
FATCA Is Not Just A Worry For American Investors

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June 8, 2014 By Jim Atkins

Thousands of investors worldwide are finding out that controversial new US tax avoidance laws have a much wider reach than just American taxpayers with offshore accounts.

This is because an unforeseen consequence of the new Foreign Account Tax Compliance Act (FATCA) is international customers of US financial institutions must reveal their personal and financial details to the US Internal Revenue Service (IRS) as well.

Even if they have no financial connection with the US, are tax resident elsewhere and have no personal connections with the US, they still have to complete a Form W-8BEN to let the IRS know that they owe no tax in the USA.

This is because customers of American based financial institutions at overseas branches have a financial status under FATCA which means they must report on their worldwide activities in the US.

So far, almost 125,000 British customers of American bank JP Morgan have had to fill in the forms, even though the British branch is only a subsidiary, has a British call centre and sells financial products regulated in the UK by the Financial Conduct Authority.

Far reaching FATCA

FATCA was designed to catch US taxpayers with offshore accounts who did not report their entire income honestly to the IRS.

However, it seems the reach of the law is much farther than first thought and will net financial information about thousands of non-US customers who have accounts with American financial companies worldwide.

Under intergovernmental agreements between 70 nations, this information will be fed back to the customer's national tax authority automatically by the IRS.

IRS tax demands

JP Morgan apologises for the intrusion, but explains the bank has no choice but to ask for the information from customers as it is legally obliged to do so in the US.

Whether the IRS has jurisdiction to demand the information from non-US residents is a legal point that does not seem to have been addressed yet.

"In future, rather than send letters and IRS tax declarations to customers, we expect to ask new customers a set of simpler questions," said a spokesman for the bank.

"We do not anticipate that we will have to send existing customers any more letters demanding information, although they may have to fill in an IRS declaration each year."

Meanwhile, if US banking customers object to the IRS mailing, they can always vote with their feet and switch their cash to a different institution.

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As if answering to HM Revenue & Customs were not onerous enough, British investors are now having to jump through hoops for the equivalent US tax authority, the Internal Revenue Service or IRS.

The IRS is trying to tighten its grip on US citizens living in other countries who owe tax. But a consequence of its crackdown is that British investors, who owe nothing in the US and may have no financial or other connections there whatever, have to complete IRS documents and provide information either to the IRS itself or to a finance firm acting under IRS instructions.

An estimated 125,000 British-based investors with JPMorgan Asset Management have been asked to complete a “W-8BEN” form (see image below). As far as these investors were concerned, JP Morgan – which runs a range of very well-known, popular investment funds out of its London offices – is more or less a British firm. They deal with British call centres and send cheques, queries or other correspondence to a British address.

So why, all of a sudden, were they being sent a form whose heading (“Certificate of Foreign Status of Beneficial Owner for United States Tax Withholding and Reporting”) makes HMRC’s jargon-strewn documents look by comparison intelligible and human?

The answer is that JPM, which has a US parent company, has a certain status conferred on it by the IRS which it would lose unless it collects and keeps on file information about its customers – wherever in the world they may be. So British investors, regardless of their citizenship or where they have lived in the past, were being required to complete the W-8BEN.

The form (shown below) requires people to give their address and confirm where they are resident for tax purposes. If I received a form like that, issued by the tax authority of another country, forwarded to me by a private firm, I’d be inclined to throw it in the bin. And the *Your Money* reader who alerted us to the JPM mailing felt the same. He said: “I don’t have to do business with this company. If it wants me to hand over information just so that it can fulfil its obligations to authorities elsewhere, I have to think whether I’d rather invest elsewhere.”

JPM indicated that this was its first such mailing – the 125,000 clients were sent the forms in two mail outs around the end of April – and that no more would follow. Instead, new customers would have to complete a less obtrusive set of questions when they first signed up. JPM indicated that, while it regretted the annoyance it might cause, if it didn’t ask its existing customers to complete the form now, it might be forced to demand even more information later on.

From July the US’s crackdown will be felt by British investors in another way. After that anyone opening a new investment account – whether the company is US or British – will have to provide information required by the IRS. This new regime has been disruptive to finance firms, though consumers have heard little about it. The tax authorities here and in Europe say they will benefit eventually as more information about evasion will be shared each way. But to me it seems just another example of information harvesting – on a truly global scale

- See more at: <http://www.iexpats.com/fatca-just-worry-american-investors/#sthash.mTd5zRri.dpuf>