Offshore Finance Holdings & FATCA Reporting Requirements

By Dr. Ashford Maharaj

Having lived in the United States and not visited your home country like in the past two years, and planning on going there now (2018), you may experience an inability to access banking and financial services. This experience does not mean that the teller is inefficient or is prone to give you a hard time. On the contrary, you may be denied banking services or have to experience a "hard time" because that country and their financial institutions would have become Foreign Account Tax Compliance Act (**FATCA**) compliant since you last requested financial services there, say like two years ago. By FACTA Compliant we mean that the foreign financial institutions (the bank) is to report to the IRS through the homeland's central bank, information about financial accounts held by U.S. persons, or by foreign entities in which U.S. taxpayers hold a level of ownership.

In the midst of a financial crisis in 2009 the U.S. Congress caught its first real glimpse into the magnitude of international individual tax evasion with a congressional report that some 52,000 American accounts totaling approximately $15 billion in previously unreported assets were held at one solely Swiss bank. The potential scope of offshore tax abuse – as well as the challenges associated with reducing instances of abuse – has since been the subject of increased government scrutiny, prompting reports by the United States Congress and the Government Accountability Office (see references). Tax analysts estimate that $40 to $70 billion is lost each year to international individual tax evasion. So being strapped for cash the Congress felt the timely need to take action on unreported overseas incomes and hence the main reason for establishing the FATCA rules and regulations.

The Indian and Caribbean Diaspora:

There are some 11,400 U.S. citizens and another 5,000 or so individuals with a U.S. Indicia covered by and spelt out as "U.S. persons" in Trinidad & Tobago from data found on the U.S Department of State's website and the Central Statistical Office of Trinidad & Tobago. Data on Jamaica is difficult to locate at the time of writing this article, but there are some 25,000 of such individuals in Jamaica and about 8,000 or so in Guyana. In India there are approximately 61,000 plus US residents living and working in India and some 54,000 or so likewise in Pakistan according to State Department figures. The Foreign Account Tax Compliance Act (FATCA), which became law in 2010 gave foreign countries a timeframe to become compliant, which is, by latest 2017. A quick verification on such compliance revealed the Caribbean countries and indeed most from the Asian sub-continent are in fact FATCA compliant. So who specifically are within the ostrich hands of the IRS? These subjects are being defined as a "U.S. Person" would include:

1. United States' born or naturalized citizen of the U.S., including someone born in the U.S. but living in another country and who has not renounced their citizenship.
2. A lawful resident of the U.S., including a U.S. green card holder.
3. Any person residing in the U. S. citizen or not.
4. Anyone spending a specified amount of time in the U.S. such as "snowbirds residents" (spends winters in the warmer countries).
5. A green card holder who never formally handed in their green card upon leaving the U.S. (even though the green card in no longer valid for U. S. immigration purposes).
6. The descendant of a U. S. citizen provided a parent lived in the U. S. for a specified time period.
7. Other: to be certain if you are (or not) a "US person" please consult with your tax advisor.

What are the thresholds as per the FATCA requirements?

If you are a U.S. person and the total balance on all your accounts is equal to or greater than US$50,000 (or its equivalent, in the domestic currencies) at any time during the reporting year you will be required to report your account. This means that all accounts owned by you, jointly or otherwise, maintained in any currency, will be reported once the total value of all your accounts is equal to or greater than US$50,000.

