

EXTREME PENALTIES, **EX**PATRIATION,
&
EXCHANGE OF INFORMATION

HOW TO DEAL WITH YOUR **EXES**

SEPTEMBER 11, 2014

THE EX – WHAT IS NEXT

I 
MY EX

I Hate My

EX

FBAR - Background

- FinCen 114: Report of Foreign Bank and Financial Accounts a/k/a the Foreign Bank Account Report or “FBAR” (Treasury Form, not IRS Form).
- In 1970, U.S. Congress enacted the Bank Secrecy Act, which is codified in Title 31 (Money and Finance) of the U.S. Tax Code. The purpose of the Bank Secrecy Act was to require the filing of reports and the retention of records, where doing so would be helpful to the U.S. government in carrying out criminal, tax and regulatory investigations.

FBAR - Enforcement

- The U.S. Treasury Department delegated full investigatory and enforcement authority to the IRS.
- Increased enforcement after the 9/11 terrorist attacks in the United States under the Patriot Act (*Uniting and Strengthening America by Providing Appropriate Tools Required to Intercept and Obstruct Terrorism (USA PATRIOT ACT) Act of 2001*).
- IRS has in its arsenal several formidable weapons, including the power to take “any action reasonably necessary” to enforce FBAR compliance.
- From Fox America's Newsroom June 13, 2013: Rep. Jeff Duncan (R-SC) has raised some eyebrows on Capitol Hill this morning, claiming that he saw IRS agents training with AR-15 assault rifles. According to Fox, no IRS enforcement agent has ever been killed in the line of duty, but they have had used their weapons **8** times, and accidentally fired a weapon on **11** occasions.

FBAR - Enforcement



UBS Settlement 19/08/2009

- The landmark settlement was expected to provide a road map for the IRS as it tried to clamp down on tax evasion by Americans who use offshore accounts.
- UBS handed over 4450 names of U.S. clients to the IRS.
- UBS paid fine of \$780,000,000

New York Times 19/08/2009:

❖ “Whether the deal will change the Swiss banking industry’s culture of secrecy remains to be seen. Smaller Swiss banks say they are confident that they can blunt its effects and continue to profit by finding new, more elaborate ways to protect the privacy of clients. But American authorities have made clear that their pursuit of tax evaders will not stop at UBS.”

❖ “Some smaller, centuries-old private Swiss banks, however, are stepping up their efforts to attract American money, given the importance of foreign clients to the nation’s financial institutions. Executives at smaller Swiss banks and trade groups say they are increasingly working with Swiss financial and legal companies to set up offshore entities as a way to shield assets from prying regulatory eyes. They have also been reassuring clients that their accounts will remain confidential.”

Wegelin & Co - 04/01/2013

Reuters 04/01/2013:

- ❖ Wegelin & Co, the oldest Swiss private bank closed the doors permanently after more than 2 1/2 centuries, following its guilty plea to charges of helping wealthy Americans evade taxes through secret accounts. The plea, in U.S. District Court in Manhattan, marks the death knell for one of Switzerland's most storied banks, whose original European clients pre-date the American Revolution.
- ❖ Wegelin admitted to charges of conspiracy in helping Americans evade taxes on at least \$1.2 billion for nearly a decade. Wegelin agreed to pay \$57.8 million to the United States in restitution and fines.
- ❖ In addition, three Wegelin bankers were indicted in January 2012.
- ❖ In 2012, the U.S. government separately seized more than \$16 million of Wegelin funds in a UBS AG account in Stamford, Connecticut, via a civil forfeiture complaint. Since Wegelin has no branches outside Switzerland, it used UBS for correspondent banking services, a standard industry practice, to handle money for U.S.-based clients. In court papers, Wegelin's president Bruder said that Wegelin "believed it would not be prosecuted in the United States for this conduct because it had no branches or offices in the United States and because of its understanding that it acted in accordance with, and not in violation of, Swiss law and that such conduct was common in the Swiss banking industry."

AMNESTY



IRS Voluntary Disclosure Alternatives

- 2014 Offshore Voluntary Disclosure Program (OVDP)
- Streamlined Procedures (SP) for Non-Resident and Resident US Taxpayers

Voluntary Disclosure

Under the terms of the 2014 OVDP, taxpayers must:

- File amended or original returns for the last 8 years of non compliance (2006-2013);
- File amended or original FBARs for same period;
- Pay 20% accuracy-related penalties on the full amount of underpayments of tax for all years;
- Pay an FBAR penalty of 27.5% or 50% of the highest balance in the undeclared bank accounts or value of foreign assets which had a tax liability during the period covered by the voluntary disclosure;
- Cooperate in the voluntary disclosure process, including providing information on offshore financial accounts, institutions and facilitators.

