

Guide to U.S. Investments for foreigners and the Effect of FATCA

针对外国人的美国投资指南以及FATCA的影响

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June 2014



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Chinese connections to the U.S.A. (1)

中国与美国的联系（1）



Chinese commercial real estate purchases in the U.S.A. totaled over \$3 billion: Tishman, China Vanke to Build 655-Unit San Francisco Condo Tower

中国在美国购买的商业地产总额超过30亿美元，Tishman和万科建造的有655个单元的旧金山公寓塔

Chinese Investment in U.S. reaches \$14 Billion in 2013: Shuanghui's \$7.1 billion takeover of pork processor Smithfield.

在2013年，中国在美国投资达到140亿美元：双汇以71亿美元收购猪肉加工商Smithfield。

Chinese connections to the U.S.A. (2)

中国与美国的联系（2）



May 17, 2014: Baidu \$300 million R&D center in Silicon Valley with 200 employees.
2014年5月17日，百度投资3亿美元在硅谷建造200名雇员的研发中心。

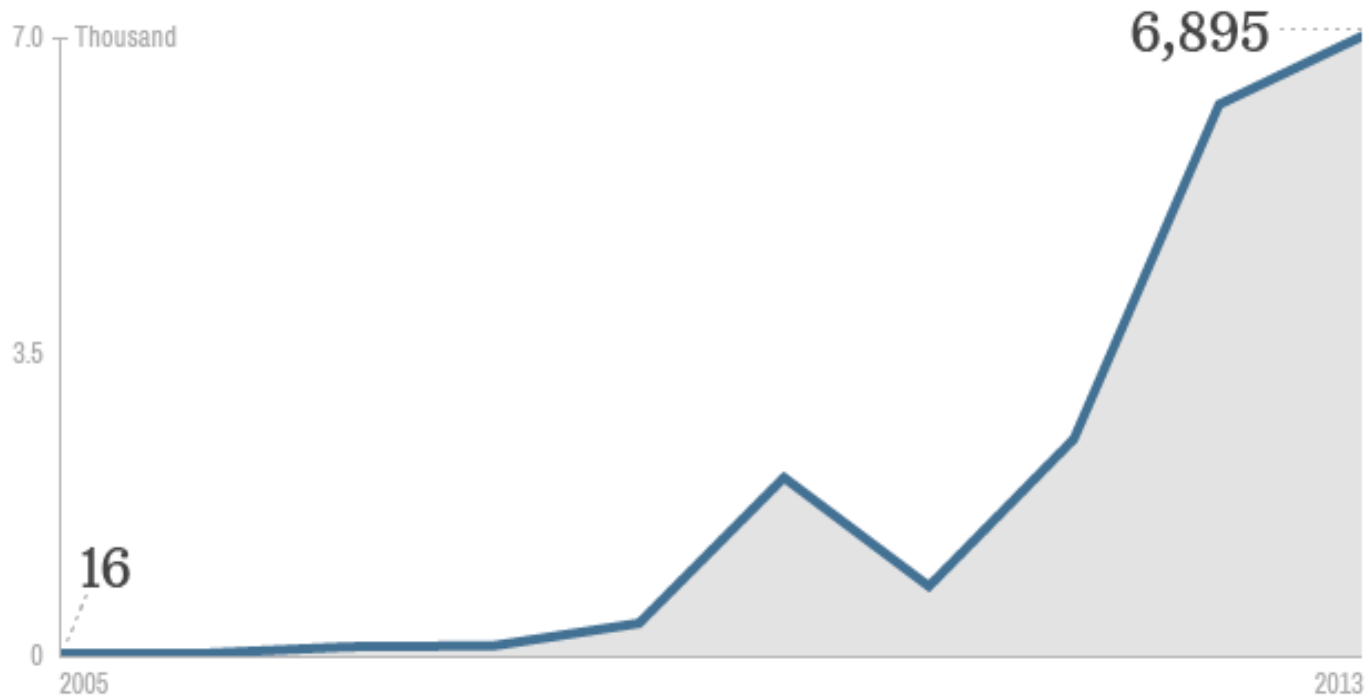
6,895 EB5 visas in 2013: 64% of Chinese millionaires plan to leave China and 1/3 of the super rich (those with more than \$16,000,000) have already emigrated.

2013年6,895 份EB5签证：64%的中国百万富豪计划移民，三分之一的超级富豪（资产超过1600万美元）已经移民。

Over 3,000,000 Chinese in the USA.
在美国中国人超过三百万。

Growth of EB5 applications EB5申请的增长

EB-5 U.S visas issued to the Chinese



NOTE: FIGURES DO NOT INCLUDE VISAS ISSUED TO RESIDENTS OF HONG KONG OR TAIWAN; SOURCE: U.S. STATE DEPARTMENT





Department of the Treasury
Internal Revenue Service



Tax rates - Single Filing Status

稅率 - 單一申報情況

Ordinary Income Tax Rates:

一般的所得稅稅率：

10% on taxable income (可稅收入) from \$0 to \$9,075, plus

15% on taxable income over \$9,075 to \$36,900, plus

25% on taxable income over \$36,900 to \$89,350, plus

28% on taxable income over \$89,350 to \$186,350, plus

33% on taxable income over \$186,350 to \$405,100, plus

35% on taxable income over \$405,100 to \$406,750, plus

39.6% on taxable income over \$406,750.



Tax rates – Individual

税率 – 个人

➤ Capital Gains:

资本收入:

➤ Long Term (held over one year): 20% 长期收入（持有超过1年）：20%

➤ Short Term: normal marginal tax rates, maximum 39.6%

➤ 短期收入：普通的边际税率，最高39.6%

➤ Dividend: 39.6% unless qualified (20%)

股息：39.6% 除非满足（20%）

➤ Interest: normal marginal tax rates

利息：普通边际税率

➤ 3.8% net investment income surtax applies to some taxpayers if adjusted gross income exceeds certain thresholds (**\$150,000 and above for Married Filing Separately**)

➤ 3.8%净投资收入附加税，适用于一些纳税人其相应总收入超过了特定的阈值（在夫妻分开申报的情况下，15万美元或以上）

➤ Medicare surtax of 0.9% on wages or net-self employment income above certain thresholds (\$150,000 and above for Married Filing Separately)

➤ 医保附加税为工资的0.9%或者净自我雇佣收入超过了特定的阈值（在夫妻分开申报的情况下，15万美元或以上）



Tax rates – Corporation

税率 – 公司

- Corporate tax rate: 35%
- 企业所得税税率：35%
- LLC and S-Corp: passthrough: taxed like a partnership
- 有限责任公司和小公司：转移：税率类似于合伙



Status – Individual

身份 – 个人

➤ Citizen

公民

➤ Permanent Resident (Green Card)

永久居住者（绿卡）

➤ Resident Alien

外籍居住者

➤ Non Resident Alien ("Foreigner")

外籍非居住者（外国人）

Foreign Investor

外国投资者

Non Resident Alien = A non U.S. individual who is NOT a Resident Alien i.e., she does not reside in the United States.

外籍非居住者 = 一个非居住在美国的非美国籍个人，也就是其不在美国居住

Resident for Income Tax Purposes:

所得税适用的居住者：

- Green Card: Lawful Permanent Resident
- 绿卡：合法的永久居住者
- Substantial Presence Test
- 实质性存在测试
- Voluntary Election
- 自愿选举

Foreign Corporation = any corporation that is not formed in the United States or under the laws of the United States

外国公司=任何不在美国成立的公司或者不在美国法律的管制范围之内
的公司



Substantial Presence Test

实质性存在测试

Under the Substantial Presence Test a foreign citizen or national will be considered a U.S. tax resident if:

在实质性存在测试中一个外国公民或者国民会被考虑成一个美国的纳税居民，如果

- He is present in the USA for at least 31 days during the calendar year; and
- 其在一年中有至少31天在美国境内
- 183 days during the 3-year period that includes the current year and the 2 years immediately before that, counting:
 - 并且3年中有183天在美国境内这3年包括今年以及紧接着今年的前两年，计算：
 - All the days he was present in the current year, and
 - 今年所有其在美国境内的日子
 - 1/3 of the days he was present in the first year before the current year, and
 - 去年其在美国境内的日子取三分之一
 - 1/6 of the days he was present in the second year before the current year.
 - 前年其在美国境内的日子取六分之一

Substantial Presence Test (2)

实质性存在测试 (2)

Example:

Yuhong Wang was physically present in the United States 120 days in each of the years 2011, 2012, and 2013. To determine if he meets the substantial presence test for 2013, count the full 120 days of presence in 2013, 40 days in 2012 (1/3 of 120), and 20 days in 2011 (1/6 of 120). Since the total for the 3-year period is 180 days, he is not considered a resident under the substantial presence test for 2013.

