FATCA & U.S. Persons in Europe

FATCA and its consequences for Tax, Banking & Financial Planning

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Which questions will I discuss today?

Why are there problems?

What are the problems?

Where can cross-border families bank?

How should they save and invest?

Agenda

1. FAWCO & its Tax and Banking Committee

2. U.S. Tax Persons vs. U.S. Citizens

3. FATCA

4. What works/doesn't work

5. Consequences & Outlook for U.S. persons

What is FAWCO?

serving overseas Americans and the international community since 1931

FAWCO

Federation of American Women's Clubs Overseas

www. fawco.org

Who are we and what do we do?

- UN recognized NGO
- Outreach & support for US persons overseas & cross-border families since 1931
- 68 Clubs in 37 countries worldwide
- Website, conferences, local club events & activities, UN engagement for international women‘s issues
- Worldwide network
- www.fawco.org

FAWCO & its Tax and Banking Committee

FAWCO‘s Tax & Banking Committee

- Outreach seminars for our Clubs
- Website resources & links
- Collecting info
- Information & solutions sharing
- Advocacy

U.S. Tax Persons vs. U.S. Citizens

NOTICE TO ALL U.S. PERSONS

REGISTERING OF U.S. PERSONS UNDER THE FOREIGN ACCOUNT TAX COMPLIANCE ACT (FATCA)

SRI LANKA BANKS' ASSOCIATION (GUARANTEE) LIMITED

How many people are impacted?

At least

- 6.5 -7 million US citizens overseas
- Unknown number of *accidental* Americans, Green Card holders, visitors, NRAs & cross-border persons of multiple nationalities

Why do we talk about U.S. tax persons and not U.S. citizens?

- Multinational families of mixed, or double nationality
- NRAs (Non Resident Aliens) with US assets
- Working visitors & students to USA
- Green Card Holders
- *Accidental* Americans
- And potentially, other investors in US- based assets

Key investment tax issues for US Tax persons living overseas

- US Tax persons are subject to <u>US tax on worldwide income regardless of tax residence</u>
    - US reporting required,
    - PFIC Rules: Passive Foreign Investment Companies
    - Short term vs long term capital gains rates,
    - FATCA Impacts
    - IGA Treaty Tax treatment in other countries
- Choosing the investment & savings instruments that work in their cross-border context
- Awareness of treaty impacts on investing & gifting planning choices

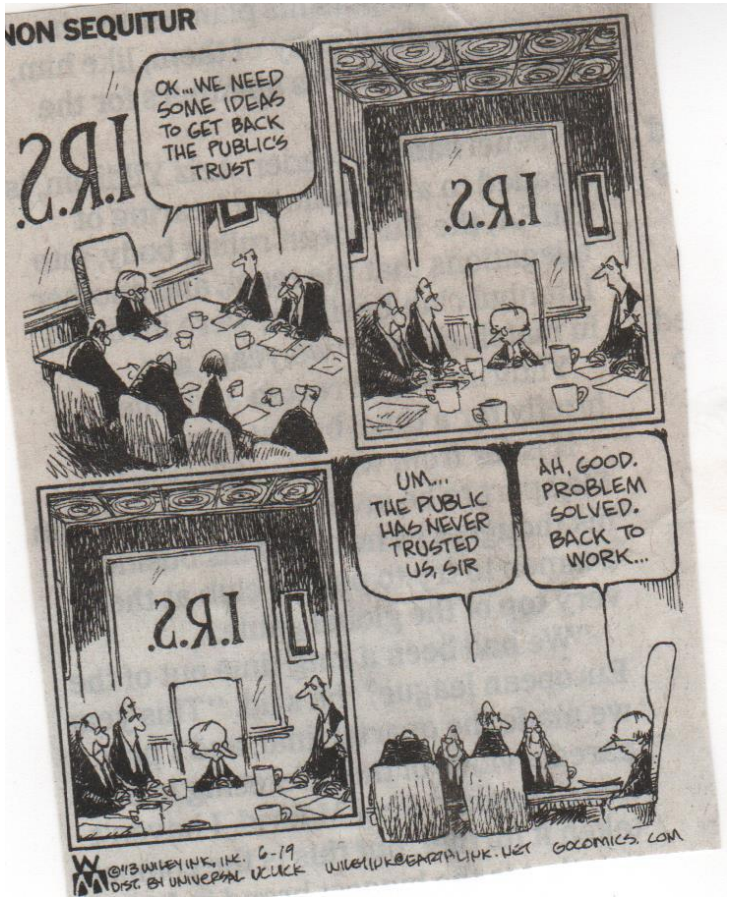
Why is there a U.S. Tax Compliance Gap?