Streamlined Procedures

The modified streamlined filing compliance procedures are designed for only individual taxpayers (U.S. citizens, lawful permanent residents, and those meeting the substantial presence test), including estates of individual taxpayers.

The streamlined procedures are available to both U.S. individual taxpayers residing outside the United States and U.S. individual taxpayers residing in the United States.

U.S. taxpayers must :

- (1) for each of the most recent 3 years for which the U.S. tax return due date has passed, file delinquent or amended tax returns, together with all required information returns (e.g., Forms 3520, 5471, and 8938); and
- (2) for each of the most recent 6 years for which the FBAR due date has passed, file any delinquent FBARs.

Streamlined Procedures – Non Willful

Taxpayers will be required to certify, in accordance with the specific instructions that the failure to report all income, pay all tax, and submit all required information returns, including FBARs was due to non-willful conduct:

“My failure to report all income, pay all tax, and submit all required information returns, including FBARs, was due to non-willful conduct.

I understand that non-willful conduct is conduct that is due to negligence, inadvertence, or mistake or conduct that is the result of a good faith misunderstanding of the requirements of the law.”

Streamlined Procedure - Penalty

The Title 26 miscellaneous offshore penalty is:

- for those residing outside the United States: 0%
- for those residing in the United States 5% of the highest aggregate balance/value of the taxpayer's foreign financial assets that are subject to the miscellaneous offshore penalty during the years in the covered tax return period and the covered FBAR period.

For this purpose, the highest aggregate balance/value is determined by aggregating the year-end account balances and year-end asset values of all the foreign financial assets subject to the miscellaneous offshore penalty for each of the years in the covered tax return period and the covered FBAR period and selecting the highest aggregate balance/value from among those years

A taxpayer who is eligible to use the Streamlined Procedure will be subject only to the Title 26 miscellaneous offshore penalty (0% or 5%) and will not be subject to accuracy-related penalties, information return penalties, or FBAR penalties

Voluntary Disclosure – Why:

- Avoid severe civil and criminal penalties
- The ability of a U.S. taxpayer to maintain a “secret” foreign financial account is fast becoming nonexistent. Foreign account information is flowing into the IRS through:
 - The worldwide deployment of civil and criminal tax enforcement resources;
 - The development of relationships with corresponding taxing agencies in other countries;
 - Treaty-based information exchanges;
 - The use of the civil summons process to seek the identification of account holders in foreign institutions operating within the jurisdiction of the U.S.;
 - Indictments and investigations of foreign institutions and their bankers such as UBS (\$780 Million fine) and Credit Suisse in Switzerland (\$2.6 Billion fine), HSBC in India and Singapore and branches of foreign banks in Switzerland;
 - The receipt of information from whistleblowers and informants;
 - Cooperation from taxpayers, advisers, foreign banks, and bankers who have been criminally prosecuted;
 - Cooperation from taxpayers from OVDP participants who identified their banks, bankers, advisers, and others; and
 - FATCA regulations.

Criminal prosecution of Swiss bankers

March 2014 – Andreas Bachmann, Credit Suisse banker pled guilty

Nov. 18, 2011 — Renzo Gadola, a citizen and resident of Switzerland, was sentenced to five years probation. Gadola pleaded guilty in December 2010 to assisting an American client in concealing an offshore bank account from the United States government. From 1995 through August 2008, he was employed as a private banker by UBS AG.

Aug. 4, 2011 — Gian Gisler, a former UBS AG banker, was charged with conspiring to hide more than \$215 million offshore at various Swiss banks. Gisler had more than 38 U.S. taxpayer clients and allegedly opened and/or managed more than 60 hidden accounts on their behalf.

Aug. 2, 2011 — Martin Lack, a former UBS AG banker was charged with conspiracy to defraud the United States. Lack assisted U.S. customers to open and maintain secret bank accounts at a Swiss cantonal bank headquartered in Basel, Switzerland.