示例:

王某在2011、2012和2013年中，每年在美国实际存在120天。在判断其在2013年是否满足实质性存在测试时，首先要先计入2013年居住的120天，2012年计入40天（ $120 \times 1/3$ ），2011年计入20天，由于三年间全部计入的时间为180天，因此，他在2013年的实质性测试下不会被认定为是一位居民。



Substantial Presence Test – Exemptions

实质性存在测试 – 豁免

Exempt Individual

豁免个人

Do not count days for which the foreign citizen is an exempt individual. The term "exempt individual" does not refer to someone exempt from U.S. tax, but to anyone in the following categories who is exempt from counting days of presence in the U.S.:

当一个外国公民是豁免个人时，其不需要被计算日期。“豁免个人”这个术语并不意味着那个人将不需要缴税，而是任何一个在下列分类中的人都将豁免计算在美国境内的日期：

Substantial Presence Test – Exemptions (2)

实质性存在测试 – 豁免 (2)

- An individual temporarily present in the United States as a foreign government-related individual;
• 一个作为外国政府关系人而临时在美国境内的人
- A teacher or trainee temporarily present in the United States under a "J " or "Q " visa, who substantially complies with the requirements of the visa;
• 一个教师或者受训人员暂时在美国境内，其持有且实质上满足“J”或者“Q”签证的要求。
- A student temporarily present in the United States under an "F, " "J, " "M, " or "Q " visa, who substantially complies with the requirements of the visa; and
• 一个学生暂时在美国境内，其持有且实质上满足“F” “J” “M” 或者“Q” 签证的要求
- A professional athlete temporarily in the United States to compete in a charitable sports event.
• 一个专业运动员暂时在美国境内为了完成一个慈善运动活动



Substantial Presence Test – Exemptions (3)

实质性存在测试 – 豁免 (3)

Even if you meet the substantial presence test, you can still be treated as a nonresident alien if you:

即便你受到了实质性存在测试，你也可以仍然被认为是一个外国人非居住者，如果你：

- ✓ Are present in the United States for less than 183 days during the year;
- ✓ 一年中在美国境内不超过183天
- ✓ Maintain a tax home in a foreign country during the year; and
- ✓ 这一年中维持着一个纳税住所在国外
- ✓ Have a closer connection during the year to that same foreign country.
- ✓ 在这一年中与此外国保持着更紧密的联系

Substantial Presence Test – Exemptions (4)

实质性存在测试 – 豁免 (4)

For determining whether you have a closer connection to a foreign country, your tax home must be in existence for the entire current year, and must be located in the same foreign country for which you are claiming to have a closer connection.

决定你是否与外国保持着一个更紧密的联系的条件的条件是，你的纳税住所必须存在于这个外国一整年，而且此住所必须位于那一个你声称有更紧密关系的国家境内。



Substantial Presence Test – Exemptions (5)

实质性存在测试 – 豁免 (5)

In determining whether you have maintained more significant contacts with the foreign country than with the United States, the facts and circumstances to be considered include, but are not limited to, the following:

在决定你是否与外国保持着一个比美国更加重要的联系的时候，包括但不限于以下的事实和情况将被列入考虑范围：

- The country of residence you designate on forms and documents;
- 你在表格以及文件上指出的居住国
- The types of official forms and documents you file, such as Form W-9 or W-8BEN; and
- 你填写的官方表格以及文件的类型，比如W-9表格或者W8BEN表格
- The location of:
 - 以下内容的所在地：
 - Your permanent home,
 - 你的永久住所



Substantial Presence Test – Exemptions (6)

实质性存在测试 – 豁免 (6)

- Your family,
- 你的家庭
- Your personal belongings, such as cars, furniture, clothing, and jewelry,
- 你的个人物品，例如车，家具，衣服，以及珠宝
- Your current social, political, cultural, or religious affiliations,
- 你现在的社交。政治，文化或者宗教从属
- Your business activities (other than those that constitute your tax home),
- 你的商业行为（除了包括在你纳税住所之内的）
- The jurisdiction in which you hold a driver's license,
- 你驾照的管辖区域

Substantial Presence Test – Exemptions (7)

实质性存在测试 – 豁免 (7)

- The jurisdiction in which you vote, and
- 你投票的管辖区域
- Charitable organizations to which you contribute.
- 你贡献的慈善组织

Note: It does not matter whether your permanent home is a house, an apartment, or a furnished room. It also does not matter whether you rent or own it. It is important, however, that your home be available at all times, continuously, and not solely for short stays.

注意：你的永久居所是一个别墅，一个公寓还是一个有家具的房间并不重要。同样，你拥有它或者是租用它也不重要。然而，重要的是，你的居所是一直持续可用的，而不仅仅是短期的。

Substantial Presence Test – Exemptions (8)

实质性存在测试 – 豁免 (8)

You can not claim you have a closer connection to a foreign country if:

你不能宣称你与外国保持着一个更加紧密的联系，如果：

- You have a green card application pending;
- 你的绿卡申请正在等待批准
- Have started the process of applying for a green card; or
- 你已经开始了申请绿卡的程序，或者
- Hold a valid green card.
- 已经持有有效绿卡

Dual Status Aliens

双重身份外国人

You are a dual status alien when you have been both a U.S. resident alien and a nonresident alien in the same tax year.

当你在一个纳税年度中同时是美国居住者外国人和非居住者外国人的时候你就是一个双重身份外国人

In determining your U.S. income tax liability for a dual-status tax year, different rules apply for the part of the year you are a resident of the United States and the part of the year you are a nonresident.

在一个双重身份纳税年度中，不同的规定将适用于你的美国居住者部分以及你的美国非居住者部分，以决定你的美国所得税债务

The most common dual-status tax years are the years of arrival and departure.

最常见双重身份纳税年度是入境和离境的年度

Dual Status Aliens (2)

双重身份外国人 (2)

For The Part of the Year You are a U.S. Resident Alien

For the part of the year you are a U.S. resident alien, you are taxed on income from all sources. Income from sources outside the United States is taxable if you receive it while you are a resident alien.

在这个年度中你的美国居住者外国人部分，你的所有收入来源都会被课税。你来自美国以外的收入也会被课税，如果你接受的时候是一个居住者外国人。

For The Part of The Year You are a Nonresident Alien

For the part of the year you are a nonresident alien, you are taxed on income from U.S. sources only.

在这个年度中你的美国非居住者外国人部分，你仅有美国来源的收入将被课税。

Foreign Investor – Subject to Taxation

外国投资者 – 课税对象

A Nonresident Alien who invests in the United States is subject to the following U.S. federal taxes:

一个投资美国的非居住者外国人是以下美国联邦税的课税对象：

1. Income Taxation - United States source income

1. 所得税 – 美国来源收入

2. Estate Tax - United States Situs assets only (includes real estate)

2. 遗产税 – 仅适用于位于美国的资产（包括不动产）

3. Gift Tax - real and tangible personal property with a United States situs

3. 赠与税 - 位于美国的个人不动产和有形资产

Two sources of Income Taxation

两种所得税来源

A nonresident alien's income that is subject to U.S. income tax must generally be divided into two categories:

一个非居住者外国人的收入被作为美国所得税的对象一般被分为两种类型：

1. Income that is Effectively Connected with a trade or business in the United States including compensation for services performed in the United States. Effectively Connected Income, after allowable deductions, is taxed at graduated rates. These are the same rates that apply to U.S. citizens and residents.

