

Robert W. Wood

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Still More Foreign Account Worries!

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Already feel bombarded with admonitions about reporting all income and disclosing foreign bank accounts? Well, here's more! The [Foreign Account Tax Compliance Act](#) (yes, the unfortunate acronym is FATCA) was passed as part of the [Hiring Incentives to Restore Employment Act](#) (also known as the HIRE Act). We already know about FBARs, otherwise known affectionately as [TD F 90-22.1](#).

Just when you were getting used to having to file an FBAR, like an infomercial, wait, there's more! FATCA adds a second filing requirement relating to foreign accounts and assets. Internal Revenue Code Section 6038D requires U.S. taxpayers with foreign accounts and assets having an aggregate value exceeding \$50,000 to report them on an information return.

Timing. This new reporting rule kicks in for tax years beginning after March 18, 2010, so for most of us, it applies to calendar year 2011 and thereafter.

Forms? In due course, there could be a *new* form to fill out, or it could be done on an existing tax form ([Form 8275](#) Disclosure Statement). The IRS hasn't said which yet. Unlike the FBAR form, though, this one is to be attached to the person's Form 1040 tax return. Note that this new rule **does not** obviate the FBAR.

In fact, one could be **required** to make a FATCA disclosure, but **not** have an FBAR filing obligation. That could occur, for example, if you have an investment in a foreign hedge fund or private equity fund which would be subject to FATCA but should not require an FBAR.

The FATCA disclosure must include the name and address of the financial institution, the account number, or in the case of a stock or security, the name and address of the issuer and the class or issue of the stock or security. Similar identification is required for other sorts of assets. The disclosure must include the highest value of the asset during the year.

Not Your Father's FATCA. Some of us are now used to the "foreign bank account worth over \$10,000" shorthand that triggers an FBAR filing. So what's the shorthand rule for FATCA filings?

Report "specified foreign financial assets" with an aggregate value exceeding \$50,000. A "specified foreign financial asset" includes ownership of:

- Any financial account maintained by a foreign financial institution;

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- Any stock or security issued by a non-U.S. person;
- Any financial interest or contract held for investment that has a non-U.S. issuer or counterparty; and
- Any interest in a foreign entity. That means taxpayers who purchase foreign real estate through an entity are covered.

Penalties. What fun would it be to talk of filing and disclosure obligations without talk of penalties? FATCA has these too. The minimum penalty for failing to make the required disclosure is \$10,000.

But that's not all. The penalty increases by \$10,000 for each 30-day period following notification from the Treasury Department, with a maximum penalty of \$50,000. However, there's a 90-day grace period before these timed penalty additions are added, starting with the notification from the Treasury. The penalty is waivable if the taxpayer demonstrates the failure to file was due to reasonable cause.

Two Penalties? What happens if you have both a FATCA and an FBAR filing obligation, and fail on both counts? Both penalties apply.

Statute of Limitations. We all know the IRS usually can audit your return for three years, or six years in cases of substantial understatements of income (25% or more). See [IRC Section 6501\(e\)](#). For more about IRS statutes of limitations, see [Even The IRS Has Time Limits](#). The normal three year period also generally applies to information about foreign transfers including those under FATCA.

However, FATCA extends the statute of limitations to six years if you omit more than \$5,000 of income attributable to an asset you should have reported. In other words, even if you don't have a substantial understatement of income, the IRS has six years to audit you.