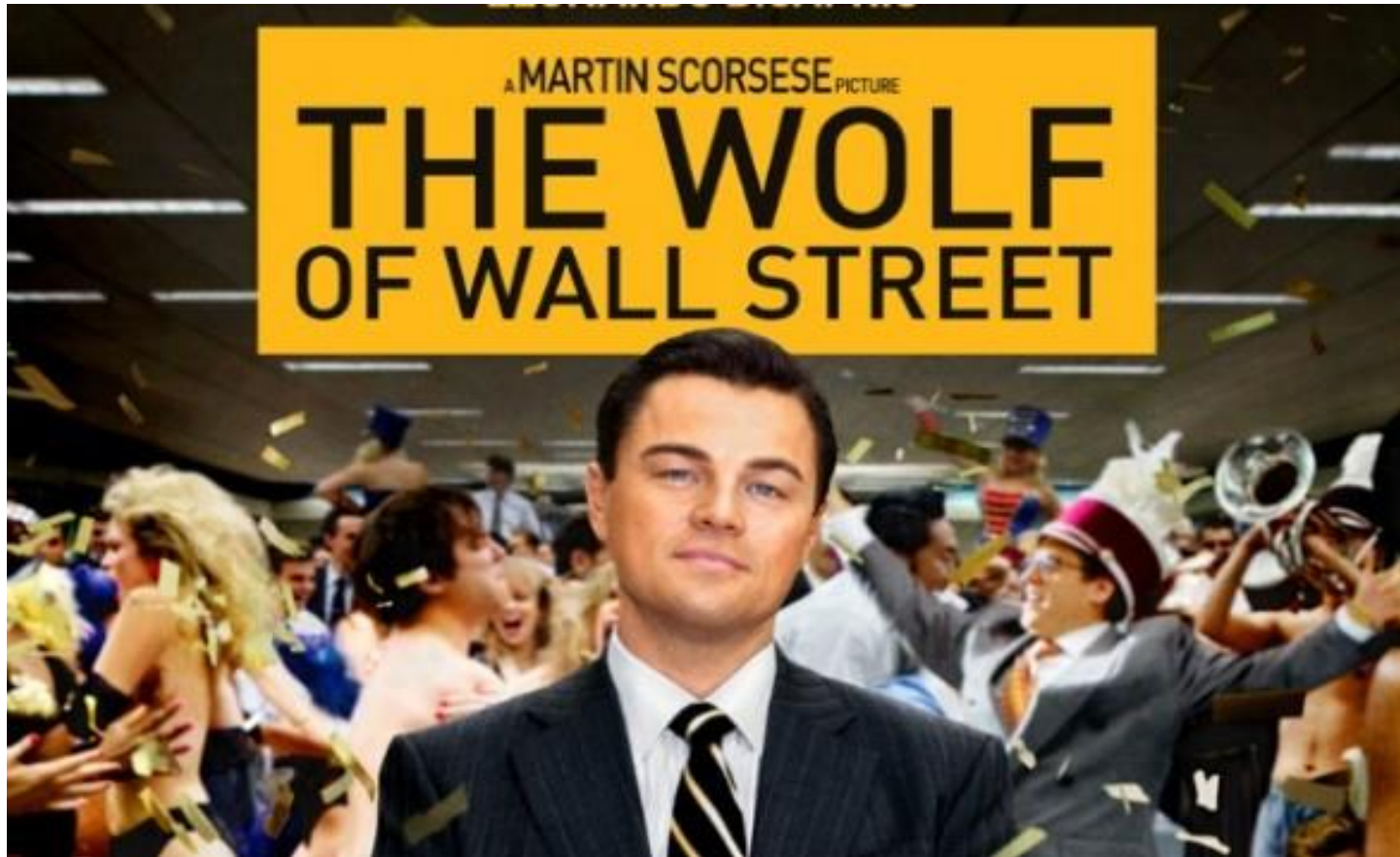
July 21, 2011 — Beda Singenberger, a Swiss financial advisor, was indicted for conspiring with U.S. taxpayers and others to hide more than \$184 million in offshore Swiss bank accounts.

Aug. 20, 2009 — Hansruedi Schumacher and Matthias Rickenbach were indicted for conspiring to assist wealthy American clients conceal their assets by establishing sham offshore entities. Schumacher was an executive manager at Neue Zuercher Bank (NZB), a private Swiss bank. Rickenbach was a Swiss attorney who advised U.S. clients.

Nov. 12, 2008 — Raoul Weil, a senior executive of a large Swiss bank, was charged with conspiring with other executives, managers, private bankers and clients of the banking firm to defraud the United States. On October 19, 2013, Weil was arrested in Bologna, Italy while on vacation and extradited to the USA.