1. 此收入与美国境内的交易或者商业有实际联系，包括美国境内服务的补偿。在准予扣除数之后的实际相关收入，将被以渐进税率课税。这与适用于美国公民或者居住者的税率一致。

Two sources of Income Taxation (2)

两种所得税来源 (2)

2. Investment and other passive income: certain U.S. source income that is Fixed, Determinable, Annual, or Periodical (FDAP) and not connected with a U.S. trade of business. FDAP income is taxed at a flat 30% (or lower treaty rate, if qualify, e.g., dividend, royalties and interest withholding rate under the U.S.A/China Income Tax Treaty is 10%) and no deductions are allowed against such income.

2. 投资和其他消极收入：特定美国来源的固定、可审定、年度或定期性且不与美国商业交易相关的收入。FDAP收入将被以30%定比率课税（或者更低的协定税率，比如在中美所得税协定之下，股息，特许权使用费以及利息的所得税率是10%）且没有准予扣除数。

Income from a U.S. rental property is NOT treated as income from a U.S. trade of business unless a special election is made. 从美国出租财产中所得的收入不被认为是从美国的商业交易中所得的收入，除非特别选举。

What is US Source

什么是美国来源

As a nonresident alien, you are subject to U.S. tax only on income from U.S. sources which generally includes the following:

作为一个非居住者外国人，你仅有美国来源的收入被课税，这一般包括以下内容：

1.Compensation for personal services performed in the United States regardless of the location of the payor;

1.在美国境内服务的补偿，不论支付者的所在地

2.Rents and royalties from leased or licensed property located or used in the United States;

2.位于美国境内或者在美国境内使用的租借的或者许可使用的财产的租金和版税

3.Real Property Income and Gain: Income and gain from the rental or sale of real estate located in the United States;

3.不动产收入和利得：来源于位于美国境内的不动产的租借或者销售的收入和利的



What is US Source (2)

什么是美国来源 (2)

4.Sale of Personal Property you have a tax home in the United States;

4.销售动产，你在美国有纳税住所

5.Interest income: interest paid by a resident of the United States constitutes U.S. source income, while interest paid by foreign residents is generally foreign-source income.

5.利息收入：由美国居住者支付的利息构成美国来源收入，而由外国居住者支付的利息收入则一般为外国来源收入

6.Dividends paid by U.S. corporations;

6.美国公司支付的股息

7.Alimony paid by U.S. residents; and

7.由美国居住者支付的赡养费，以及

8.U.S. Social Security benefits

8. 美国的社会保障福利



What is US Source (3)

什么是美国来源 (3)

Deferral of income does not change its nature: If you receive a bonus in 2014 for services that you performed in the United States in 2013, that 2014 bonus will still be treated as U.S. source business income even if you never returned to the United States in 2014.

延迟收入并不会改变其性质：如果你在2014年收到一笔奖金因为你2013年在美国做的服务，那么这个2014年的奖金仍然被认为是美国来源的商业收入，即使你2014年从来没有返回过美国。

Income from trading in investments such as shares, securities or commodities in the United States for a nonresident alien's own account is not considered to be U.S. business income, unless the nonresident alien is a dealer. This rule applies no matter how much trading activity the nonresident alien has.

来自于投资交易，例如在美国的股票，有价证券或者商品期货，的收入，在给一个非居住外国人自己的账户的情况下，不被认为是美国的商业收入，除非这个非居住外国人是一个经销商。不管非居住者外国人有多少交易活动，此项规定都是适用的。



Real Estate

不动产

Income from US Real Estate held for investment:

来源于为了投资的美国不动产的收入

- Passive income and taxed at flat rate of 30% unless lower rate applies under tax treaty

And no deductions allowed;

- Election to treat the income as being from a U.S. trade or business and deduction allowed with net income taxable at the graduated rate schedules.

Applies to all properties; no election to apply property-by-property



Estate & Gift Tax

遗产与赠与税

- Applies to U.S. citizens and individuals domiciled in the United States.
- 适用于美国公民以及定居在美国的个人
- Domicile is not residency
- 定居并不是正在居住
- Taxable value of the estate is the value of the property minus liabilities and bequests to U.S. charities
- 应纳税的遗产价值是财产的价值减去负债以及向美国慈善机构的遗赠
- 40% Estate and Gift tax over US\$ 5,340,000 (2014)
- 40%的遗产和赠与税超过了5340000美元（2014年）

Estate & Gift Tax (2)

遗产与赠与税 (2)

- Non-Domiciled Foreign Citizens:
 - ✓ Estate tax on tangible property located in the United States and intangible U.S. property such as shares of U.S. companies
 - ✓ 40% Estate tax above US\$60,000

没有定居的外国公民：

位于美国境内的有形资产以及美国的无形资产，例如美国公司的股份收遗产税

40%的遗产税超过了60000美元

Tax returns

纳税申报

- New York State and New York City
- 纽约州和纽约市

- Many states do not honor U.S. tax treaties
- 不履行美国纳税条约的州

- Different definitions of residency
- 居住定义不同

Filing Requirements

申报要求

- ❖ 1040 NR on or before April 15 of the following year
在4月15日或者之前提交1040NR
- ❖ Extension through October 15
延长至10月15日
- ❖ Only extension of time to file, not to pay
仅延长期限去申报而不是去支付
- ❖ Possible extension through December 15
可能延长至12月15日

ID Number 身份证号码

- Social Security Number (SSN)
- 社会安全序号 (SSN)

- Individual Taxpayer Identification Number (ITIN)
- 个别纳税人识别号码 (ITIN)

U.S. TAX BACKGROUND - REPORTING

美国税务背景知识- 报税

- U.S. tax payers (Citizens, Green Card Holders, certain Visa Holders) are required to report worldwide income regardless where they live.

不论在哪里居住，美国纳税人（公民、绿卡持有人、某些签证持有人）应当申报全球收入。

- In addition, U.S. taxpayers are required to file information returns such as:

此外，美国纳税人还应当申报如下的信息：

- FBAR
- Form 8938 : Foreign Assets （国外资产）
- Form 5471: Foreign Corporation （国外公司）
- Form 3520: Foreign Trust and Gifts （国外信托和赠与）

FBAR - Who Must File an FBAR

FBAR – 谁必须申报FBAR

United States persons are required to file an FBAR if:

“美国人”应当申报FBAR，如果：

- The United States person had a financial interest in or signature authority over at least one financial account located outside of the United States;

“美国人”在至少一个美国之外的金融账户有经济利益或
签字权； and 并且

- The aggregate value of all foreign financial accounts exceeded \$10,000 at any time during the calendar year to be reported, e.g., \$2,000+\$3,000+\$6,000.

所有外国金融账户的总值在申报年度内的任何时间超过
10,000美元，例如\$2,000+\$3,000+\$6,000

FBAR Penalties

FBAR处罚

Failure to properly report the foreign account on Schedule B of Form 1040 and to file an FBAR may warrant civil and criminal sanctions. The two primary civil FBAR penalties are referred to as “non-willful” and “willful.”

没有在1040B表上正确申报外国账户及没有申报FBAR可能导致民事和刑事处罚。FBAR的两类主要民事处罚分为：“非故意”和“故意”；

The non-willful penalty is up to \$10,000 for each negligent violation of the FBAR filing or record-keeping requirements, and it may be waived if the violation was “due to reasonable cause” and the amount of the transaction or the balance in the account at the time of the transaction was properly reported.

对每项违反FBAR申报或记录要求的疏忽，“非故意”类处罚为可高达10,000美元的罚款，也可能免于处罚，如果违规行为是“由于合理的原因”并且在交易时交易的金额或账户内的余额已申报。

FBAR Penalties(2)

FBAR处罚(2)

Willfully failing to file an FBAR can warrant both criminal sanctions and civil penalties equivalent to the greater of \$100,000 or 50 percent of the high balance in an unreported foreign account per year — for each year (maximum 6) for which an FBAR was not filled.

