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The facts on Fatca

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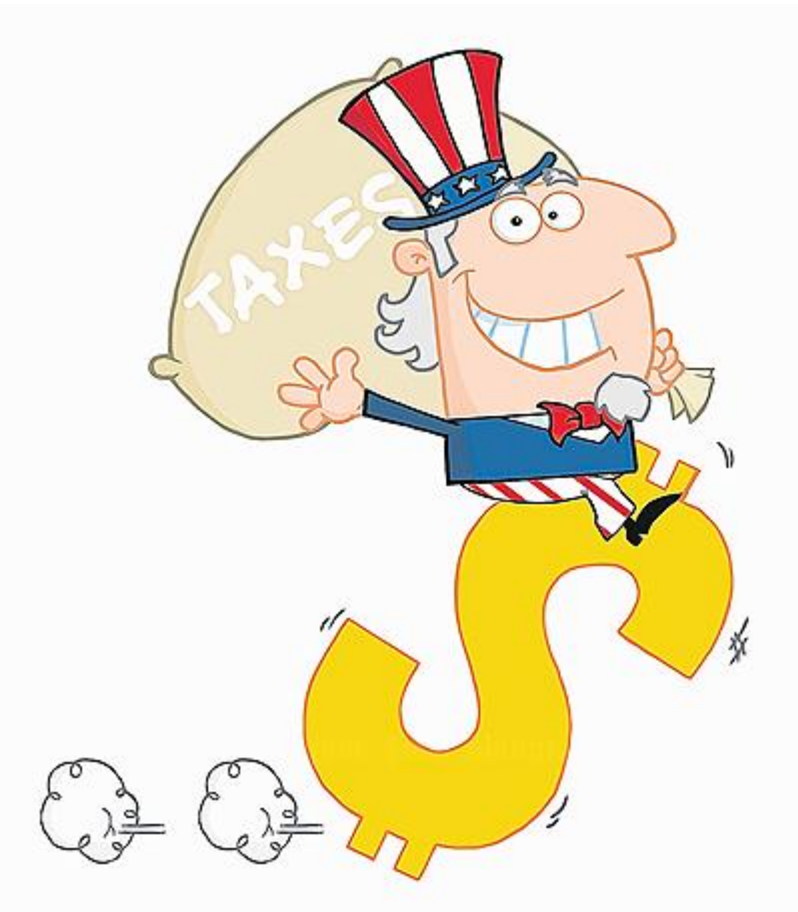
As any American can tell you, the US government, through its Internal Revenue Service (IRS), has no equal in regards to the resources it can deploy and the lengths to which it will go to ensure that it gets every penny it presumes is owed from your paycheque.



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On a related note, we have recently heard expats complaining about the noticeable increase in paperwork and personal disclosure that is now required by many banks, US and otherwise, when opening an account. This article will seek to explain to American expats the new regulations that will govern the way their tax is collected.

The source of the increasing disclosure and documentation required by many financial institutions comes down to US politics, and in particular the US Hiring Incentives to Restore Employment Act (Hire) of 2010. Included as part of Hire, the Foreign Account Tax Compliance Act (Fatca) has among its objectives the restoration of ''fairness'' to the US tax system and the reduction of tax evasion by US taxpayers through the use of nefarious sounding ''offshore bank accounts'' in ''tax havens''.

In the abstract those objectives are difficult to contest; in practice, critics have raised concerns about Fatca's effectiveness and its effects. Fortunately, there is time to modify some of Fatca's provisions, as the US government announced a few weeks ago that its implementation will be postponed from Jan 1 to June 30, 2014.

The primary tool that Fatca uses to detect tax evasion is the requirement for foreign financial institutions (FFIs) to annually file a report with the IRS on all assets held with them by their American clients, or to face stiff penalties. If the country in which the FFI is situated is party to an intergovernmental agreement (IGA) with the US, this annual report is filed with the domestic taxation authority, and that authority then shares the information with the IRS. These reporting requirements include the name, address, tax identification number, receipts, withdrawals and current balance for every account that is in any way linked to a US citizen.

Foreign banks that do not comply with Fatca will face a 30% withholding tax on all payments made to the bank from the US. The withheld amounts are then turned over to the IRS as a tax. This effectively means that any FFIs with direct or indirect interests in the US must either bow to the wishes of the US government, be prepared to accept the penalties for not doing so, or eliminate all US citizens from their client lists.

Furthermore, if you as an individual US taxpayer have any foreign financial assets _ everything from personal or joint bank accounts, insurance policies with cash value, stocks, securities, money market investment accounts, or even pension funds _ with an aggregate (combined) value of greater than US$50,000 (1.57 million baht), you must disclose all account information including your account number, names and addresses of all parties involved, and the maximum value of each asset during the taxable year. Failure to do so can lead to considerable financial and other penalties. The scope of these regulations includes all US citizens living abroad, green card holders (permanent residents) and dual citizens.

Importantly, an entity such as a corporation or partnership that is directly or indirectly more than 10% owned by one or more person covered by the regulations will also be considered a ''person''. Critics fear that Fatca will result in FFIs refusing to offer services to US customers, and in business opportunities being withheld from US investors. In any event, one wonders whether the global administration and compliance costs will exceed resulting increased tax revenues.

Even a person who seemingly has no connection to the US will often be confronted with the effects of Fatca when their financial institution requires them to provide evidence and information to demonstrate that they are not a person with US status. A US postal address, phone number or birthplace are among the criteria that can result in an even greater level of scrutiny by the bank in making this determination. As a consequence, you may end up disclosing additional personal information to the bank, domestic taxation authorities and the IRS merely to prove that you are not properly the subject of Fatca. Orwell lives.

If you are reading this and thinking, ''I didn't even know I had to file in the US because I pay taxes in Thailand!'' you are not alone. Many US taxpayers living overseas neglect to file individual tax returns or FBARs (report of foreign bank and financial accounts), the latter being required if you have a financial interest in or signature authority over foreign financial accounts with an aggregate value of $10,000 or more at any point during the tax year, due to the simple fact that they are unaware of their filing requirements in the US while working and paying taxes abroad. Dual citizens in particular have been caught in this trap. These requirements predate Fatca.

Instead of coming after you for tax evasion, the IRS has offered some of you a way to return to their good graces without penalty. Those taxpayers who (a) have lived abroad since 2009 and (b) have not filed individual income tax returns since then (or earlier) and (c) owe less than $1,500 for each of those years, qualify for this special offer from the government. If you fall within these parameters, you are deemed a ''low compliance risk'' by the IRS, and can take advantage of this new policy by filing delinquent tax returns for the last three years and delinquent FBARS for the last six years.

However, if you filed an income tax return at any time since 2009, you do not qualify. This provision also does not protect you from potential criminal inquiry if the IRS determines that something of an extralegal nature is apparent in your filing information (then again, in this case you're probably not filing tax returns anyway). Regardless of your financial situation, since all FFIs will soon provide the IRS with your complete banking information, it is probably better to remain compliant or return to compliance with the IRS rather than take the risk of being labelled as a tax evader.

Those, in broad laypersons' terms, are the facts about Fatca as we understand them to be as of now. Please note that we are not US tax advisers, and suggest that if these facts are causing you consternation you should contact a US tax adviser now in order to address the issue proactively rather than waiting for unwelcome correspondence from the IRS.

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