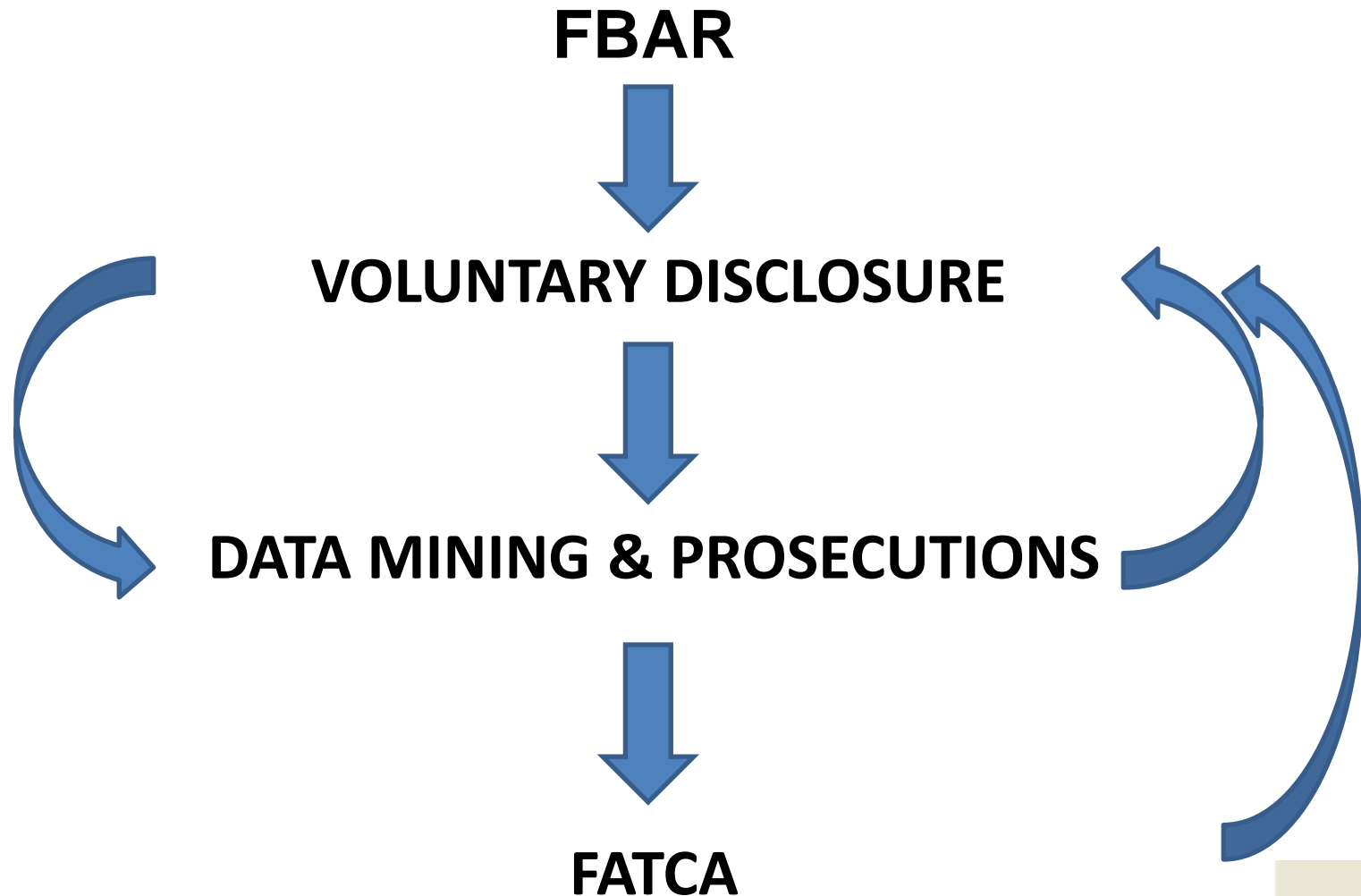
May 13, 2008 — Banker Mario Staggl was indicted for conspiring with banker Bradley Birkenfeld to assist an American billionaire real estate developer evade paying \$7.2 million in taxes by assisting in concealing \$200 million of assets in Switzerland and Liechtenstein.

Criminal prosecution of Swiss bankers



Jean-Jacques Handali (a/k/a/ Jean Jacques Saurel in The Wolf of Wall Street) of UBP Geneva

FROM FBAR TO FATCA



FATCA

The Foreign Account Tax Compliance Act or FATCA, as it is colloquially known, was enacted by the Hiring Incentives to Restore Employment Act on March 18, 2010.

FATCA for individuals:

U.S. persons owning foreign accounts or other specified financial assets must report them on a new Form 8938 which is filed with the person's U.S. tax returns if they are generally worth more than US\$50,000; a higher reporting threshold applies to overseas residents.

It also requires taxpayers to report financial assets that are not held in a custodial account, e.g., income deriving real estate, physical stock or bond certificates.

FATCA

FATCA for corporations:

FATCA requires non-US financial institutions ("FFIs") and non-US non-financial entities ("NFFEs") to identify and disclose their US account holders or become subject to a 30% US withholding tax with respect to payments of US source income such as interest, dividends, rents, salaries ("FDAP Income") and gross proceeds from the sale or disposition of US stocks and securities.

