

FOREIGN ACCOUNT TAX COMPLIANCE ACT (“FATCA”)

Source: *Wikipedia*

Not to be confused with FACTA (the Fair and Accurate Credit Transactions Act).



Enacted by the [111th United States Congress](#)

Effective March 18, 2010 (26 USC § 6038D); December 31, 2012 (26 USC §§ 1471-1474)

The **Foreign Account Tax Compliance Act (FATCA)** is a United States federal law that requires United States persons, including individuals who live outside the United States, to report their financial accounts held outside of the United States, and requires foreign financial institutions to report to the Internal Revenue Service (IRS) about their U.S. clients. Congress enacted FATCA to make it more difficult for U.S. taxpayers to conceal assets held in offshore accounts and shell corporations, and thus to recoup federal tax revenues.^[1] The FATCA is a portion of the 2010 Hiring Incentives to Restore Employment (HIRE) Act.^{[2][3]}

BACKGROUND

FATCA is designed to increase compliance by U.S. taxpayers rather than to enforce collection from foreigners. FATCA requires foreign financial institutions to report information related to the ownership by U.S. persons of assets held overseas.^[4] Under U.S. tax law, U.S. persons are generally required to report and pay taxes on income from all sources.^[5] Taxpayer identification numbers and source withholding are used to enforce foreign tax compliance. For example, mandatory withholding is often required when a U.S. payor cannot confirm the U.S. status of a foreign payee.^[6] The United States levies income taxes on its citizens, regardless of residency, and therefore requires Americans living abroad to pay U.S. taxes on foreign income (minus credit for foreign tax paid).^{[7][8][9]} For this reason, the increased reporting requirements of FATCA have had extensive implications for U.S. citizens living abroad.

The IRS previously instituted a ‘Qualified Intermediary’ (QI) program under Internal Revenue Code § 1441,^[10] which required participating foreign financial institutions to maintain records of the U.S. or foreign status of their account holders and to report income and withhold taxes.^[11] ‘One report found that participation in the QI program was too low to have a substantive impact as an enforcement measure and was prone to abuse.^[12] ‘An illustration of the weakness in the QI program was that UBS, a Swiss bank, had registered as a QI with the IRS in 2001 and was later forced to settle with the U.S. Government for \$780 million in 2009 over claims that it fraudulently concealed information on its American account holders.^[12] ‘Self-reporting of foreign financial assets was also found to be relatively ineffective.^[13]

It has been estimated that the U.S. Treasury loses as much as \$100 billion annually to offshore tax non-compliance.^[3] ‘Therefore, supplementing the reporting regimes already in place was deemed to be an effective means of increasing compliance and raising government revenue.^[14] After committee deliberation, Sen. Max Baucus and Rep. Charles Rangel introduced the Foreign Account Tax Compliance Act of 2009 to Congress on October 27, 2009. It was later

added to an appropriations bill as an amendment, sponsored by Sen. Harry Reid, which also renamed the bill the HIRE Act.^[15] The bill was signed into law on March 18, 2010.

PROVISIONS

FATCA has three main provisions:

- It requires foreign financial institutions, such as banks, to enter into an agreement with the IRS to identify their U.S. person account holders and to disclose the account holders' names, TINs, addresses, and the transactions of most types of accounts.^[16] Some types of accounts, notably retirement savings and other tax-favored products, may be excluded from reporting on a country by country basis. U.S. payors making payments to non-compliant foreign financial institutions are required to withhold 30% of the gross payments.^{[17][18]} Foreign financial institutions which are themselves the beneficial owners of such payments are not permitted a credit or refund on withheld taxes absent a treaty override.^[19]
- U.S. persons owning these foreign accounts or other specified financial assets must report them on a new IRS Form 8938, Statement of Specified Foreign Financial Assets, which is filed with the person's U.S. tax returns if the accounts are generally worth more than US\$50,000.^[20] A higher reporting threshold applies to US persons who are overseas residents and joint filers.^{[21][22][23]} Account holders would be subject to a 40% penalty on understatements of income in an undisclosed foreign financial asset.^{[18][24]} Understatements of greater than 25% of gross income are subject to an extended statute of limitations period of 6 years.^[25] It also requires taxpayers to report financial assets that are not held in a custodial account, i.e. physical stock or bond certificates.
- It closes a tax loophole that foreign investors had used to avoid paying taxes on U.S. dividends by converting them into "dividend equivalents" through the use of swap contracts.^{[26][27]}

