

Does Everyone Hate the New FATCA (Foreign Account Tax Compliance Act)? Probably. Here's Why.

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[This post is the first in a series discussing the Foreign Account Tax Compliance Act (FATCA) and its impact upon foreign investment and development in South Florida and the United States as well as efforts both locally and in other countries to stop FATCA.]

The **Foreign Account Tax Compliance Act (FATCA)** was passed by Congress in 2010 and will become effective in 2013 -- unless its critics win their fight to kill FATCA in the meantime. And there are many groups and individuals that want FATCA stopped -- many of them are foreign investors and international real estate developers here in South Florida, along with other local CPAs, bankers, and businesspeople.

What is FATCA?

The [overview provided by the federal government at the Internal Revenue Service site](#) explains the Foreign Account Tax Compliance Act this way:

The Foreign Account Tax Compliance Act (FATCA), enacted in 2010 as part of the Hiring Incentives to Restore Employment (HIRE) Act, is an important development in U.S. efforts to combat tax evasion by U.S. taxpayers with investments in offshore accounts.

Under FATCA, U.S. taxpayers with financial assets outside the United States must report those assets to the IRS. In addition, FATCA will require foreign financial institutions to report directly to the IRS information about financial accounts held by U.S. taxpayers, or held by foreign entities in which U.S. taxpayers hold a substantial ownership interest.

[and from the July 2011 news release....]

... The new law targets noncompliance by U.S. taxpayers through foreign accounts. Under the notice's phased implementation approach, foreign financial institutions (FFIs) and U.S. withholding agents are given adequate time to build the systems needed to fully comply with FATCA.

"FATCA is an important development in U.S. efforts to combat offshore noncompliance. At the same time, the IRS recognizes that implementing FATCA is a major undertaking for financial institutions." said IRS Commissioner Doug Shulman. "Today's notice is a reflection of our serious commitment to implementation of the statute, but also a serious commitment to listen to the implementation challenges of affected financial institutions and make appropriate adjustments to ensure a smooth and timely roll-out."

FATCA was enacted in 2010 as part of the Hiring Incentives to Restore Employment (HIRE) Act. FATCA requires FFIs to report to the IRS information about financial accounts held by U.S. taxpayers, or by foreign entities in which U.S. taxpayers hold a substantial ownership interest. In order to avoid being withheld upon under FATCA, a participating FFI will have to enter into an agreement with the IRS to:

- Identify U.S. accounts,
- Report certain information to the IRS regarding U.S. accounts, and
- Withhold a 30-percent tax on certain payments to non-participating FFIs and account holders who are unwilling to provide the required information.

FFIs that do not enter into an agreement with the IRS will be subject to withholding on certain types of payments, including U.S. source interest and dividends, gross proceeds from the disposition of U.S. securities, and passthrough payments.

Fighting Against Its Passage: Many Foreign Lenders and Most US Business Interests

From OpenCongress, here is a list of just some of the opposition to FATCA as it was being debated and passed by Congress. Notice how the opponents include American CPAs, bankers and even the American Chamber of Commerce:

1. Australian Banking Association
2. American Citizens Abroad
3. **U.S. Chamber of Commerce**
4. European Fund and Management Association
5. Swiss Bankers Association
6. State Street Bank and Trust
7. **American Bankers Association**
8. Securities Industry and Financial Markets Association Clearing House
9. European Banking Federation
10. Institute of International Bankers
11. International Capital Markets Services Association
12. Investment Fund Institute of Canada
13. The Investment Industry Association of Canada
14. Euroclear Bank
15. The Financial Services Roundtable
16. International Capital Market Association
17. International Swaps and Derivatives Association
18. Managed Funds Association
19. Covington & Burling LLP
20. Credit Suisse
21. **American Institute of Certified Public Accountants**

In the next post of this series: what's so bad about FATCA from both Florida's perspective as well as from those of foreign interests.