Table 1: Sample FATCA Compliant Countries & Models

Jurisdiction	Status	Intergovernmental Agreement (IGA) & Related Agreements,	Understandings	Effective Date
Anguilla	Signed	Model 1		6-30-2014
Antigua &Barbuda	In Force (6-7-2017)	Model 1		6-30-2014
Bahamas	In Force (9-17-2015)	Model 1 Correction		6-30-2014
Barbados	In Force (9-25-2015)	Model 1 Correction		6-30-2014
Bermuda	In Force (8-19-2014)	Model 2	Understanding	6-30-2014
British Virgin Is.	In Force (7-13-2015)	Model 1		6-30-2014
Curaçao	In Force (8-3-2016)	Model 1 Related Agreem't		6-30-2014
Dominica	Agreement in Substance	Model 1		6-30-2014
Grenada	In Force (4-6-2018)	Model 1		6-30-2014
Guyana	In Force (9-29-2017)	Model 1		6-30-2014
Haiti	Agreement in Substance	Model 1		6-30-2014
India	In Force (8-31-2015)	Model 1	Understanding	6-30-2014
Jamaica	In Force (9-24-2015)	Model 1		6-30-2014
St. Kitts and Nevis	In Force (4-28-2016)	Model 1		6-30-2014
St. Lucia	In Force (9-1-2016)	Model 1		6-30-2014
St. Vincent & Gren	In Force (5-13-2016)	Model 1		6-30-2014
Trinidad &Tobago	In Force (9-22-2017)	Model 1		11-30-2014

The FATCA law offers two models of intergovernmental arrangements that are known as Model 1 and model 2. Notice that most countries from the above table employ the Model 1 arrangements. In fact, it is only Bermuda which employs the Model 2 arrangement (US Department of Treasury). Indeed there are only a handful of other countries such as Hong Kong, Iraq, Japan, and Nicaragua that employ Model 2.

In Model 1 the partner jurisdiction agrees to report to the IRS the specified information about the U.S. accounts maintained by all relevant financial institution located in the country. The exchange of information under such a model may be on a reciprocal or nonreciprocal basis. The impetus therefore is for the foreign financial institutions (FFIs) to report all information required under FATCA to their domestic government tax agencies. The domestic tax agencies would collect all of the FATCA information and turn it over of the IRS. Since the FFIs would do all of their reporting domestically to their own agencies, the Intergovernmental Arrangements (IGA) in Model 1 is sometimes negotiated as a reciprocal agreement.

Under Model 2 the partner jurisdiction agrees to direct and enable all relevant FFIs located in the jurisdiction to report specified information about their U.S. accounts directly to the IRS. Unlike model I therefore, Model 2 requires that the financial institutions report the FATCA-related information directly to the IRS and without any intermediaries. Since the FFIs report all FATCA-related information directly to the IRS, they need to register with the IRS and sign an FFI agreement, which should reflect the specific changes to the model 2 intergovernmental arrangements between the Fed and the foreign jurisdiction.

What about business accounts?

Business or Non – personal accounts of investors in corporations, proprietorships, partnerships, family holdings are also required to report their investment interests under the new law. FATCA made reference to substantial or beneficial ownership as the U.S. person who has 10% or more shareholding or greater in a company. For accounts operated by business entities, the threshold is US$250,000 and above. Essentially, FATCA is used to detect assets, rather than income and it does not include a provision imposing any tax. The requirement is that the financial institutions would report the information they gather about the U.S person to the Internal Revenue Service (IRS) directly or indirectly as spelled out in Model 1 or 2 above.

The legitimacy for implementation of FATCA is rooted in the intergovernmental agreements (IGAs) with most governments around the world and includes the proviso that their financial institutions will send the U.S.-person's data to the local government first and then to the IRS. FATCA, therefore, is used by government personnel to detect indicia of U.S. persons and their assets and to enable cross-checking where assets have been self-reported by individuals to the IRS or to the Financial Crimes Enforcement Network (CEN). As would be expected the CEN is more so interested in money laundering a criminally inclined activities whereas FATCA is more so financially-oriented. Note that in addition to foreign banking institutions financial units such as stockbrokerage, hedge fund dealers, insurance companies, trusts, etc., would also report directly or indirectly to the IRS all their clients, who are "U.S. persons." The law also provides that those banks and financial units, who do not become compliant will be subject to a 30% withholding on these investments, which will directly impact financial institutions' clients.

Table 2: Top Tax Haven Countries in the World

Country	# of Companies
BVI	113,650
Panama	48,360
Bahamas	15,915
Seychelles	15,182
Niue	9,611
Samoa	5,307
British Anguilla	3,253
Nevada, USA	1,260
Hong Kong	452
UK	148

Source: Gleaned from Financial Secrecy Indes, http://www.financialsecrecyindex.com/PDF/. Retrieved 05/31/18

Notice from the above data that many of these countries are former British colonies. Even the British (UK) made the list. The purpose of the law therefore is to limit the ability of U.S. persons to keep assets hidden specially in those so-called tax-haven countries. The implementation of FATCA has far-reaching consequences as it affecting most foreign governments and foreign financial institutions and indeed individuals and business entities as a whole. The financial implications of FATCA is significant to the tax reporting and revenue generating environments.