These reporting requirements are in addition to the requirement for reporting of foreign financial accounts to the U.S. Treasury;^[28] this most notably includes Form TD F 90-22.1 "Report of Foreign Bank and Financial Accounts" (FBAR) for foreign financial accounts exceeding US\$10,000 required under Bank Secrecy Act regulations issued by the Financial Crimes Enforcement Network (FinCEN).^[29]

CONTROVERSY

Certain aspects of FATCA have been a source of controversy in the financial and general press.^[30] The controversy primarily relates to several central issues:

- **Cost.** Although numbers are still somewhat speculative, estimates of the additional revenue raised seem to be heavily outweighed by the cost of implementing the legislation. The Association of Certified Financial Crime Specialists (ACFCS) claims FATCA is expected to raise revenues of approximately US\$800 million per year for the U.S. Treasury; however, the costs of implementation are more difficult to estimate. ACFCS also claims it is extremely likely that the cost of implementing FATCA (which will be borne by the foreign financial institutions) will far outweigh the revenues raised by the U.S. Treasury, even excluding the additional costs to the U.S. Internal Revenue Service for the staffing and resources needed to process the data produced.^[31] Unusually, FATCA was not subject to a cost/benefit analysis by the Committee on Ways and Means. Perhaps not considered by Congress, the cost to the global financial institutions to implement FATCA could be \$200 plus billion dollars, based on per capita costs for Australia and the UK.^[32]
- **Capital flight.** The primary mechanism for enforcing the compliance of foreign financial institutions is a punitive withholding levy on U.S. assets. This may create a strong incentive for foreign financial institutions to divest (or not invest) in U.S. assets, resulting in capital flight.^[33]
- **Foreign relations.** Forcing foreign financial institutions and foreign governments to collect data on U.S. citizens at their own expense and transmit it to the IRS has been called divisive. Canada's former Finance Minister Jim Flaherty raised an issue with this "far reaching and extraterritorial implications" which would require Canadian banks to become extensions of the IRS and would jeopardize Canadians' privacy rights.^[34]

There are also reports of many foreign banks refusing to open accounts for Americans, making it harder for Americans to live and work abroad.^[35]