Full implementation by 2018, including:

- ✓ Registration with the IRS for Global Intermediary Identification Number
- ✓ Identification of accounts for existing customers
- ✓ Revised account opening procedures to identify new US accounts
- ✓ Withholding on non participating banks and institutions
- ✓ Reporting of compliant and non compliant accounts

FATCA – Foreign Financial Institutions

A Foreign Financial Institution is defined as any foreign entity that:

- Accept deposits in the ordinary course of a banking or similar business;
- Hold financial assets for the account of others as a substantial portion of their business;
- Are foreign investment entities, including entities that conduct certain investment and asset management activities for customers, entities that are managed by other FFIs and the gross income of which is primarily attributable to investing, reinvesting, or trading in financial assets, and certain collective investment vehicles with investment strategies of investing, reinvesting, or trading in financial assets;
- Are insurance companies that issue investment-like contracts or annuity contracts; or
- Are certain holding companies or treasury centers that are members of corporate groups that include FFIs or that are formed by certain investment vehicles.

The definition of an FFI is broad and includes entities that would not typically be considered to be financial institutions such as trust companies, investment funds, hedge funds, certain family investment vehicles, foreign feeder funds and insurance companies.

FATCA – Foreign Non Financial Institutions

A Non Foreign Financial Institution NFFE is any foreign entity that is not a financial institution.

A foreign entity is an entity that is not a “U.S. person”.

An NFFE generally will not be required to comply with the diligence and reporting requirements applicable to FFIs. However, in certain circumstances, an NFFE may be required to identify and make a certification to a withholding agent regarding US persons that own accounts or substantial interests in the NFFE.

FATCA - Financial Account

- Any deposit account maintained by a financial institution
- Any custodial account maintained by a financial institution
- Any cash value insurance contract and any annuity contract issued or maintained by a financial institution
- Some exceptions to the notion of financial account, e.g. (i) certain savings account, (ii) term life insurance contracts, (iii) account held by exempt beneficial owner.

FATCA - Reporting

FATCA requires a FFI to track and identify all U.S. money on behalf of the IRS. This includes ascertaining and disclosing to the IRS the:

- Name, Address and Tax Identification Number (TIN) of each account holder that is a U.S. person;
- Name, Address and TIN of each substantial U.S. owner of any account held by a U.S. owned foreign entity;
- Account number;
- Account balance or value; and
- Gross receipts and withdrawals/payments from the account.

Substantial U.S. owners of foreign entities include any U.S. person who owns directly or indirectly more than 10% beneficial interest in a company, partnership or trust.

FATCA

For participating FFIs, investments will be needed in four key areas:

- **Documentation:** capturing process changes and analyzing the customer base.
- **Withholding:** building systems for withholding on recalcitrant account holders.
- **Reporting:** building and sustaining an annual reporting model for all US individuals to cover account balances and gross payments.
- **Legal:** review all documentation like operating and lending agreements

The United States Congress Joint Committee on Taxation estimated that the FATCA bill would raise \$792 million of additional taxes a year in the next ten years.

Estimate of the costs to the private sector alone has been roughly estimated at US\$8 billion a year, approximately ten times the amount of estimated revenue raised. The UK government has estimated that the cost to British businesses alone will be £1 billion - £2 billion for the first five years.

FATCA - CONTROVERSY



**STOP
FATCA**
Protect our borders from USA laws



FATCA - CONTROVERSY

Cost

Capital flight. Strong incentive for foreign financial institutions to not invest in US assets to avoid 30% withholding

Foreign relations. Forcing foreign financial institutions and foreign governments to collect data on US citizens at their own expense and transmit it to the IRS is controversial. There are also reports of many foreign banks refusing to open accounts for Americans, making it harder for Americans to live and work abroad.

Citizenship renunciations. 1001 in first quarter of 2014, jump of 50% (Tina Turner). 2,999 in 2013 and over 4,000 expected in 2014

Workability: Complexity and postponing of the implementation

FATCA - CONTROVERSY

Russia's VTB to ditch Russia-based U.S. taxpayer clients

June 5, 2014

Reuters: Russia's second-largest bank, VTB, said it is phasing out business with around 2,000 Russia-based individual and corporate clients that are U.S. taxpayers ahead of a new law to fight tax dodging by Americans.

State-controlled VTB said it registered with the IRS in order to maintain compliance with FATCA and would voluntarily abide by the legislation.

"However, as part of its prudent approach to managing risk, VTB's senior management has instructed the group's entities to gradually phase out business with clients, both individuals and legal entities, that are US taxpayers," VTB said.