“故意”不申报FBAR可能导致刑事和民事处罚，民事处罚相当于100,000美元或未申报外国账户每年最高余额的50%（以上二者中数值大者）——对未申报FBAR的每一年（最高6年）

Willfulness is generally determined by “a voluntary, intentional violation of a known legal duty.” The IRS' Internal Revenue Manual provides that willfulness is demonstrated by the person's knowledge of the FBAR requirements or conscious choice to ignore coupled with his conscious choice not to comply with them.

“故意”一般定义为“自愿、有意违反已知法律责任”。IRS的内部手册规定，“故意”表现为，知道FBAR要求或有意识地选择忽略再加上有意识的选择不遵守FBAR规定。

Green Card consequences of non compliance

不合规对绿卡的后果

- Under the EB-5 process an applicant is granted “conditional permanent residence” for a two year period. At the end of the two year period assuming that the conditions of the visa have been met the applicant can become a permanent resident. For EB-5 visa holders, the failure to file FBAR’s could be asserted as a failure to comply with U.S. law and be a reason for denial of the Application to remove the two year condition to become a permanent resident
在EB-5过程中，申请人被授予两年期的“附条件永久居留”。两年期结束后，如果满足条件，申请人成为永久居民。对EB-5签证持有人，没有提交FBAR可能构成没有遵守美国法律，导致成为永久居民的申请被拒。
- Lawful permanent residents who have pled guilty to charges related to the filing of false tax returns that resulted in a loss to the government of more than \$10,000 have committed aggravated felonies involving fraud or deceit and are subject to deportation (Kawashima v. Holder)
合法永久居民对虚报纳税申报（导致政府超过\$10,000的税收损失）的指控认罪，被判犯有涉及欺诈或欺骗的加重重罪，受到驱逐出境的处罚 (Kawashima v. Holder)。

UBS Settlement 19/08/2009

2009年8月19日瑞银和解

- 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.
大家期望，该里程碑性的和解将对IRS打击美国人通过离岸账户的逃税行为的努力给出一个解读；
- UBS handed over 4450 names of U.S. clients to the IRS.
瑞银向IRS交出超过4450名美国客户的姓名；
- UBS paid fine of \$780,000,000
瑞银支付了7亿8千万美元的罚款

Voluntary Disclosure – Why: 自愿披露- 为什么

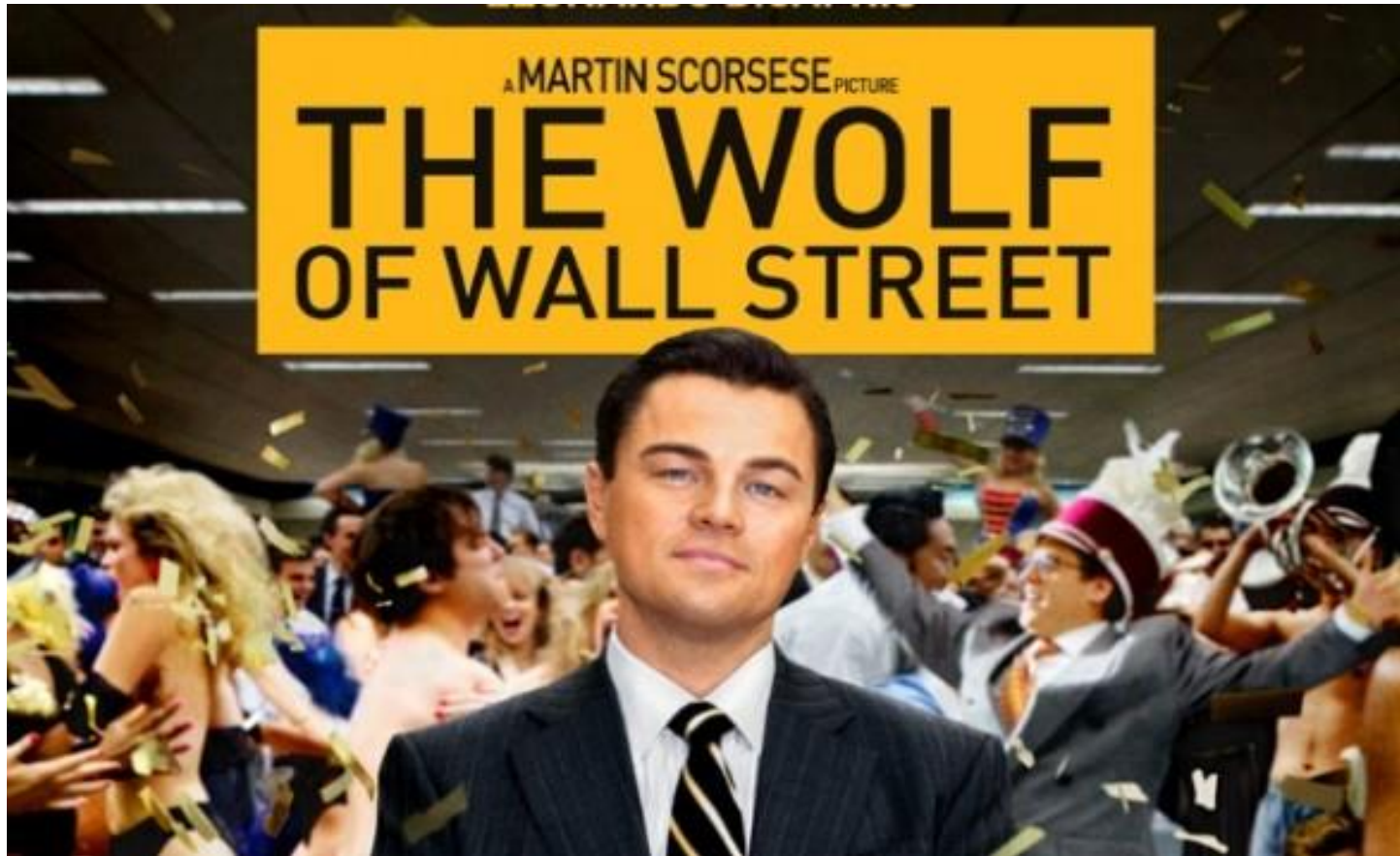
- Avoid severe civil and criminal penalties 避免严重的民事和刑事处罚
- The ability of a U.S. taxpayer to maintain a “secret” foreign financial account is fast becoming nonexistent. 美国纳税人保存“秘密”外国金融账户的能力正急速趋于消失。
- Foreign account information is flowing into the IRS through : 外国账户信息通过以下渠道流向IRS:
 - The worldwide deployment of civil and criminal tax enforcement resources;
民事和刑事税收执法资源的全球范围配置;
 - The development of relationships with corresponding taxing agencies in other countries;
与其他国家对对应税务机关关系的发展;
 - Treaty-based information exchanges; 条约基础的信息交换;
 - The use of the civil summons process to seek the identification of account holders in foreign institutions operating within the jurisdiction of the United States;
对在美国辖区内经营的外国机构使用民事传票, 寻求账户持有人的身份信息;

Voluntary Disclosure – Why: (2)

自愿披露- 为什么(2)

