

Have You Been FBARed?

The Foreign Account Tax Report (FBAR) and the Foreign Account Tax Compliance Act (FATCA)

by Gary M. Harden



US resident citizens with foreign accounts or who are foreign account beneficiaries, Ex Pats (US citizens living abroad) and resident aliens working under green card authority are frequently unaware of, or are otherwise inattentive to, their legal responsibilities to report global income to the IRS and to annually file an electronic record of their foreign accounts of \$10,000 or more in value to the Financial Crimes Enforcement Network on FBAR, Form 114. Did you know that many foreign pensions established with regard to wholly foreign services are subject to US income tax reporting and the FBAR? Just one of many unpleasant surprises awaiting those who IRS finds before voluntary disclosure. US tax liabilities for income reported in another country only can be reduced if a US return is filed and the benefits reducing double tax exposure applied under a tax treaty with the US. Terms vary from country to country. Penalties for non-compliance can be severe, including annual FBAR penalties that top out at 50% of the highest account balance that year. Fifty percent of each account per year adds up very quickly. So do the smaller penalties, many of which are stacked. It is not capped by the amount in the account.

Based upon my experience in practice, many US taxpayers are oblivious to their reporting obligations. Tax return preparers typically ask if a client has foreign accounts (they are required to) but lots of taxpayers misunderstand, do not view the question as significant and do not report. Until now, foreign financial institutions and domestic financial institutions generally have not been sending information returns to them and to the IRS regarding their obligations. FATCA became fully effective January 2015, and now over 80 countries are reporting to IRS under intergovernmental agreements (IGAs). Over 77,000 foreign financial institutions are registered with the IRS and are doing the same.

How will IRS use this information?

Offices

Toledo Office:

One Seagate, 24th Floor
P.O. Box 10032
Toledo, Ohio 43699
Phone: 419-241-6000
Fax: 419-247-1777

Columbus Office:

100 East Broad St.
Ste. 2100
Columbus, Ohio 43215
Phone: 614-564-1445
Fax: 614-280-1777

Findlay Office:

510 South Main St.
Findlay, Ohio 45840
Phone: 419-424-5847
Fax: 419-424-9860

Novi Office:

28175 Haggerty Rd.
Novi, Michigan 48377
Phone: 248-994-7757
Fax: 248-994-7758

www.eastmansmith.com

If coordinated voluntary disclosure is made before IRS receives a notice, or begins its enforcement process, it can preserve taxpayer assets and substantially reduce penalties. I have been representing taxpayers with these issues since 2009. It is a serious concern.

It is critical for taxpayers to work through an attorney, because the necessary privilege does not apply directly to accountants and other financial advisors.

If you would appreciate a confidential consultation, or have questions regarding FBAR or FACTA, please contact [me](#).

Disclaimer

The article in this publication has been prepared by Eastman & Smith Ltd. for informational purposes only and should not be considered legal advice. This information is not intended to create, and receipt of it does not constitute, an attorney/client relationship.