

Foreign Accounts and FATCA

Is the Voluntary Disclosure Window Closing?

Congress has enacted stiff penalties on U.S. taxpayers who fail to report their foreign bank accounts because it believes that billions of dollars of tax revenue are not being captured. Until recently, the IRS had no way to determine if a taxpayer owned a foreign account unless the taxpayer volunteered the information or the IRS obtained the information in the course of an audit. To encourage taxpayers who failed to disclose their foreign accounts, the IRS has administered the Offshore Voluntary Disclosure Program (the "OVDP"). This program allows most taxpayers to voluntarily disclose their previously hidden accounts in exchange for reduced civil penalties and no criminal penalties. However, the OVDP may shortly come to an end.

The Foreign Account Tax Compliance Act ("FATCA"), enacted in 2010, imposes a variety of requirements on foreign banks. Most significantly, FATCA added section 1471 to the Internal Revenue Code. This Code section effectively forces foreign banks to identify and report account information regarding their U.S. account holders. Foreign banks that do not report such information may be subject to a 30% withholding tax on payments they receive from U.S. sources. In order to avoid this withholding, beginning July 1, 2014, certain foreign banks will be required to report information to the IRS about U.S. account holders with accounts of \$50,000 or more.

For U.S. taxpayers who still have foreign accounts, this means that time may be running out to enter the IRS's OVDP. The OVDP is *not* available to U.S. taxpayers who are currently under criminal or civil examination. Since the IRS will begin receiving substantial data from foreign banks beginning July 1, 2014, it seems likely that the IRS may begin examining U.S. taxpayers whose information has been revealed through the FATCA reporting requirement. Such taxpayers will be unable to participate in the OVDP and likely face significant monetary and potentially criminal penalties. Moreover, the IRS may logically conclude that with the FATCA bank reporting requirement in place, there is no further need to offer reduced penalties to taxpayers in exchange for information that the IRS will already have received from the foreign banks.

U.S. taxpayers who still have foreign accounts should seriously consider entering the OVDP before the July 1, 2014 FATCA



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reporting begins. The tax attorneys at Hanson Bridgett have significant experience with foreign account disclosures and can assist U.S. taxpayers in the OVDP process.

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