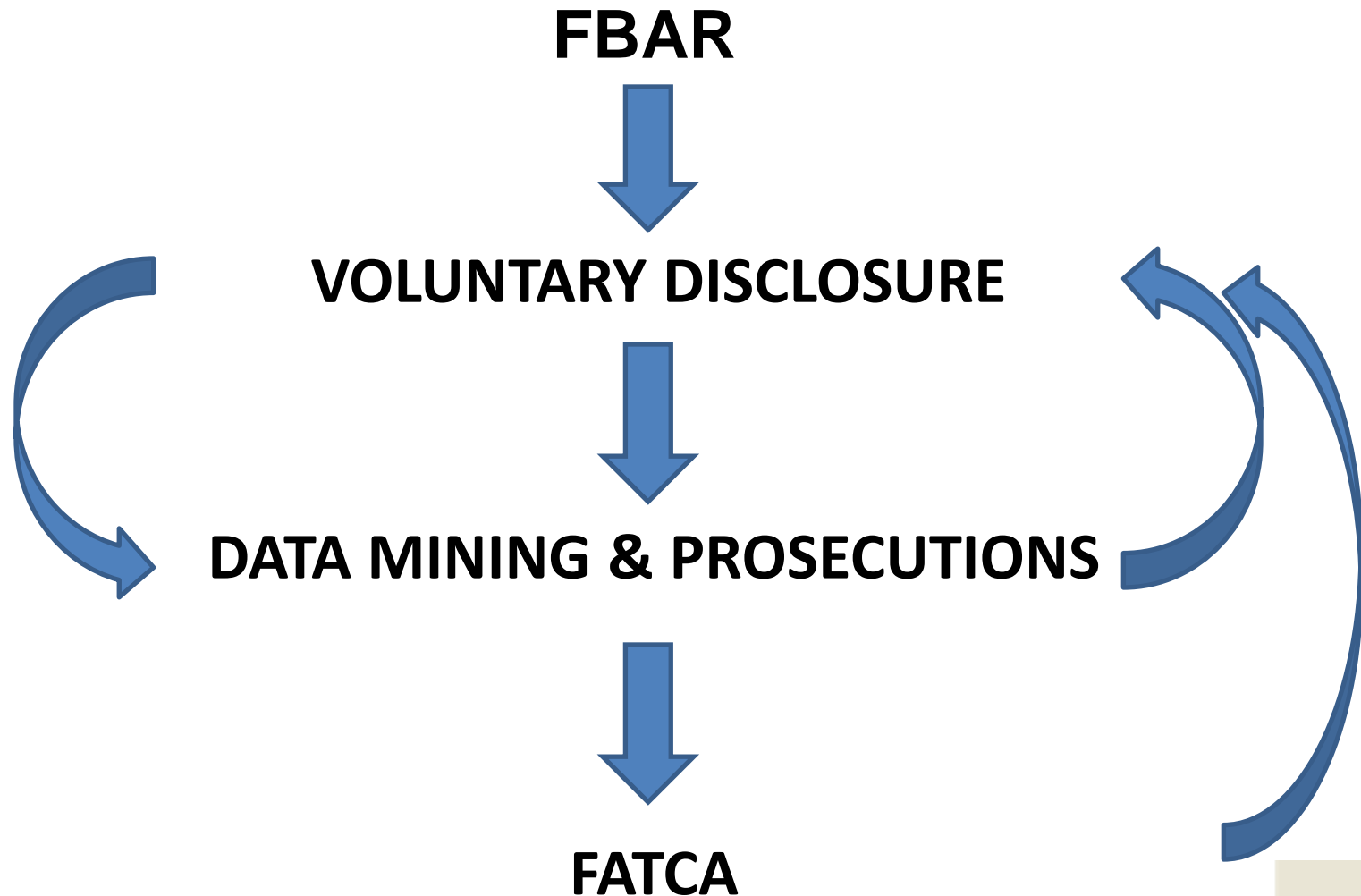
- Indictments and investigations of foreign institutions and their bankers such as UBS (\$780 Million fine) and Credit Suisse in Switzerland (\$2.6 Billion fine), HSBC in India and Singapore and branches of foreign banks in Switzerland; 起诉和调查外国机构及银行，如UBS（7亿8千万美元罚金）和瑞银（26亿美元罚金），印度及新加坡HSBC，及瑞士外国银行分支机构；
- The receipt of information from whistleblowers and informants; 从告密和举报人获取信息；
- Cooperation from taxpayers, advisers, foreign banks, and bankers who have been criminally prosecuted; 被刑事起诉的纳税人、顾问人员、外国银行和银行家的配合；
- Cooperation from taxpayers from OVDP participants who identified their banks, bankers, advisers, and others; and 参加自愿披露纳税人配合指认他们的银行、银行家、顾问和其他方；以及
- FATCA regulations

Criminal prosecution of Swiss bankers 刑事起诉瑞士银行家



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

Voluntary Disclosure – WHY: 自愿披露- 为什么



FATCA

海外帐户纳税法案

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.

《海外帐户纳税法案》或简称FATCA，基于《恢复就业法案》，于2010年3月18日立法。

FATCA for individuals: FATCA针对个人

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.

拥有价值超过五万美元的外国账户或其他特定金融资产的“美国人”，必须在提交美国纳税申报时，申报8938表；对海外居民适用更高的申报门槛值。

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还要求纳税人申报不在保管账户持有的金融资产，例如产生收入的不动产，实物股权或债券证书。

FATCA(2)

海外帐户纳税法案(2)

FATCA for corporations: FATCA针对公司

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 new 30% US withholding tax with respect to payments of US source income such as interest, dividends, rents, salaries and gross proceeds from the sale or disposition of US stocks and securities.

FATCA要求非美国金融机构（“FFIs”）和非美国非金融实体（“NFFEs”）指认与披露他们的美国账户持有人，或就支付美国来源的收入，如利息、红利、租金、工资和销售或处置美国股票及证券的对价款，接受一项新的30%美国预提税。

Banks 银行

FATCA(3)

海外帐户纳税法案(3)

Hedge Funds / Investment Companies 对冲基金/投资公司

Pension Funds 养老基金

Insurance Companies 保险公司

In addition to complying with the reporting and diligence procedures, a participating FFI is required to withhold 30% of any "passthru" payments that it makes to "recalcitrant" account holders or nonparticipating FFIs.

除了遵守申报和尽职程序，参与的FFI应当对支付给“顽抗”账户持有人或未参与FFIs的任何“通过”支付预提30%税款。

FATCA(4)

海外帐户纳税法案(4)

FATCA for corporations: FATCA针对公司

Full implementation in 2018, including:
于2018年全面实施，包括

- ✓ Registration with the IRS for Global Intermediary Identification Number
向IRS注册全球中介识别号码
- ✓ Identification of accounts for existing customers
指认现存客户的账户
- ✓ Revised account opening procedures to identify new US accounts
修改开户程序以指认新的美国账户
- ✓ Withholding on non participating banks and institutions
对未参与银行和机构的预提
- ✓ Reporting of compliant and non compliant accounts
报告合规及未合规账户



FATCA(5)

海外帐户纳税法案(5)

For participating FFIs, investments will be needed in four key areas:
参与的FFIs需要在四个关键方面进行投入:

Documentation: capturing process changes and analyzing the customer base.

文件: 捕捉过程变化和分析客户群

Withholding: building systems for withholding on recalcitrant account holders.

预提: 对“顽抗”账户持有人建立预提系统。

Reporting: building and sustaining an annual reporting model for all US individuals to cover account balances and gross payments.

申报: 对美国个人, 建立并维护一个年报系统, 涵盖账户余额和支付总额。

FATCA(6)

海外帐户纳税法案(6)

Legal: review all documentation like operating and lending agreements

法务：审核所有文件，如经营和借款协议

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.

美国国会税收联合委员会估计，FATCA在未来十年期间每年将增加7亿9千2百万美元的税收。

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.

对私有行业的成本预计为每年80亿美元，大约是预计增加税收的十倍。英国政府预估单对英国企业，在前五年将有10亿到20亿英镑的成本。

FATCA – Foreign Financial Institutions

FATCA - 外国金融机构

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

外国金融机构是一种金融实体，其：

- Accept deposits in the ordinary course of a banking or similar business;
- 在日常的银行业务或者其他类似业务中接收存款；
- Hold financial assets for the account of others as a substantial portion of their business;
- 将为他人账户持有金融资产作为其业务的实质部分；
- 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 assets³;
- 是外国投资实体，包括为客户进行投资以及实行资产管理活动的实体，被其他外国金融机构管理且其总收入主要贡献于金融资产的投资，再投资或者贸易的实体，以及关于金融资产的投资，再投资或者贸易的投资战略的特定集合投资工具的实体；

FATCA – Foreign Financial Institutions(2)

FATCA - 外国金融机构(2)

- Are insurance companies that issue investment-like contracts or annuity contracts; or

是签订类投资合同或者年金合同的保险公司；

- Are certain holding companies or treasury centers that are members of corporate groups that include FFIs or that are formed by certain investment vehicles.