- Of 6+ million overseas US tax persons, only about 1 million persons filed US tax returns in the latest year for which there are statistics

Why is this?

- Unaware of need to file in US, tax compliant where they reside
- Practical difficulties: expensive, complex, time consuming, threatening, & difficulty finding double advisors
- FEAR !!!

Why such fear of the IRS ?



What problems do FAWCO members report?

- Losing access to overseas banking & financial services
- Losing access to US banking & financial services
- Lack of awareness of US tax reporting responsibilities or of foreign tax reporting responsibilites
- Facing reporting difficulties =extreme penalties/high costs
- Finding competent, cost-effective financial advisors who are sensitive to cross-border tax & legal complexity
- Finding affordable tax preparation & planning assistance
- Finding competent, affordable, cross-border legal planning advisors

What are our current challenges?

- Find :
  1. Overseas banks & financial companies that serve U.S. tax persons in spite of FATCA and US banks for residents overseas
  2. Affordable & knowledgable cross-border tax advisors for various jurisdictions
  3. Asset protection strategies that work in our cross border jurisdictions
- Support our members in facing these issues
- Raise awareness
- Advocate for reasonable solutions with stakeholders

FATCA

FATCA requires Foreign Financial Institutions(FFI) to:

- Issue W-9 for US taxpayers

  W-8BEN-E for foreign status of beneficial owners
- Classify, register & report gains & income information on US account holders & US tax person owners, as well as for clients with investments that generate US source income or gains
- Face US penalties for non-compliance

What are ‘withholdable payments’ ?

- Any US source interest, dividends, rents, salaries, wages, premiums, annuities, compensations, renumerations, gains, profits, or income
- Gross proceeds from property sales; stock distributions
- FPPs- Foreign Pass through Payments

Who has to report for FATCA:

FFIs that are exempt from FATCA reporting:

- Most government entities
- Most nonprofit organizations
- Certain small, local financial institutions
- Certain exempt retirement entities

FFIs that must register & report:

- Depository institutions (banks)
- Custodial institutions (mutual funds)
- Investment entities (hedge & PE funds)
- Insurance companies with cash value products/annuities
- Many investment advisors

Source: Corporations, under FATCA Homepage ,IRS web

FATCA's dirty details:

- Before Jan 2014 FFI registration with IRS
- FFIs register with IRS electronically & must report US clients' income & gains but may have to withhold up to 30% for recalcitrant clients
- Info filing for US accounts over $50,000
- US withholding on US based asset capital gains & dividends: 20, 30 or 40% on payments made after June 30,2014
- Must also have done due diligence on account holders' US tax compliance by this date
- Important: differing InterGovernmental Agreements (IGA) provisions

What does FATCA mean for banks and other FFIs?

Risk Analysis !
What is cheapest ?

- Cost of investment in reporting infrastructure
- U.S Person clients vs. penalty risk of losing clients
- Reputation costs of completely avoiding US investments
- Reputation costs of dumping all US person clients

What works/doesn't work

U.S. person clients in Europe

- Where can I bank?
- How can I save & invest?
- What doesn’t work ?
- What still works ?

FATCA inspired Banking issues

- Many non-US banks won‘t open new US tax person accounts , &/or are closing older ones *(incl. US partners/officers)*
- When opening an account, ask for US form(W-9)
- European banks often can‘t provide complete US tax reporting
- Possible 30 % withholding imposed on FFIs
- Many European Banks can‘t sell US person clients their products
- Many foreign banks are concluding that US reporting is too expensive to be worth having US citizen/ tax person clients

Inconsistencies in access to financial services

- Banking landscape is a moving target
- Many foreign banks still have not digested the impact FATCA will have on them
- Banks may soon reevaluate their policies
- In some, rare cases, banks continue to maintain retail banking services for long term clients, high net worth clients, strong business relationships

Problems in Overseas Banking

Examples of banks that close or refuse accounts with U.S. citizens:

Julius Bär

Bank of Singapore

Santander

BNP PARIBAS

Raiffeisen Bank (CH)

JPMorgan

In Frankfurt & Paris

ING

CREDIT SUISSE

Volksbank Austria

METZLER
B. Metzler seel. Sohn & Co.