- **Extraterritoriality.** The legislation enables U.S. authorities to impose regulatory costs, and potentially penalties, on foreign financial institutions who otherwise have few if any dealings with the United States.^[36] The U.S. has sought to ameliorate that criticism by offering reciprocity to potential countries who sign intergovernmental agreements, but the idea of the U.S. Government providing information on its citizens to foreign governments has also proved controversial.^[37] The law's interference in the relationship between individual Americans or dual nationals and non-American banks led Georges Ugeux to term it "bullying and selfish."^[38] The Economist has called FATCA's "extraterritoriality stunning even by Washington's standards."
- **Citizenship renunciations.** *Time* magazine reported a sevenfold increase in Americans renouncing U.S. citizenship between 2008 and 2011, attributing this at least in part to FATCA.^[39] According to *BBC Magazine*, the act is one of the reasons for a surge of Americans renouncing their citizenship - a rise from 189 people in Q2/2012 to 1,131 in Q2/2013.^[40] Another surge in renunciations in 2013 to record levels was reported in the news media, with FATCA cited as a factor in the decision of many of the renunciants.^{[41][42]} According to the legal website International Tax Blog, the number of Americans giving up U.S. citizenship started to increase dramatically in 2010 and rose to 2,999 in 2013, almost 6-fold the average level of the previous decade.^[43] The trend has continued in 2014 with over 2,300 people giving up citizenship in the first three quarters. The numbers of those renouncing their citizenship are understated, some say considerably.^{[44][45]} According to a survey reported by Forbes, "5.5 million Americans eye giving up U.S. citizenship".^[46]
- **American citizens living abroad.** According to *CBC.ca*, many Americans living abroad may face large fines as a result of this legislation.^[47] According to *Time* magazine, American citizens living abroad are unable to open foreign bank accounts.^[48] The Wall Street Journal reports that "FATCA worsens the already profoundly unjust the tax treatment of millions of middle-class Americans living abroad." "FATCA rules were intended to correct a tax loophole. Applied to Americans living abroad, they are absurd." ^{[49][50]} The Guardian reports that Americans living abroad feel financially terrorized by FATCA requirements.^[51] According to research by Democrats Abroad: "These survey results show the intense impact FATCA is having on overseas Americans. Their financial accounts are being closed, their relationships with their non-American spouses are under strain, some Americans are being denied promotion or partnership in business because of FATCA reporting requirements and some are planning or contemplating renouncing their US citizenship." ^[52]
- **IRS not ready.** According to *The New York Times*, it is unclear whether the IRS is ready to handle millions of new complicated filings per year.^[28] On May 2, 2014, the IRS issued Notice 2014-33 providing that 2014 and 2015 will be regarded as a transition period for purposes of enforcement and administration relating to entity but not individual investors.^[53]
- **Effect on "accidental Americans".** The reporting requirements, including penalties, apply to all U.S. citizens, including those who are unaware that they have U.S. citizenship. Since the U.S. considers all persons born in the U.S., and most foreign-born persons with American parents, to be citizens, FATCA affects a large number of foreign residents, who are unaware that the U.S. considers them citizens.
- **Complexity.** Doubts have been expressed as to workability of FATCA due to its complexity,^[54] and the legislative timetable for implementation has already been pushed back twice.^[55] According to US National Tax Advocate Nina Olsen in regards to FATCA: "This is a piece of legislation that is so big and so far-reaching, and [has] so many different moving pieces, and is rolling out in an incremental fashion ... that you really won't be able to know what its consequences are, intended or otherwise," Olson said. "I don't think we'll know that for years. And by that point we'll actually be a little too late to go, 'Oops, my bad, we shouldn't have done this,' and then try to unwind it."^[56]
- **Identity theft.** The IRS reports that identity thieves are using fraudulent compliance requests as a "phishing" ruse to obtain sensitive account-holder information.^[57]

OPPOSITION

Republican National Committee

On January 24, 2014, the Republican National Committee passed a resolution calling for the repeal of FATCA.^[58]

American Expatriates

American Citizens Abroad, Inc., (ACA) a not-for-profit organization claiming to represent the interests of six million Americans residing outside the United States, asserts that one of FATCA's problems is citizenship-based taxation (CBT). ACA calls for the U.S. to institute residence-based taxation (RBT) to bring the US in line with all other OECD countries.^{[59][60]}

As reported in the Washington Times,^[61] a legal challenge has been launched by James Bopp attorney, and backed by the Republican Party, that FATCA violates the Senate's sole possession of foreign treaty power, an 8th Amendment Excessive Fines Claim, and a 4th Amendment Search and Seizure Claim.^{[62][63]}

Canadians and especially Canadians considered to be American persons for taxation purposes

Although not technically a direct opposition to FATCA - as the United States Congress has no legislative authority over Canada - but instead in opposition to a parallel Canadian federal legislation, Alliance for The Defense of Canadian Sovereignty (ADCS) is pursuing legal challenge of Canadian law that supports FATCA and implements it between the United States and Canada,^[64] on grounds that such law violates the Canadian Charter of Rights & Freedoms; particularly, in regards to anti-discrimination provisions against discrimination on the basis of citizenship and/or national origin.^[65] On August 11, 2014, in an action supported by the Alliance for the Defense of Canadian Sovereignty, two Canadian citizens filed suit in the Federal Court of Canada challenging the constitutionality of the Canadian law that implements FATCA in Canada. Both of the citizens were born in the U.S., with at least one Canadian parent, but returned to Canada in childhood and have had no residential ties to the U.S. since. They state that this would result in them having U.S. indicia and therefore being discriminated against by Canadian banks.^{[66][67]} On August 12, Canadian government spokesman Jack Aubry defended the constitutionality of the legislation, but otherwise declined to comment on the pending litigation.^[68]

