foreign entities associated with U.S. taxpayers. The information will provide comprehensive taxpayer identification, including passport data, ITINs, and account numbers. It will also include balances, transactions, and interest payments.

Almost all nations around the world are complying including traditional havens such as Switzerland, the Cayman Islands, as well as the most countries in the Middle East, South America, the Far East, China, and even Russia. Allen Barron can provide an up-to-date analysis of your own bank(s) and the information about you they’ve already agreed to disclose to the U.S. government.

# Countries, Banks and Financial Institutions Around the World Provide Information About You to the IRS



Algeria	Colombia	Hong Kong	Malta
Angola	Costa Rica	Hungary	Mauritius
Anguilla	Croatia	Iceland	Mexico
Antigua and Barbuda	Curaçao	India	Moldova
Armenia	Cyprus	Indonesia	Montenegro
Australia	Czech Republic	Iraq	Montserrat
Austria	Denmark	Ireland	Netherlands
Azerbaijan	Dominica	Isle of Man	New Zealand
Bahamas	Dominican Republic	Israel	Nicaragua
Bahrain	Estonia	Italy	Norway
Barbados	Finland	Jamaica	Panama
Belarus	France	Japan	Paraguay
Belgium	Georgia	Jersey	Peru
Bermuda	Germany	Kazakhstan	Philippines
Brazil	Gibraltar	Kosovo	Poland
British Virgin Islands	Greece	Kuwait	Portugal
Bulgaria	Greenland	Latvia	Qatar
Cabo Verde	Grenada	Liechtenstein	Romania
Cambodia	Guernsey	Lithuania	Saudi Arabia
Canada	Guyana	Luxembourg	Singapore
Cayman Islands	Haiti	Macao	Taiwan
Chile	Holy See	Malaysia	United Kingdom
China	Honduras		



## Additional facts about FATCA

Most Foreign Financial Institutions (FFIs) are on the lookout for Americans and US Taxpayers.

FFIs must report the names, addresses, and US identification numbers, as well as account numbers and balances to their own sovereign tax agency (who in turn reports it to the IRS) or directly to the IRS. Foreign owned entities require the name, address, and the US taxpayer ID number for each "substantial" US taxpayer with an ownership interest in the entity.

### ***Report of Foreign Bank and Financial Account or FBARs are Still Required – Now Due 4/15***

FBAR reports were around before FATCA. FBAR reports and IRS Form 8938 must contain full, accurate, and transparent reporting of all offshore accounts, investments, assets, real estate, and income.

### ***All IRS Forms and Offshore Reports Contain a "Perjury" Clause***

The penalty for knowingly providing false information to the IRS is perjury – resulting in fines of \$2,000 to \$5,000 and three or more years in prison.



## Two Options for Coming Into Compliance:

### **OVDP - Offshore Voluntary Disclosure Program**

If you have unreported or under-reported offshore investments, assets, or money in a foreign bank or financial account with a balance above \$10,000 at any point in the past eight years, you should give serious consideration to IRS OVDP option. While this option does have a steeper penalty, 27.5% versus 5%, there is no "qualification" to the program: as long as the taxpayer makes a transparent and full disclosure, the IRS agrees to release them from criminal tax evasion prosecution and allow them to move forward with their life.

### **Streamlined Filing Compliance Procedures**

The newer Streamlined Domestic Offshore Procedures represent a tremendous opportunity for any US taxpayer with foreign accounts and assets to come into compliance with the IRS and reduce their penalties from a 27.5% penalty (and in many cases 50%) with 8 years of look-back, to a 5% penalty and a three-year look-back period.

# The Key is “WILLFUL” Versus “NON-WILLFUL” Conduct

## “Willful” Versus “Non-Willful” Conduct

Outside of the Offshore Voluntary Disclosure Program or OVDP willful conduct related FBAR-related penalties are 50% of the highest value of each of your offshore accounts per year, or \$100,000 per incidence, whichever is higher. All U.S. taxpayers may file under the OVDP and eliminate criminal tax evasion exposure while reducing that penalty to 27.5% for the highest aggregate account balance, unless your bank(s) have already been listed on the IRS’ 50% penalty listing for FFI’s who the IRS has found to have helped Americans to evade the payment of income tax.

Non-willful tax filers may submit an application under the Streamlined Domestic Offshore Procedures and reduce that penalty to the lowest possible amount of 5%. Acceptance of a Streamlined application requires IRS acceptance that the conduct of failure to report offshore income and assets was “non-willful.” This is a high bar requiring extensive documentation.

## Why Wouldn’t Every US Taxpayer Simply Opt for the Streamlined Domestic (Foreign) Offshore Procedures?

Why shouldn’t every US taxpayer with offshore accounts or assets choose the Streamlined Domestic Offshore Procedures when coming into compliance with the IRS and FBAR reporting requirements under FATCA?

The central question surrounds whether the inconsistencies in your FBAR reporting were a willful attempt to avoid paying US income taxes, or if the US taxpayer claims they were inadvertent simple math errors, misunderstanding of tax code, or other “non-willful conduct.” The economic value of non-willful conduct when compared to willful conduct in this context is staggering.