是作为包含外国金融机构或者由特定投资工具形成的公司集团的成员的特定控股公司或者财政中心。

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.

外国金融机构的定义非常广泛，其包括很多并不典型被认为是金融机构的实体，比如信托公司，投资基金，对冲基金，特定的家庭投资工具，国外支线基金以及保险公司。



FATCA – Foreign Non Financial Institutions

FATCA -外国(非)金融机构

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

非外国金融机构（NFFE）为不是金融机构的任何外国实体。

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

外国实体为非“美国法人”的实体。

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.

一个非外国金融机构一般来说并不被要求遵守适用于外国金融机构的注意和报告义务。然而在某些情况下，非外国金融机构可能会被要求对在这个金融机构拥有账户或实际利害关系的美国人的身份向预提税款代理人出具相关证明。

FATCA - Financial Account

FATCA - 金融账户

- Any deposit account maintained by a financial institution
金融机构保持的任何存款账户
- Any custodial account maintained by a financial institution
金融机构保持的任何保管账户
- Any cash value insurance contract and any annuity contract issued or maintained by a financial institution
- 金融机构签发或保持的任何现金价值的保险合同和任何年金合同
- 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.

金融账户的一些例外，如（i）某些存款账户，（ii）人寿保险合同，（iii）由豁免受益所有人持有的账户。

FATCA – Withholding

FATCA – 预提

New Account Opening Procedures. Withholding agents under FATCA generally will be required to implement the new FATCA account opening procedures by July 1, 2014.

新的开户程序。按照FATCA进行预提的代理人将被要求在2014年7月1日实施新的FATCA开户程序

Due Diligence on Pre-Existing Obligations. FATCA establishes that a "preexisting obligation" is an obligation that is outstanding on June 30, 2014.

预先存在义务的尽职责任。FATCA明确，预先存在义务是指在2014年6月30日已存在的义务。

First FATCA Information Report. The first deadline for FFIs to file FATCA information reports with the IRS is March 31, 2015 and will cover tax year 2014.

第一份FATCA信息报告。FFIs向IRS提交第一份FATCA信息报告的期限是2015年3月31日，将涵盖2014年税务年度。

FATCA – Withholding(2)

FATCA – 预提(2)

Payments of FDAP income will be subject to FATCA withholding from July 1, 2014.

固定、可审定、年度或定期性（FDAP）收入的支付将从2014年7月1日开始成为FATCA预提的对象

Gross proceeds from the disposition of property that can produce US-source interest and dividends will only be subject to FATCA withholding for dispositions occurring after December 31, 2016.

对于可以产生美国源头利益及红利的财产处置的总货价收入，只有财产处置在2016年12月31号之后发生，才是FATCA预提的对象。

FATCA will not apply, however, with respect to FDAP income derived from, and gross proceeds from a disposition of, any "**grandfathered obligations**"

然而，FATCA将不适用于，有关源自任何“祖父条款”的FDAP收入，以及基于任何“祖父条款”的财产处置所得的总货价收入。

FATCA – Reporting

FATCA - 报告

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:

FATCA要求FFI代表美国国税局追踪并且确定所有美国资金。这包括查明并向美国国税局披露：

- Name, Address and Tax Identification Number (TIN) of each account holder that is a U.S. person;
- 每一个是美国人的帐户持有者的名字，地址，税标识号
- Name, Address and TIN of each substantial U.S. owner of any account held by a U.S. owned foreign entity;
- 任何一个美资外国实体的账户的实质美国所有人的名字，地址，税标识号
- Account number;
- 帐号

FATCA – Reporting(2)

FATCA - 报告(2)

- Account balance or value; and
- 账户结余和价值； 以及
- Gross receipts and withdrawals/payments from the account.

账户中的收入总额以及提款/付款

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.

外国实体的实质美国所有人包括直接或间接拥有公司，合伙或者信托超过10%受益权的任何美国人

FATCA - PASSTHRU PAYMENTS

FATCA – “通过” 款项

A portion of any payment made by a FFI will be treated as a passthru payment, and therefore subject to 30% withholding, in proportion to the ratio of the FFI's U.S. assets to its total assets (the passthru percentage).

FFI支付的任何款项的一部分将被视为“通过”款项，因此应当预提30%税款，按照FFI的美国资产与其总资产的比例（“通过”百分比）。

As the International Swaps and Derivatives Association (ISDA) notes:

国际掉期业务及衍生投资工具协会（ISDA）指出

FATCA - PASSTHRU PAYMENTS(2)

FATCA – “通过” 款项(2)

“the passthru payment rules could potentially impose US withholding tax on an interest payment made by a British Bank’s London office to a German Bank’s Frankfurt office if the German Bank is a nonparticipating FFI and the British Bank is a participating FFI, provided the British Bank holds any US assets in any of its global offices. The FATCA withholding rate in such case is 30% times the passthru payment percentage of the British Bank. The passthru payment percentage is expected to be calculated at least annually by dividing an FFI’s Total US Assets by the FFI’s Total Assets (in each case determined on a global basis).”

“通过款项规则可能对由英国银行伦敦办公室向德国银行法兰克福办公室支付的利息款项强征美国预提税款，如果德国银行是非参与FFI，而英国银行是参与FFI，假设英国银行在其任何全球办公室持有任何美国资产。在上述情况中，FATCA预提率是30%乘以英国银行的“通过”百分比。

“通过”百分比将至少每年计算，以FFI的美国资产除以FFI的总资产（在每一情况中，都以全球基数确定）。

FATCA – CONTROVERSY

FATCA – 争议



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



FATCA – CONTROVERSY(2)

FATCA – 争议(2)

❑ Cost 成本

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

资本撤离。外国金融机构有强大的动机不投资美国资产，以避免30%的预提。

❑ 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.

外交关系。强迫外国金融机构和外国政府花自己的钱收集美国公民数据，并向IRS传输是有争议的。

FATCA – CONTROVERSY(3)

FATCA – 争议(3)

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

放弃公民。2014年的第一季度1001名，增长50%（Tina Turner），2013年2999名，2014年预计超过4000名。

□ **Workability:** Complexity and postponing of the implementation

可行性：复杂性和实施推迟。

FATCA – CONTROVERSY(4)

FATCA – 争议(4)

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

俄罗斯VTB银行放弃俄罗斯的美国纳税人客户

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.



FATCA – CONTROVERSY(5)

FATCA – 争议(5)

❑ Technology:

技术:

International Data Exchange System (IDES):

国际间数据交换系统 (IDES) :

FATCA data to flow on time but what about:

FATCA数据是按时流出的，但是关于:

- Encryption protocols?加密协议?
- Transmission securely?传输安全?
- Confidentiality?机密性?
- Use limited to tax issues?仅限税务问题使用?

FATCA – IGAs

FATCA – 政府间协议

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

美国财政部发布了政府间协议模板，有两种方式：

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.

方式1:合作国家的金融机构向合作国家的的税务机关报告美国账户的信息，再由合作国家的的税务机关向美国提供该信息。

FATCA – IGAs(2)

FATCA – 政府间协议(2)

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).

方式1包括了互惠版本(Model 1A)，即美国将于合作国家分享合作国家纳税人的信息，和非互惠版本(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.

方式2：合作国家金融机构直接向美国IRS报告，合作国家同意降低此类报告的司法障碍。

FATCA – IGAs(3)

FATCA – 政府间协议(3)

Jurisdictions that have signed agreements: 已签署协议的辖区

Model 1 IGA

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

Model 2 IGA

Austria, Bermuda, Chile, Japan, Switzerland

FATCA – IGAs(4)

FATCA – 政府间协议(4)

Jurisdictions that have reached agreements in substance: 已实质达成协议的辖区

Model 1 IGA

Azerbaijan, Bahamas, Brazil, British Virgin Islands, Bulgaria, Colombia, Croatia, Curaçao, Czech Republic, Cyprus, India, Indonesia, Israel, 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

FATCA – Nepal

FATCA – 尼泊尔

Katmandu.