WEGELIN & CO.
PRIVATBANKIERS SEIT 1741

citibank

UBS

SEB

M. M. WARBURG & CO
1798

BERENBERG
PRIVATBANKIERS SEIT 1590

& diverse Sparkassen

More Problems in Overseas Banking

Examples of banks reducing services for their U.S. citizens and U.S. tax person clients:

- COMMERZBANK - checking & savings accounts only + only self-directed stock deposits; if living in US, must have agent living in Germany
- CITIBANK - High fees for expatriate wealth management
- HSBC - no new clients?, prefer large holdings, min $100K balances
  no investment services for US cit, non US residents (must apply in US)
- Deutsche Bank - investing for US citizens only from New York office since 2011 ab ca. $3 Mil; US persons unclear
- HypoVereinsbank Member of UniCredit checking & savings accounts only;
  no investment deposits as of Jan. 2012

US Banks (operating in US) closing US accounts of Americans resident overseas

ING Ally Bank

Pittsburgh National Bank

Bank of America

Marshall & Isley

American Express Bank

Franklin Templeton

Bank One Fifth Third

Morgan Stanley HSBC

Century Management

Citizens Bank

PNC Financial

Vangard Dreyfus

Mellon Investment

Chase Citibank

Sharebuilder Medallion

IRS Legacy Direct

Merrill Lynch

Putnam Bank (Conn.)

Treasury Department

T.Rowe Price

Wells Fargo Etrade

(includes testimonials being collected by American Citizens Abroad.)

We serve Americans abroad: what we know works!

In Europe

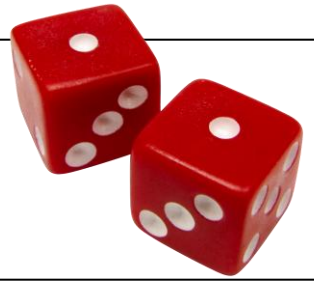
- **Pictet** , Genf & Frankfurt (SEC registered) min 3 Million Euro
- **Vontobel** (Zürich, Genf, Dallas)– min. 750,000 SFR (SEC registered)
- **Sparda Bank (**no new clients)
- some small, local banks
- **HSBC** - min $100,000 on deposit
- **DAB Bank**
- **Lloyd‘s Bank**
- **Interactive Brokers**

In the US

- **Charles Schwab** US
- **Fidelity** (inconsistent data)
- **Bank of America/Merrill**- no new clients
- **Wells Fargo** (no new clients)
- **JP Morgan** only in New York for new accounts over 3 Million Euro, if can supply US address
- Small **US local savings & loans**
- some **Credit Unions**
- **USSA-**US military banking services

Consequences & Outlook for U.S. persons

Consequences for US person clients



Investment Imperatives

- Simplify instruments
- Minimize compound costs
- Avoid PFIC & intransparent products
- Find & consult with competent cross-border advisors before implementation
- If risk using US only ETFs. Review local tax treatment beforehand
- Keep all retirement savings in US, or calculate additional foreign & US taxation in output projections

To date viable options

- Use small, local overseas & US banks where possible
- Keep long-term banking relationships where still tolerated
- Keep savings & retirement assets primarily in the US & manage online
- Use financial institutions on FAWCO‘s GoTo list
- Protest cancellations
- Return to US, or expatriate

How you hold your assets matters!

Ex: Trust held by Individual
(not considered FATCA entities)

NFFE
(Non Financial Foreign Entities)

- Lower levels of certification
- Lower levels of information reporting to avoid withholding
- If holding assets in personal name, not much will change

Ex: Trust managed by trust or holding company (which are FATCA entities)

FFI

- May require registration under FATCA
- Classification complicated & has important reporting & tax implications
- Considered investing for other persons = FFI
- FFI is subject to 50% gross income test re investment activity

Financial Planning
Advisory Issues for Individuals

Planning Issues

- Retirement assets in US or Host Country? Often one or the other , but not in both
- Cost minimization
- Asset protection strategies that work in both countries
- Increased risks of ID theft & hacking while using electronic data transfer across international borders

Risks

- Evolving legal & taxation environment, treaties
- US may soon tax overseas US persons as NRAs
- Currency/country concentration

If you'd only known before you married him...

Planning challenges for cross-border marriages, families & multinationality individuals !!!

Thank you !
Can you help?

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www. fawco.org
Email: ustaxbanking@fawco.org