In any event, a Canadian Federal Court ruling would not constitute jurisdiction over the privacy of their relationship as United States citizens with the United States Government, but only over their rights as Canadians, and therefore a finding of unconstitutionality as a matter of Canadian Constitutional law, as to the two litigants, while allowing a remedy under Canadian law, would not relieve them of their responsibilities to the United States under FATCA, as United States citizens, thus not removing the effectuation of the provisions of FATCA on U.S. citizen-taxpayers, no matter where, outside the United States, their bona fide tax home is located. However, a Human Rights Complaint submitted to the United Nations, by members of The Isaac Brock Society and Maple Sandbox, that the U.S. system of taxation, and requirements, compliance reporting, and excessive penalties therewith, of its citizens tax resident in other countries including taxation of their income and assets in those countries, represents violation of their Human Rights. This complaint is suggestive that such taxation violates the IRS Taxpayer Bill of Rights provision #10 "The Right to a Fair and Just Tax System."^{[69][70]}

On October 7, 2014, the legal claim by the Alliance for the Defence of Canadian Sovereignty was amended to include the allegation that the FATCA IGA and enabling legislation are in violation of both the Income Tax Act of Canada and the Canada U.S. Tax Treaty.^[71]

COSTS

There are wildly varying estimates of the likely cost of implementing the legislation. FATCA is expected to produce approximately \$8.7 billion in additional tax revenue over 10 years, which is small relative to the estimated \$40 billion

per year cost of international tax evasion.^{[72]:36} 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.^[73]

Estimate of the costs to the private sector, the IRS and foreign revenue authorities are less precise. Compliance cost to financial institutions alone has been roughly estimated at US\$8 billion a year,^[74] approximately ten times the amount of estimated revenue raised. The United Kingdom government has estimated that the cost to British businesses alone will be £1.1 billion to £2 billion for the first five years (approximately two thirds of the estimate total additional global tax revenue expected).^[75] According to the Financial Post, the Scotia Bank in Canada has already spent almost \$100 million.^{[76][77]} There are few reliable estimates for the additional cost burden to the IRS, although it seems certain that the majority of the cost seems likely to fall on the relevant financial institutions and (to a lesser degree) foreign tax authorities who have signed intergovernmental agreements. Based on implementation costs known in a few countries projected costs exceed \$200 billion for all the financial institutions of the world to implement FATCA and this projection excludes annual administration costs.^[32]

IMPLEMENTATION

Domestic

FATCA added 26 U.S.C. § 6038D (section 6038D of the Internal Revenue Code) which requires the reporting of any interest in foreign financial assets over \$50,000 after March 18, 2010. FATCA also added 26 U.S.C. §§ 1471–1474 requiring U.S. payors to withhold taxes on payments to foreign financial institutions (FFI) and nonfinancial foreign entities (NFFE) that have not agreed to provide the IRS with information on U.S. accounts. FATCA also added 26 U.S.C. § 1298(f) requiring shareholders of a passive foreign investment company (PFIC) to report certain information.

The IRS issued temporary and proposed regulations on December 14, 2011 for reporting foreign financial assets, requiring the filing of Form 8938 with income tax returns.^{[78][79]} The U.S. Department of the Treasury issued final regulations and guidance on reporting interest paid to nonresident aliens on April 16, 2012.^[80] Treasury and the IRS issued proposed regulations regarding information reporting by, and withholding of payments to, foreign financial institutions on February 8, 2012,^{[81][82][83]} and final regulations on January 17, 2013.^{[84][85]} On December 31, 2013 the IRS published temporary and proposed regulations on annual filing requirements for shareholders of PFICs.^[86] On February 20, 2014, the IRS issued temporary and proposed regulations making additions and clarifications to previously issued regulations and providing guidance to coordinate FATCA rules with preexisting requirements.^{[87][88]}