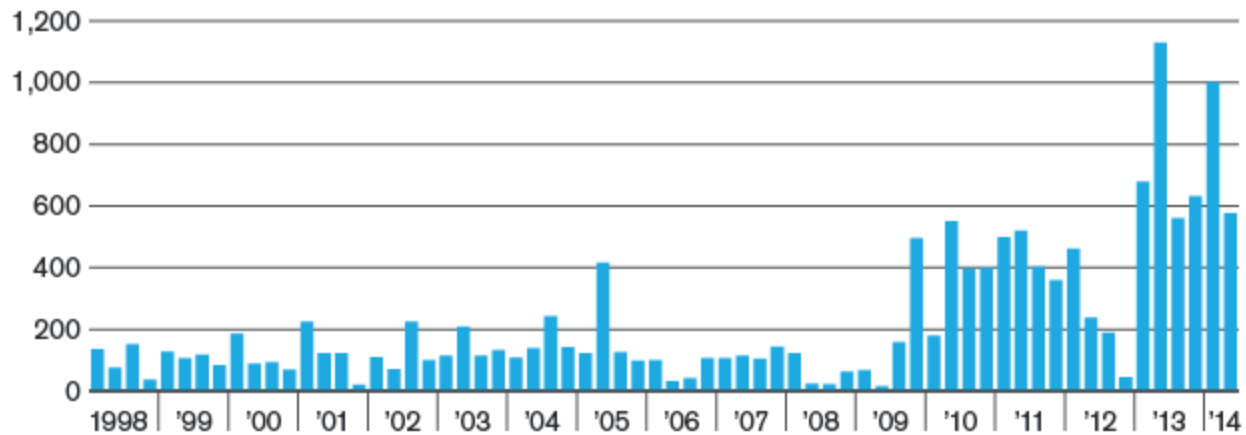
VTB said it would phase out business with Russia-based U.S. taxpayer clients only; those based in the United States are not affected.

Even at this late stage, Russian law and FATCA are incompatible — Russian banks will be able to comply with U.S. law or Russian law, but not both, the head of the Association of Russian Banks said.

Expatriation

More Americans Are Relinquishing Their U.S. Citizenship

Number of U.S. citizens who have expatriated, quarterly data



Source: U.S. Federal Register data compiled by Bloomberg

Bloomberg Visual Data

Expatriation – covered expatriate

IRC 877A expatriation rules apply to you if you are a U.S. citizen or Long-term resident and any of the following statements apply:

- Your average annual net income tax for the 5 years ending before the date of expatriation or termination of residency is more than a specified amount that is adjusted for inflation (\$147,000 for 2011, \$151,000 for 2012, \$155,000 for 2013 and \$157,000 for 2014); or
- Your net worth is \$2 million or more on the date of your expatriation or termination of residency; or
- You fail to certify on Form 8854 that you have complied with all U.S. federal tax obligations for the 5 years preceding the date of your expatriation or termination of residency.

Expatriation – LTR

You are an Long-term resident (LTR) if you were a lawful permanent resident of the United States in at least 8 of the last 15 tax years ending with the year your status as an LTR ends.

In determining if you meet the 8-year requirement, do not count any year that you were treated as a resident of a foreign country under a tax treaty and did not waive treaty benefits applicable to residents of the country

Green card holders

Expatriation – Covered Expatriate Taxation

If you are a covered expatriate in the year you expatriate, you are subject to income tax on the net unrealized gain in your property as if the property had been sold for its fair market value on the day before your expatriation date (“mark-to-market tax”).

Gains from deemed sales are taken into account without regard to other U.S. internal revenue laws. Losses from deemed sales are taken into account to the extent otherwise allowed under U.S. internal revenue laws.

For 2013, the net gain that you otherwise must include in your income is reduced (but not below zero) by \$668,000.

Expatriation – exemptions of expat tax

Certain dual-citizens:

- You became at birth a U.S. citizen and a citizen of another country and you continue to be a citizen of, and are taxed as a resident of, that other country; and
- You were a resident of the United States for not more than 10 years during the 15-tax-year period ending with the tax year during which the expatriation occurred.

Minors:

- You expatriated before you were 18 ½; and
- You were a resident of the United States for not more than 10 tax years before the expatriation occurs.

Expatriation – Deferment of tax

You can make an irrevocable election to defer the payment of the mark-to-market tax imposed on the deemed sale of property if:

1. You make the election on a property-by-property basis.
2. The deferred tax on a particular property is due on the return for the tax year in which you dispose of the property.
3. Interest is charged for the period the tax is deferred.
4. The due date for the payment of the deferred tax cannot be extended beyond the earlier of the following dates:
 - a. The due date of the return required for the year of death.
 - b. The time that the security provided for the property fails to be adequate.
5. You make the election in Part IV, Section C of form 8854
6. You must provide adequate security (such as a bond).
7. You must make an irrevocable waiver of any right under any treaty of the United States that would preclude assessment or collection of any tax imposed by section 877A.