加德满都

Issuing a circular on June 16, 2014, the Nepal Rastra Bank (the Nepali Central Bank) directed all Nepali banks and financial institutions to provide bank account information of US taxpayers living in or operating from Nepal to the Internal Revenue Service (IRS) of the United States

The Nepali central bank issued the instruction following enactment of the Foreign Account Tax Compliance Act (FATCA) 2010 in the US, which requires non-US financial institutions to report about income of US taxpayers worldwide. This means all financial institutions in Nepal must send bank account information on US taxpayers to the US government.

FATCA EFFECT
FATCA 效应



FATCA Effect(2)

FATCA 效应 (2)

U.K. Banks refuse to do business with Americans
英国 银行拒绝与美国人做生意

The Netherlands: Private wealth management firms ask
American account holders to leave

荷兰: 私人财富管理公司请美国账户持有人离开

Switzerland: Major banks close U.S. departments.

瑞士: 大银行关闭美国部门

FATCA Effect(3)

FATCA 效应 (3)

Other countries:其他国家

✓ U.S. persons preferred not to be directors in foreign companies.

倾向不选美国人为外国公司的董事

✓ accounts frozen or closed
冻结或关闭账户

✓ sale of securities portfolio
出售证券投资组合

✓ no release of money even after signing of W-9 statement and FATCA statement

尽管签署了W-9和FATCA声明书，仍不释放资

金

FATCA Effect - China

FATCA 效应 – 中国

South China Morning Post 南華早報

Monday, 12 May, 2014: Fatca dealt with, but clones of tax evasion law may emerge

2014年5月12日周一：FATCA已经妥善解决，但是相似的避税法案可能会出现

Since many Hong Kong-based financial firms and private banks are targeting wealthy mainlanders as clients, they could be severely affected if China introduces its own version of Fatca.

The implications for their reporting and compliance efforts would be even broader than in the case of Fatca, because of the numbers involved.

In March, China's deputy tax commissioner, Zhang Zhiyong, said the mainland needed to step up its international tax collection efforts and to take part in the international exchange of information to curb cross-border tax evasion.

The Hong Kong government may now need to turn its lobbying efforts, successful in the case of the US, towards Beijing for exemptions from a Chinese Fatca.



FATCA Effect - China(2)

FATCA 效应 – 中国(2)

Order of the PRC State Council No. 642 outlining the "Decision of the State Council on Amending the Measures for Reporting of Statistics on International Receipts and Payments".

国务院第642号令规划了“国务院关于修改《国际收支统计申报办法》的决定”的轮廓

Reporting requirements under Circular 642 are imposed on PRC Residents, as well as non-PRC residents carrying out economic activities within the PRC.

对于中国的居民以及在中国开展经济活动的非中国居民而言，国务院令642号下的报告义务是强制性的

WHO ARE PRC RESIDENTS: 谁是中国居民

- Individuals residing in the PRC for one year or more 在中国境内居留1年以上
- PRC nationals staying abroad for a period of less than one year;中国短期出国人员（在境外居留时间不满1年）
- PRC incorporated enterprises (including foreign-invested enterprises and foreign-invested

financial institutions);在中国境内依法成立的企业事业法人（含外商投资企业及外资金融机构）

FATCA Effect - China(3)

FATCA 效应 – 中国(3)

- Representative offices and branches of foreign legal persons (excluding the offices of international organizations, Embassies and Consulates); and 外国法人的代表办公室以及分支机构（排除国际组织，使领馆的办公室）
- PRC state authorities (including PRC Embassies and Consulates abroad), PRC organizations 中国国家权力机关（包括中国驻外使领馆），中国团体

WHAT:

- Economic transactions between PRC residents and non-PRC residents 在中国居民以及非中国居民之间的经济交易
- The status of foreign financial assets and liabilities of the PRC 外国金融资产的状态以及中国的负债情况

FATCA Effect - China - Circular 642

FATCA 效应-- 中国 – 642号

Non-PRC residents carrying out economic activities within the PRC:

在中国境内开展经济活动的非中国居民:

- Foreigners buying real estate in China?

在中国购买房地产的外国人?

- Foreigners investing in China?

在中国投资的外国人?

- Foreigners providing consulting services in China?

在中国提供咨询服务的外国人?

FATCA Effect: From FBAR to the OECD

FATCA 效应：从FBAR到经合组织

FBAR



VOLUNTARY DISCLOSURE



DATA MINING & PROSECUTIONS



FATCA



TAX INFORMATION EXCHANGE AGREEMENTS

Tax Information Exchange

税务信息交换

Bilateral: 双边

Double Taxation Agreements (DTA): 避免双重课税协议

- Clause in agreement to prevent double taxation 协议中条款避免双重课税
- OECD Model Convention OECD 范本
- 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.

OECD MODEL TAX CONVENTION ON INCOME AND CAPITAL

关于收入和资本的OECD税收协定范本

Article 26 EXCHANGE OF INFORMATION

第26条 信息交换

1. The competent authorities of the Contracting States shall exchange such information as is foreseeable relevant for carrying out the provisions of this Convention or to the administration or enforcement of the domestic laws concerning taxes of every kind and description imposed on behalf of the Contracting States, or of their political subdivisions or local authorities, insofar as the taxation there under is not contrary to the Convention. The exchange of information is not restricted by Articles 1 and 2.
2. Any information received under paragraph 1 by a Contracting State shall be treated as secret in the same manner as information obtained under the domestic laws of that State and shall be disclosed only to persons or authorities (including courts and administrative bodies) concerned with the assessment or collection of, the enforcement or prosecution in respect of, the determination of appeals in relation to the taxes referred to in paragraph 1, or the oversight of the above. Such persons or authorities shall use the information only for such purposes. They may disclose the information in public court proceedings or in judicial decisions.
3. In no case shall the provisions of paragraphs 1 and 2 be construed so as to impose on a Contracting State the obligation:
 - a) to carry out administrative measures at variance with the laws and administrative practice of that or of the other Contracting State;
 - b) to supply information which is not obtainable under the laws or in the normal course of the administration of that or of the other Contracting State;
 - c) to supply information which would disclose any trade, business, industrial, commercial or professional secret or trade process, or information the disclosure of which would be contrary to public policy (ordre public).
4. If information is requested by a Contracting State in accordance with this Article, the other Contracting State shall use its information gathering measures to obtain the requested information, even though that other State may not need such information for its own tax purposes. The obligation contained in the preceding sentence is subject to the limitations of paragraph 3 but in no case shall such limitations be construed to permit a Contracting State to decline to supply information solely because it has no domestic interest in such information.
5. In no case shall the provisions of paragraph 3 be construed to permit a Contracting State **to decline to supply information solely because the information is held by a bank**, other financial institution, nominee or person acting in an agency or a fiduciary capacity or because it relates to ownership interests in a person.

Tax Information Exchange

税务信息交换

Bilateral: 双边

- Tax Information Exchange Agreement (TIEA) 税收信息交换协议
 - 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 在刑事案件上的司法互助
 - some exclude tax matters
- U.S. Qualified Intermediary (QI) 具备美国资质的中间人
 - Foreign QI needs to report to the USA about U.S. persons investing in the U.S.A. through that QI

Tax Information Exchange

税务信息交换

Multilateral: 多边

- European Union's Savings Directive 欧盟储蓄指令
 - 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
 - 在税务事件上的行政互助协议
 - Counsel of Europe and OECD
 - More than 50 countries have signed
- European Union finance ministers meeting of September 13 and 14
- 九月13和14日的欧盟财政部长会谈
 - 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

税务信息交换

- G-20 meeting of September 5 and 6, 2013 2013年九月5和6日的G20峰会
 - 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 OECD的一般报告标准
 - 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

Automatic Exchange of Information

税务信息自动交换

Shift to an international standard on automatic exchange of tax information has been accelerated by FATCA

FATCA加速了税务信息自动交换的国际标准的转向

Automatic exchange of information involves the systematic and periodic transmission of “bulk” taxpayer information by the source country to the residence country concerning various categories of income (e.g. dividends, interest, royalties, salaries, pensions, etc).

