

# IRS Changes to FATCA & FBAR

January 2017

## ***In brief***

The Internal Revenue Service (IRS) issued a law as part of the PATH Act of 2015 designed to encourage taxpayers to settle historic US taxes due - the IRS can direct the State department to revoke passports where taxpayers owe over \$50,000.

**FATCA** – The penalty applied to individuals making use of the Offshore Voluntary Disclosure Programme (OVDP) will go up to 50% if the Foreign Financial Institution (FFI) where they hold undisclosed accounts comes under investigation by the IRS or Department of Justice.

**FBAR** – The filing deadline for Foreign Bank Account Reporting (FBAR) has been brought forward from 30 June to 18 April in consistent with the Federal income tax due date for tax years beginning after 31 December 2015. However, six-month extension from the original due date is available for FBAR filers.

## ***In detail***

### ***FATCA Background***

The Internal Revenue Service (IRS) recently announced important changes to their offshore 'Amnesty' programme – an increase in penalties for non-compliance.

FATCA (Foreign Account Tax Compliance Act) came into the law in March 2010, to target non-compliance by US taxpayers with foreign bank accounts. The focus is to ensure US taxpayers report certain foreign (non-US) financial accounts and offshore assets.

In our experience, penalties for non-compliance in reporting offshore assets and income often exceeds tax itself - By making use of the OVDP, taxpayers can now limit their risk to these penalties. Based on the facts and circumstances, a taxpayer can get up to date

with their taxes with the streamlined procedures or the OVDP.

The OVDP currently levies a penalty of 27.5%. However, if it becomes public that the FFI is under investigation by the IRS or department of justice, these penalties increase to 50%.

Currently, there are 144 FFI's on the investigation list in which the IRS can add a FFI without any notice.

*“The ground breaking effort around automatic reporting of foreign accounts has given us a much stronger hand in fighting tax evasion,” said IRS commissioner John Koskinen. “People with undisclosed foreign accounts should carefully consider their options and use available avenues, including the offshore programme and streamlined procedures, to*

*come back into full compliance with their tax obligations.”*

### ***FBAR Background***

US Citizens, Green Card Holders and certain Non-residents have an obligation to report their foreign (non-US) bank account details (FBAR) to the US Treasury if their combined foreign account's balance exceed \$10,000. FBAR violations and tax violations can both be criminal under US tax laws. The non-wilful FBAR penalty is \$10,000 for each foreign bank account not reported whereas wilful violations are imposed with \$100,000 or 50% of the amount in the account for each violation.

As part of the new legislation signed by president Obama, the due date of the FinCEN Report 114 (commonly referred to as FBAR) was changed from 30 June to 15 April for tax

years beginning after 31 December 2015.

Whilst the date change is a positive step towards greater simplicity, as it aligns the FBAR deadline with the tax return filing deadline, taxpayers now have less time to adequately prepare for filing.

The Department of Treasury has also granted a provision to filers

who can obtain a six-month extension to file FBAR. If you are unable to file your 2016 FBAR in time to meet the 18 April 2017 deadline, you may need to obtain a six-month extension, which would grant you time until 15 October 2017 to file your 2016 FBAR. Further details regarding applying for FBAR extension is awaited.

### ***The Takeaway***

We have an established team of full time US tax and global mobility specialists based in the Middle East.

If you are based in the region and need advice on these matters, you can work with professionals who operate in your time zone - during your working week.

### ***Let's talk***

For a deeper discussion of how this issue might affect your business, please contact:

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