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Foreign Account Tax Compliance Act Draws Flak

The recently imposed Foreign Account Tax Compliance Act or FATCA has drawn criticism from various quarters, not least of who are foreign banks themselves. Basically, the Act requires foreign banks to forward details of US clients with deposits of over $50,000 to the IRS or withhold 30% of the interest, dividend and investment returns payable to them and send the money to the IRS instead. Both choices are seen to be unsavory.

FATCA is derived from the need to stop tax evasion by wealthy Americans who hide their assets in offshore bank accounts. It has been widely seen as making foreign financial institutions become ‘tax agents’ for the IRS in monitoring the tax compliance of US taxpayers with assets abroad, which is something no other country does. Due to this, many fear that FATCA is breeding greater animosity toward the US among the international community.

Foreign financial institutions that do not comply with FATCA will be billed for the taxes due, and the rate is a hefty 40% of the amount in question plus be subject to greater scrutiny by the IRS. Even Americans working abroad concur that FATCA is not a good way of trying to catch tax dodgers. One senior American finance executive working in Hong Kong described FATCA as the greatest imperialist act done by America since it invaded the Philippine Islands in 1899.

FATCA was introduced after the UBS debacle in 2009 where Swiss bank UBS was fined a penalty of $780 million for abetting US taxpayers in hiding their taxable money in UBS accounts. The bank also had to disclose information on more than 4,000 US clients suspected of tax evasion to the IRS. After its draft and proposal in 2009, it was signed into law by President Obama in March 2010, meaning FATCA will go into effect on January 1, 2014 for most types of transactions and subsequently for other payments a year after that.

Originally, the bill was to have gone into effect in 2013 but was postponed by a year due to widespread criticism from foreign banks about FATCA's reach, costs and gray areas.

FATCA affects a wide range of financial institutions that include banks of all kinds (commercial, private and investment), trusts, broker-dealers, insurance companies, funds of all sorts (mutual, hedge and private-equity), domiciliary companies, LLCs, partnerships and other intermediaries and withholding agents including the affiliates of these entities.

The Treasury Department expects FATCA to bring in $7.67 billion in lost taxes over 10 years.