

The FACTA fallout: soaring expatriatism

I have written before about the far-reaching, though perhaps legislatively unintended social impact of the Foreign Account Tax Compliance Act (FATCA). As record numbers of Americans are renouncing their U.S. citizenship, discussing the impact of the act is more important than ever. Indeed, many Americans living abroad are forced to choose between U.S. citizenship and maintaining the normal relationships many of us take for granted.

Cultural Commentary

FATCA, which was approved in 2010, was of course aimed at reeling in tax evaders and money launderers. It imposes strict reporting requirements on U.S. citizens with significant assets overseas. It also requires that all foreign banks overseas disclose to the U.S. government information on accounts held by Americans living stateside or abroad. What has resulted, however, is that Americans living overseas have been denied bank and brokerage accounts, business loans and mortgages by foreign financial institutions because those banks simply don't want to be bothered or don't have the manpower to meet the onerous reporting requirements mandated by FATCA. Also, some Americans residing overseas have had their retirement accounts summarily closed by banks unwilling or unable to comply with those requirements. And some American's residing overseas have been compelled to disclose financial information about family members, even if those members are not U.S. citizens. To add insult to injury, some foreign banks simply refuse to do any business where one spouse resident in that country is an American.

Since there are between 6 million and 8 million U.S. citizens living overseas, this is not a small problem. However, the unintended consequences of FATCA are an enormous problem if you are a law-abiding American citizen who happens to live overseas for career or personal reasons.

The U.S. is the only nation in the world — other than the East

African nation of Eritrea — that imposes worldwide taxation on its citizens. So as an American, regardless of what country you reside in, you are subject to U.S. taxes. It thus makes perfect sense to rein in money launders, tax evaders and those who send funds overseas to avoid the reach of U.S. tax laws. But it does not make sense to make life for the majority of U.S. citizens residing abroad financially very difficult and leave them extremely vulnerable.

A U.S. citizen residing should not have to choose between giving up American citizenship and possessing the normal relationships that we have all come to expect following years of hard work, payment of taxes and voting, even from afar. But for many, the cost, financially and emotionally, of maintaining U.S. citizenship is simply too high; a sort of Hobson's choice must be made. Sadly, many have indeed made that choice.

The Treasury Department reported that during 2013, 2,999 Americans renounced their U.S. citizenship or turned in their

green cards (630 in the fourth quarter alone). These numbers reflect an all time high — the prior record was set in 2011, which saw 1,781 expatriations. This groundswell is no doubt partly a result of tax filing obligations, the increased burdens

of FATCA compliance, and the well-grounded fear of the substantial penalties that will result from noncompliance.

The U.S. campaign against undeclared overseas accounts commenced in earnest in 2009, when Swiss bank UBS AG finally admitted it had helped

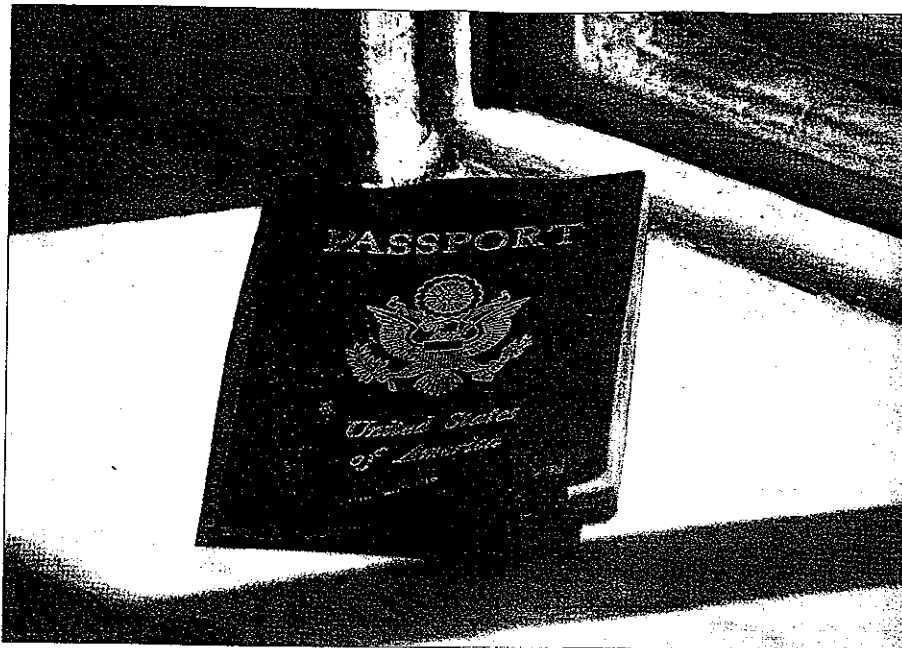
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American taxpayers hide money offshore. Ultimately, UBS paid out \$780 million and released to the U.S. government the identities of over 4,400 account holders, along with other related information. This in effect obliterated the once holy

grail of Swiss bank secrecy. In 2012, Switzerland's oldest bank, Weiglin & Co., closed its operations altogether and pleaded guilty to helping U.S. taxpayers hide over \$1.2 billion.

The results transpiring from both the UBS and Weiglin revelations were appropriate, though

those U.S. depositors seeking to avoid the tax payments would probably beg to differ. However, those situations are completely different from scenarios that have happened elsewhere in Europe, where Americans have had to transfer entire retirement accounts to foreign spouses to avoid financial ruin, or have feared that a mortgage on which payments are current would be summarily called because the bank doesn't want to or can't comply with FATCA.



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The unintended FATCA fallout to the average American citizen residing abroad is severe and draconian. While the intentions of FATCA — to pursue tax evaders and money launderers — is laudable and necessary given that the U.S. has worldwide taxation, it is pretty clear that the drafters of FATCA did not think too much about the other 6 or 7 million Americans residing abroad — those who live very ordinary lives on foreign, though otherwise very ordinary soil.

As the domestic employment market continues to be depressed and many Americans choose to live overseas for a multitude of reasons, both personal and professional, I expect that in the years to come, the Treasury Department will continue to report record breaking number of expatriations. This is a very sad outcome of otherwise well-intended legislation. However, the unintended FATCA fallout can, and should be, addressed.

Regardless of where you come out on the issue of worldwide taxation, every time I think about it, I am reminded of the wise words of Yossi Klein Halevi, who wrote in a completely different context that “neither side of an ideological divide has a monopoly on patriotism or political wisdom, and the greatest threat may be when a nation becomes embittered against itself.” I can think of no stronger potential for embitterment than putting an

individual in an untenable situation and thus forcing him or her to make a decision to expatriate from the land of their birth or naturalization.

Admittedly, I am truly obsessed with my blue-and-gold passport. For me it holds more value than the Hope Diamond. However, if FATCA had been in place when I was living overseas, I would have likewise been faced with contemplating a truly awful and heart wrenching choice — one that no law-abiding and patriotic American citizen, regardless of where they live, should have to even think about, much less make.

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