FATCA - IGAs

The United States Department of Treasury has published model Intergovernmental Agreements (IGAs) which follow two approaches:

Under Model 1, financial institutions in the partner country report information about U.S. accounts to the tax authority of the partner country. That tax authority then provides the information to the United States.

Model 1 comes in a reciprocal version (Model 1A), under which the United States will also share information about the partner country's taxpayers with the partner country, and a nonreciprocal version (Model 1B).

Under Model 2, partner country financial institutions report directly the U.S. Internal Revenue Service, and the partner country agrees to lower any legal barriers to that reporting.

FATCA - IGAs

Jurisdictions that have signed agreements:

Model 1 IGA

Australia, Belgium, Canada, Cayman Islands, Costa Rica, Denmark, Estonia, Finland, France, Germany, Gibraltar, Guernsey, Hungary, Honduras, Isle of Man, Israel, Italy, Jamaica, Jersey, Luxembourg, Malta, Mauritius, Mexico, Netherlands, Norway, Spain, United Kingdom

Model 2 IGA

Austria, Bermuda, Chile, Japan, Switzerland

Jurisdictions that have reached agreements in substance:

Model 1 IGA

Azerbaijan, Bahamas, Brazil, British Virgin Islands, Bulgaria, China, Colombia, Croatia, Curaçao, Czech Republic, Cyprus, India, Indonesia, Kosovo, Kuwait, Latvia, Liechtenstein, Lithuania, New Zealand, Panama, Peru, Poland, Portugal, Qatar, Romania, Singapore, Slovak Republic, Slovenia, South Africa, South Korea, Sweden, Turks and Caicos Islands

Model 2 IGA

Armenia and Hong Kong, San Marino

FATCA – IGA with Israel

Israel signed a FATCA agreement on June 30, 2014.

Exemptions for :

- Bodies that manage pensionary savings in Israel who will not be obliged to report on the pension savings accounts under their management;
- Other financial bodies that constitute low risk as vehicles for tax evasion will be exempt from reporting;
- Study funds for wage earners;
- Provident funds for special purposes (e.g. sickness or vacation); and
- Trustees of option plans for workers according to Section 102 of the Income Tax Act.

FATCA – IGA with Israel

- The Agreement regulates the transfer of information to the IRS via the Israel Tax Authority, which will receive information from Israeli financial bodies.
- The information relayed will include details on Israeli financial accounts held by U.S. citizens and residents, Green Card holders, or legal entities consisting of material American holdings.
- Additionally, the agreement enables the IRS to report on revenue from accounts held by residents of Israel staying in the U.S.
- The first date for the transfer of information to the U.S. as per the agreement is September 30, 2015. The first information transfer will include data on holders of American accounts as well as the balance in their accounts as of the end of 2014.

FATCA Effect

United Kingdom:

Son-of-FATCA for British offshore financial centers

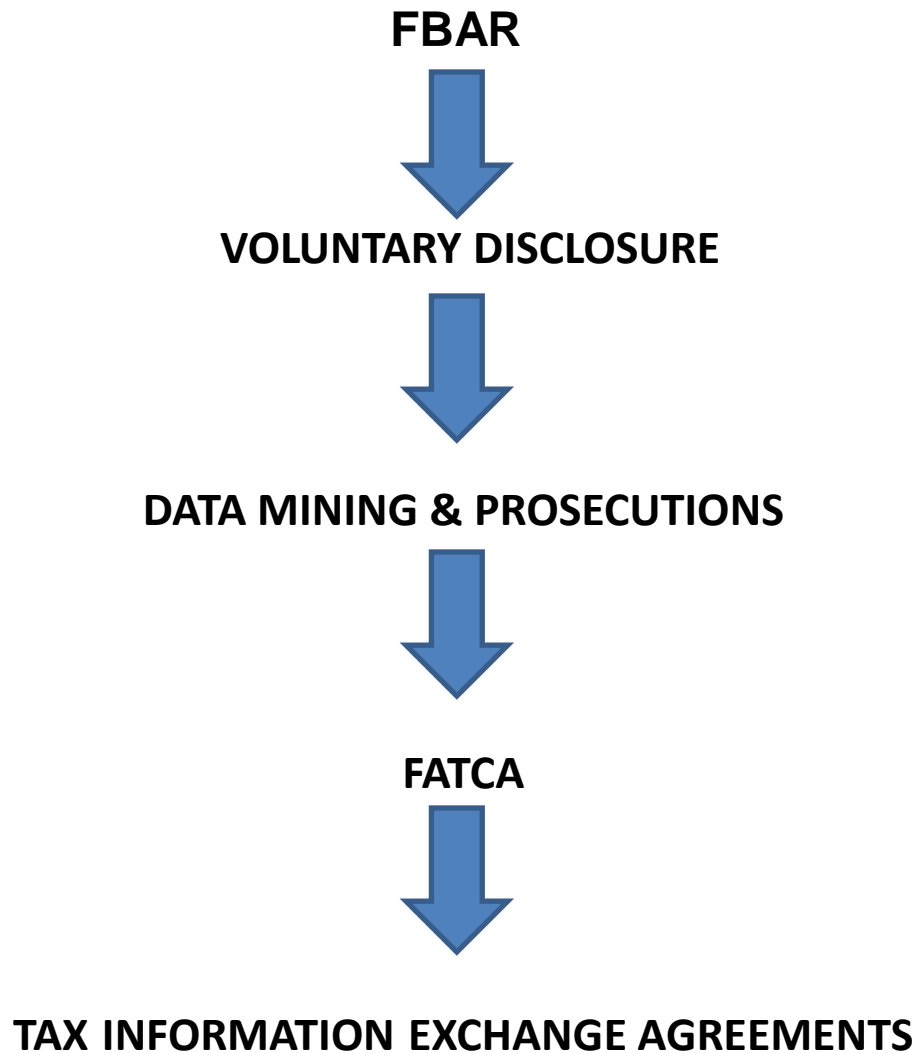
Financial details for 2014 and 2015 will have to be reported to the HMRC by September 30, 2016.