On April 2, 2014, the U.S. Treasury and the IRS extended from April 25, 2014 to May 5, 2014 the deadline by which an FFI must register with the IRS in order to appear on the initial public list of "Global Intermediary Identification Numbers" (GIINs) maintained by the IRS, also known as the "FFI List."^{[89][90]} In June 2014, the IRS began publishing a monthly online list of registered FFIs, intended to allow withholding agents to verify the GIINs of their payees in order to establish that withholding is not required on payments to those payees.^[91]

International implementation

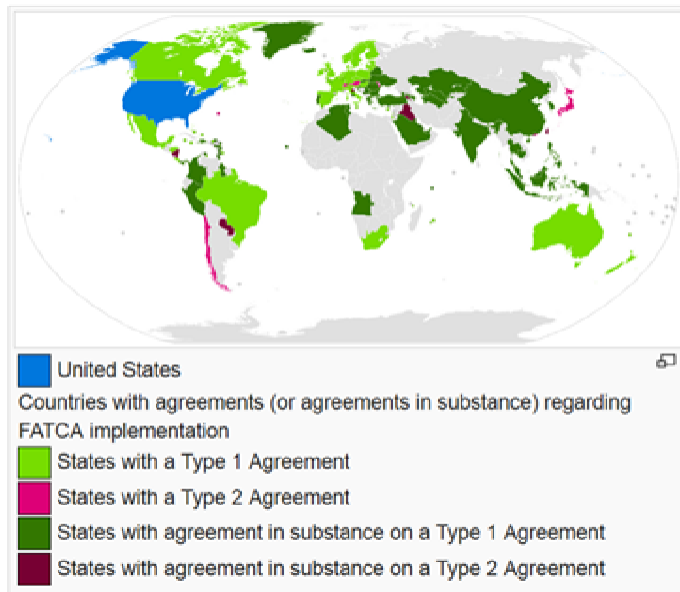
Implementation of FATCA may involve legal hurdles; it may be illegal in foreign jurisdictions for financial institutions to disclose the required account information.^[92] There is a controversy about the appropriateness of intergovernmental agreements (IGAs) to solve any of these problems.^{[93][94]}

France, Germany, Italy, Spain, and the United Kingdom announced in 2012 they consented to cooperate with the U.S. on FATCA implementation,^{[95][96]} as did Switzerland, Japan^[97] and South Africa.

The deputy director general of legal affairs of the People's Bank of China, the central bank of the People's Republic of China, Liu Xiangmin said "China's banking and tax laws and regulations do not allow Chinese financial institutions to comply with FATCA directly."^[98] The U.S. Department of the Treasury suspended negotiations with Russia in March 2014.^[99] Russia, while not ruling out an agreement, requires full reciprocity and abandonment of US extraterritoriality before signing an IGA.^{[100][101]}

A 2014 Swiss referendum against the act did not come to fruition.^[102]

INTERGOVERNMENTAL AGREEMENTS



The United States Department of the Treasury has published model IGAs which follow two approaches. 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. 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). 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.^[103] Model 2 is available in two versions: 2A with no Tax Information Exchange Agreement (TIEA) or Double Tax Convention (DTC) required, and 2B for countries with a pre-existing TIEA or DTC. The agreements generally require parliamentary approval in the countries they are concluded with, but not the United States.

In April 2014, the U.S. Department of the Treasury and IRS announced that any jurisdictions that reach "agreements in substance" and consent to their compliance statuses being published by the July 1, 2014, deadline would be treated as having an IGA in effect through the end of 2014, ensuring no penalties would be incurred during that time while giving more jurisdictions an opportunity to finalize formal IGAs.^{[89][103]}

In India the Securities and Exchange Board of India (SEBI) said "FATCA in its current form lacks complete reciprocity from the US counterparts, and there is an asymmetry in due-diligence requirements." Furthermore "Sources close to the development say the signing has been delayed because of Indian financial institutions' unpreparedness." SEBI Flags down

With Canada's agreement in February 2014, all G7 countries have signed intergovernmental agreements. As of December 9, 2014, the following jurisdictions have concluded intergovernmental agreements with the United States regarding the implementation of FATCA, many of which have not entered into force.^[103]