Why wouldn’t a US taxpayer simply want to claim “non-willful” conduct in their disclosures of offshore bank accounts, investments and assets and pay the minimal 5% penalty?

***Risk. Pure and Simple. Substantial Risk.***

In the balance is a substantial amount of money, as well as criminal prosecution and a three-to-five year jail sentence for tax evasion.

## Case Example: IRS Denies Application Under the Streamlined Domestic Offshore Procedures

Consider the Texas case of Bernhard Gubser. The IRS denied his application under the Streamlined Domestic Offshore Procedures, and is pursuing him for maximum penalties as well as criminal tax evasion charges. Mr. Gubser sued the IRS claiming that his failure to disclose assets in a single Swiss bank account in 2008 was an error. The IRS issued a notification of “willful” conduct in his case. The Court has dismissed Mr. Gubser’s lawsuit, and he will face the full fury of the IRS.

***The difference for Mr. Gubser: \$1.35 Million versus the \$10,000 he originally claimed***



# MYTH:

## Taxpayers Will Be Able to Claim “Non-Willful” Conduct Without IRS Challenge

### How Will the IRS Determine “Willful” Versus “Non-willful” Conduct?

This is the essence of the question that the IRS has yet to answer. If you can claim non-willful status, the reward is significant: a 5% penalty and no criminal prosecution. Many U.S. taxpayers have simply assumed the risk and filed under the Streamlined Procedures hoping the IRS will look the other way. This is a dangerous strategy. The 2 questions you should ask yourself are:

1. Why would the U.S. legislature take years to pass FATCA, and the U.S. Justice Department invest years and millions of dollars to pursue Swiss and other offshore institutions to obtain your information just to simply ignore it and give U.S. taxpayers amnesty?
2. What is your tolerance for risk? You are risking not only substantial financial assets, but also exposure to criminal charges and the loss of your personal freedom.

Practically speaking, if you made a simple math mistake on one form in one year, or left off one institution with a minimal account balance one time, you are probably safe to consider non-willful status and apply through the Streamlined Procedures.

If you failed to report multiple accounts in different institutions, or failed to disclose assets and income over more than one year, you should give serious consideration to the risks of attempting to claim non-willful status and that you weren't in fact attempting to hide assets and avoid the payment of U.S. taxes.



# You Can't Fool the IRS with Dual Citizenships and Multiple Passports



There are always those who will try to game the system or develop other strategies to escape the impact of FATCA and IRS offshore account and asset reporting requirements. Dual nationals, Green Card holders, and those who have entered the US on a work visa may think it will be possible to pass “under the radar.” They use different passports, identification from another country, and foreign addresses in an attempt to confuse the IRS and other sovereign nations.

## ***“How will they ever tie this back to me personally?”***

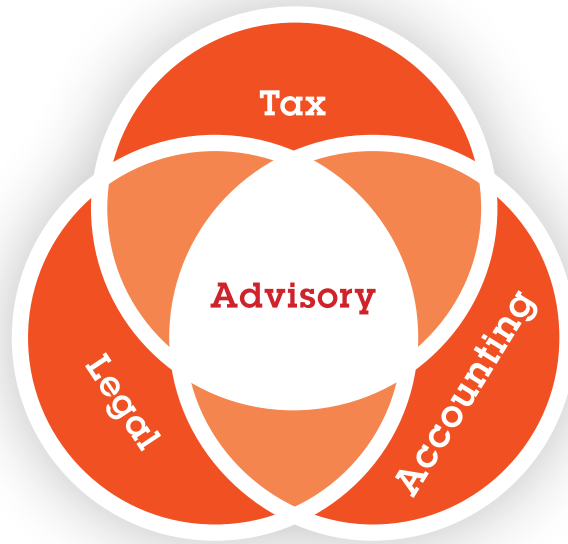
Remember, the IRS is receiving detailed electronic data and financial information from banks and governments all over the world. In return, the IRS has agreed to provide the same information back to each sovereign nation on their own nationals. In many cases, the taxes are actually higher in their “home” country than here in the US.

Your bank and the IRS are likely to put information together at some point in the near future. When they do, you are simply providing them with additional evidence of a willful attempt to disguise your identity and evade taxes. There is a potential risk of prison time in these types of situations.

## **Allen Barron Philosophy**

I am not surprised when prospective clients come into my office do not want to report their foreign accounts or assets. Often, I am met with the question, how will the IRS catch me? The reasons for not filing vary from “the law is not fair” to fear of the cost of filing the appropriate forms and the associated taxes, interest and penalties and finally how those costs will affect their economic lives. But failing to file constitutes tax evasion and tax evasion is a crime. We will strive to ensure that all appropriate deductions are taken on our client’s behalf and that you pay no more tax than is required by law. But remember, I too, have to sign the returns being submitted on our client’s behalf and I will not assist any client in attempting to evade taxes.

Call today for a free CONSULTATION and learn how  
to become IRS FBAR compliant  
**866-631-3470**



## Remember:

- You Should Never Communicate Directly with the IRS
  - You are Guilty Until Proven Innocent
- The IRS Doesn't Settle Audit Tax Debt for Pennies on the Dollar
- The Attorney-Client Privilege Provides Important Legal Protections

**You Have the Right Not to  
Incriminate Yourself**



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