It can provide timely information on non-compliance where tax has been evaded either on an investment return or the underlying capital sum even where tax administrations have had no previous indications of non-compliance.

Automatic Exchange of Information

税务信息自动交换

The information which is exchanged automatically is normally collected in the source country on a routine basis, generally through reporting of the payments by the payer (financial institution, employer, etc).

Automatic exchange can also be used to transmit other types of useful information such as changes of residence, the purchase or disposition of immovable property, value added tax refunds, etc.

Information may be transmitted electronically or by CD ROMs. If the CD ROMs are sent by mail, it must be done via an international registration system where a mail tracking function is in place.

Automatic Exchange of Information

税务信息自动交换

1. Payer or paying agent collects information from the taxpayer and/or generates information itself .

付款人或者付款人的代理人搜集纳税者的信息/或者其自己生成信息

2. Payer or paying agent reports information to the tax authorities.

付款人或者付款人的代理人向税务机关报告信息

3. Tax authorities consolidate information by country of residence.

税务机关以居住国为单位统一信息

4. Information is encrypted and bundles are sent to residence country tax authorities.

信息被加密，信息包被发送给居住国的税务机关

5. Information is received and decrypted.

信息被接收并解密

6. Residence country feeds relevant information into an automatic or manual matching process.

居住国将相关信息供给自动或者手动匹配过程

7. Residence country analyses the results and takes compliance action as appropriate.

居住国分析结果并视情况采取合规操作

Butterfly Effect

蝴蝶效应



Butterfly Effect 蝴蝶效应

FBAR



VOLUNTARY DISCLOSURE



DATA MINING & PROSECUTIONS



FATCA



TAX INFORMATION EXCHANGE AGREEMENTS

Butterfly Effect – FATCA as a new Global Standard

蝴蝶效应 – FATCA作为新的全球标准

How one small tax form is changing the world of International Taxation, Finance and Banking

小小的税表正如何改变国际税收、金融和银行界

- 100 Swiss banks sign agreement to hand over information to a third country
一百个瑞士银行签署协议向第三国交出信息
- Americans are persona non grata in the world of banking and company management
在银行和公司管理界，美国人成为不受欢迎的人
- Criminal prosecution in several countries because of data sharing
由于数据分享，在几个国家提起了刑事起诉
- FATCA has global effect from fund managers in Kuwait until banks in Greenland
从科威特的基金经理到格陵兰岛银行，FATCA的全球效应
- Tax havens no longer tax havens 税收天堂不再是税收天堂
- New industry providing FATCA services such as consultants, lawyers, accountants and software companies
提供FATCA服务的新产业，如顾问、律师、会计师和软件公司

From FBAR to Twice Cooked Pork (回鍋肉):

FBAR



FATCA



Investments in the U.S.A.



Shuanghui's \$7.1 billion takeover of pork processor Smithfield



回鍋肉



回鍋肉 a/k/a FATCA consequences for China

中国的FATCA结果

Corporations: 公司

- U.S. investments in China 美国在中国的投资
 - Signatory authority for a U.S. tax payer? 美国纳税人的签字权?
 - U.S. director? 美国董事
 - Registration and Reporting to the IRS 向IRS注册和申报
 - Reporting to Chinese Authorities 向中国机关申报
- Chinese investments in the U.S.A. 中国在美国的投资
 - Fatca withholding taxes FATCA预提税
 - Reporting by the IRS to China about US accounts/investments?
IRS向中国报告美国账户/投资
 - Compliance costs 合规成本

回鍋肉 a/k/a FATCA consequences for China(2)

中国的FATCA结果 (2)

- Joint Venture with US corporation in third country 和美国公司在第三国的合作投资
 - Fatca withholding taxes FATCA预提税
 - Reporting to the IRS and subsequently to China about the investments
向IRS报告投资情况，接下来向中国报告
 - Risk that one non-participating FFI in a series of transactions could cause other FFIs to incur 30% withholding tax. 在系列交易中有一个未参与FFIs可能导致其他FFIs承受30%预提税。

回鍋肉 a/k/a FATCA consequences for China(3)

中国的FATCA结果 (3)

Individuals: 个人

➤ EB5 immigration: pre immigration tax planning, wealth management, estate tax, PFICs, FBARs.

EB5移民：移民前期税务规划，财富管理，遗产税， PFICs, FBARs.

➤ Green card holders/citizens in the USA or China: comply with FBAR and FATCA

在美国或中国的绿卡持有人/公民：遵守FBAR和FATCA

➤ Reporting by the IRS to China about US accounts/investments

IRS向中国报告美国账户/投资

回鍋肉

Worldwide automatic exchange of information: 世界范围的信息自动交换

Hong Kong

Singapore

Switzerland

U.S.A.

European Union

FATCA – FOR LAWYERS

FATCA – 针对律师

- ✓ Escrow accounts for American clients 为美国客户托管账户
- ✓ Escrow account for non American clients if Trustee is American
- ✓ 为非美国客户托管账户，如果受托人是美国人
- ✓ Company bank accounts 公司银行账户
- ✓ Signatory authority for U.S. employees? 为美国雇员签字授权
- ✓ Due Diligence on ultimate beneficiary? 最终受益人的尽职调查
- ✓ Clients to apply for FATCA GIIN numbers or avoid doing business with the U.S.A.?
- ✓ 客户申请FATCA参与性金融机构全球身份识别码（GIIN）或者避免与美国发生商业往来

FATCA – FOR LAWYERS(2)

FATCA – 针对律师(2)

- ✓ Avoid assisting tax evasion, e.g. buying real estate with clients' undeclared funds
- ✓ 避免协助避税，例如：用客户的未申报资金购买不动产
- ✓ More paperwork in different jurisdictions 在不同管辖权下更多的文书工作
- ✓ Have you assisted U.S. clients opening bank accounts outside the U.S.A .e.g., Hong Kong, Singapore, Switzerland, Luxembourg, Liechtenstein
- ✓ 是否帮助过美国客户在美国以外开设银行账户，例如：香港，新加坡，瑞士，卢森堡，列支敦士登

FATCA – FOR COMPLIANCE OFFICERS

FATCA – 针对法务主管

FATCA RESPONSIBLE OFFICER (FRO):

FATCA 责任人员（FRO）：

- ✓ Learning curve of complex intricacies of FATCA
- ✓ 关于FATCA复杂性的学习曲线
- ✓ Coordination between legal, operations, tax, accounting and technology departments; Coordination between CEO, COO, CFO, CLO etc.
- ✓ 在法务部门，运营部门，税务部门，会计部门以及科技部门之间协调；在CEO,COO,CFO,CLO等之间协调

FATCA – FOR COMPLIANCE OFFICERS(2)

FATCA – 针对法务主管(2)

- ✓ Review legal documents such as operating agreements;
- ✓ 复审法律文件，例如营运协议
- ✓ Personal liability: Model 1, possibly. Model 2: yes
- ✓ 个人责任：模型1，可能。模型2，肯定。
 - ❖ US\$250,000 and 3 years in jail 250000美金与3年监禁
 - ❖ Indemnification by FFI FFI的赔偿
- ✓ Outsource/outside counsel?外包/外聘律师
- ✓ FRO ≠ US person: Form 5471 → disclosure of FFI's ownership
- ✓ FRO ≠ 美国人：5471表格 →披露FFI的所有权

Butterfly Effect

蝴蝶效应

Baidu \$300 million R&D center in Silicon Valley with 200 employees:

百度投资3亿美元在硅谷建造的有200名雇员的研发中心

- ✓ Chinese employees relocated to California are subject to US federal and state worldwide taxation

移居到加州的中国雇员需为世界范围收入缴纳美国联邦税和州税

- ✓ Chinese employees relocated to California are subject to FBAR reporting for their own and corporate accounts and other financial assets such as income deriving real estate, companies etc.

移居到加州的中国雇员需为他们自己的、公司的账户以及其他金融资产，如来源于不动产、公司的收入，申报FBAR。

- ✓ Payments from the USA to PRC subject to FATCA regulations and possible withholding tax if applicable

从美国支付到中国的款项受FATCA的规定，如果适用，可能产生预提税

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