Crown dependencies and British overseas territories will have to tell the HMRC:

- Names and addresses and dates of birth of client holders
- Account numbers
- Balances and details of payments made into those accounts

The financial centers covered include the Isle of Man, Guernsey, Jersey, Anguilla, Bermuda, the British Virgin Islands, the Cayman Islands, Gibraltar, Montserrat and the Turks and Caicos Islands.

FATCA Effect: From FBAR to the OECD



Tax Information Exchange

Double Taxation Agreements (DTA):

- Clause in agreement to prevent double taxation
- OECD Model Convention
- UN Committee of Tax Experts Model Convention
- Nordic Countries : Denmark, Faroe Islands, Finland, Iceland, Norway and Sweden. Automatic exchange on income and ownership of real estate
- Mexico and U.S.A. : Non-US resident interest income
- Switzerland and U.K.: Swiss authorities are set to implement an agreement for a monthly exchange of information to the UK tax authorities. The agreement signed in April 2012 calls on the Swiss authorities to provide information on income and gains derived from investments held by UK taxpayers in Swiss banks.
- Tax authorities of the U.S.A., the United Kingdom and Australia have announced a plan to share tax information involving companies and trusts holding offshore assets of taxpayers under their respective jurisdictions.

Tax Information Exchange

- Tax Information Exchange Agreement (TIEA)
 - Complement DTAs
 - For use with countries for which there is no DTA because for example they have no or low taxes on income
 - Usually narrower in scope than DTAs but more detailed on the exchange of information
 - The more the better, less regarded as tax haven: UK Crown dependencies (Isle of Man, Jersey and Guernsey) with Danish Crown Dependencies: Greenland and Faroe Islands
- Mutual Legal Assistance in Criminal Matters
 - some exclude tax matters
- U.S. Qualified Intermediary (QI)
 - Foreign QI needs to report to the USA about U.S. persons investing in the U.S.A. through that QI

Tax Information Exchange

Multilateral:

- European Union's Savings Directive
 - Limitations: only interest
 - Automatic exchange
 - Opt out of information exchange and withholding tax for some jurisdictions such as Austria, Belgium, and Luxembourg.

- The Convention on Mutual Administrative Assistance in Tax Matters
 - Counsel of Europe and OECD
 - More than 50 countries have signed

- European Union finance ministers meeting of September 13 and 14, 2013
 - European Union finance ministers met to discuss a system for an EU-wide automatic exchange of bank account information, among other issues.

Tax Information Exchange

- G-20 meeting of September 5 and 6, 2013
 - Endorsement of OECD proposal for global model for automatic information exchange for tax purposes.
 - Automatic sharing of tax information by the end of 2015
 - China was last one to sign

- OECD's Common Reporting Standard
 - 44 countries
 - Declaration on Automatic Exchange of Information in Tax Matters
 - Committed to the new single global standard for the automatic exchange of information between tax authorities as established in G-20 meeting September 2013
 - The information on new accounts and pre-existing individual high-value accounts will be exchanged by the end of September 2017
 - All other account information will be exchanged by the end of September 2018

FATCA Effect

- 100 Swiss banks sign agreement to hand over information to a third country
- Americans are persona non grata in the world of banking and company management
- Criminal prosecution in several countries because of data sharing
- FATCA has global effect from fund managers in Kuwait until banks in Greenland
- Tax havens no longer tax havens
- New industry providing FATCA services such as consultants, lawyers, accountants and software companies

Your EX wants you



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