The dramatic shift from a self-reporting regime to automatic reporting by a third party under Models 1 or 2 of the FATCA agreement could substantially increases the probability of detection and theoretically should lead to a lower level of U.S. offshore tax evasion. It is incumbent on diaspora nationals to review their foreign financial assets and determine whether or not they are in compliance with the "U.S. person" requirements. Again, you may want to consult with your tax advisor so as not the fall victim to the unforgiving and far-reaching arms of the IRS.

Drawbacks & Benefits?

FATCA has led to additional requirements and hurdles for U.S. citizens holding or wishing to hold foreign financial accounts. One hindrance may be that is some banks may not wish to do business with "U.S. persons" in order to avoid FATCA ramification. On the flip side however, many foreign financial institutions will be willing to take on U.S. clients as additional clients may mean additional hard currencies, which may usually in very scarce quantities in the home country. Once the rules are acclimatized, other benefits would include ease of use for those who live or travel extensively abroad and new business opportunities will emerge for those with global aspirations. In the final analysis, those who choose to maintain foreign financial accounts must do so, wisely as various reporting requirements are present and a failure to properly disclose these assets *can lead to audits* by the Internal Revenue Service. Due to these complexities and the additional stipulations for "US persons" that come with the new FATCA law it is prudent that one consults with his or her own tax advisor, assuming the new law is seemingly implicating anyone who is reading this brief article.

References

Adrian Cox, Frances Williams, & Joanna Chung, "US claims 52,000 hid UBS accounts," *Financial Times*, 29 February, 2009, https://www.ft.com/content/df3eeb9c-feb7-11dd-b19a-000077b07658.

CSO Trinidad & Tobago (2011). Trinidad & Tobago 2011 Population and Housing Report www.cso.tt. Retrieved 05/31/18.

Financial Secrecy Indes, http://www.financialsecrecyindex.com/PDF/. Retrieved 05/31/18

Internal Revenue Service, "Summary of FATCA Reporting for U.S. Taxpayers," 7 November, 2016, https://www.irs.gov/businses/corporations/summary-of-fatca-reporting-for-u-s- taxpayers.

Internal Revenue Service, "Summary of Key FATCA Provisions," 7 November, 2016, https://www.irs.gov/businesses/corporations/summary-of-key-fatca-provisions.

Internal Revenue Service, "FATCA Information for U.S. Financial Institutions and Entities," 14 July, 2016, https://www.irs.gov/businesses/corporations/fatca-information-for-united-states-Entities.

Jane G. Gravelle, "Tax Havens: International Tax Avoidance and Evasion," 5 January, 2015, *Congressional Research Service*, https://fas.org/sgp/crs/misc/R40623.pdf

U.S. Department of State, Trinidad and Tobago. https://www.state.gov/p/wha/ci/td/Trinidad & Tobago

U.S. Department of the Treasury, "Foreign Account Tax Compliance Act (FATCA)," 29 March 2017, https://www.treasury.gov/resource-center/tax-policy/treaties/Pages/FATCA.aspx.

Dr. Ashford Maharaj is a distinguished, tenured Accounting and Finance professor at Berkeley College, Manhattan Campus where he has been teaching finance for the past 17 years. He is the current chair of curriculum matters at the college and is the author of *Megabank consolidations in the United States: The enigma continues* (2005), published by iUniverse Publishers, Inc., Lincoln, Nebraska. Prior to joining Berkeley College, he held a supervisory position in the Checks and Commercial Loans area of JP Morgan Chase & Co. in New York City as an accredited financial analyst *(AFA®)* where he co-chaired the diversity education initiative at the bank. Dr. Maharaj was a former director with the National Insurance Board of Trinidad & Tobago.