Intergovernmental Agreements

| Jurisdiction | Type | Ratified via signature | Entry into force | Approval process partner state |
|--|------------------------------------|---|---|---|
|  Australia | 1 | April 28, 2014 | June 30, 2014 ^{1104} | |
|  Austria | 2 | April 29, 2014 | | |
|  Bahamas | 1 | November 3, 2014 | | |
|  Barbados | 1 | November 17, 2014 | | |
|  Belgium | 1 | April 23, 2014 | | |
|  Bermuda | 2 | December 19, 2013 | | |
|  Brazil | 1 | September 23, 2014 | | |
|  British Virgin Islands | 1 | June 30, 2014 | | |
|  Bulgaria | 1 | December 5, 2014 | | |
|  Canada | 1 | February 5, 2014 | June 27, 2014 ^{1105} | Implementation act published. ^{1106} |
|  Cayman Islands | 1B ^{1107} | November 29, 2013 | | |
|  Chile | 2 | March 5, 2014 | | |
|  Costa Rica | 1A ^{1107} | November 26, 2013 | | |
|  Curaçao | 1 | December 16, 2014 ^{1108} | | |
|  Cyprus | 1 | December 2, 2014 | | |
|  Czech Republic | 1 | August 4, 2014 | | |
|  Denmark | 1 | November 19, 2012 | | Implementation law L67 passed December 20, 2013. ^{1109} Draft implementation regulation published, hearing ends May 8, 2014. ^{1110} Due diligence deadlines June 30, 2015, and June 30, 2016. ^{1111} |
|  Estonia | 1 | April 11, 2014 | | |

| Jurisdiction | Type | Ratified via signature | Entry into force | Approval process partner state |
|---|---------------------|------------------------|-------------------------------|---|
|  Finland | 1 | March 5, 2014 | | |
|  France | 1 | November 14, 2013 | | |
|  Germany | 1 | May 31, 2013 | | |
|  Gibraltar | 1 | May 8, 2014 | | |
|  Guernsey | 1 | December 13, 2013 | July 1, 2014 ^[112] | Draft implementation regulation published. ^[113] |
|  Honduras | 1 | March 31, 2014 | | |
|  Hong Kong | 2 | November 13, 2014 | | |
|  Hungary | 1 | February 4, 2014 | | |
|  Ireland | 1 | January 23, 2013 | July 1, 2014 ^[114] | |
|  Isle of Man | 1 | December 13, 2013 | July 1, 2014 ^[115] | Draft implementation regulation published. ^[113] |
|  Israel | 1 | June 30, 2014 | | |
|  Italy | 1 | January 10, 2014 | | |
|  Jamaica | 1 | May 1, 2014 | | |
|  Japan | 2 | June 11, 2013 | | |
|  Jersey | 1 | December 13, 2013 | | Draft implementation regulation published. ^[113] |
|  Latvia | 1 | June 27, 2014 | | |
|  Liechtenstein | 1 | May 19, 2014 | | |
|  Lithuania | 1 | August 26, 2014 | | |
|  Luxembourg | 1 | March 28, 2014 | | |
|  Malta | 1A ^[116] | December 16, 2013 | | |

| Jurisdiction | Type | Ratified via signature | Entry into force | Approval process partner state |
|--|------|------------------------|----------------------------------|--|
|  Mauritius | 1 | December 27, 2013 | | |
|  Mexico | 1 | November 19, 2012 | January 1, 2013 ^[117] | Replaced by revised treaty on April 9, 2014, with no break in enforcement. ^[118] |
|  Moldova | 2 | November 26, 2014 | | |
|  Netherlands | 1A | December 18, 2013 | | Approval act Presented to Parliament in July 2014. ^[119] |
|  New Zealand | 1 | June 12, 2014 | July 3, 2014 ^[120] | |
|  Norway | 1 | April 15, 2013 | | |
|  Poland | 1 | October 7, 2014 | | |
|  Singapore | 1 | December 9, 2014 | | |
|  Slovenia | 1 | June 2, 2014 | | |
|  South Africa | 1 | June 9, 2014 | | |
|  Spain | 1 | May 14, 2013 | | |
|  Sweden | 1 | August 8, 2014 | | |
|  Switzerland | 2 | February 14, 2013 | June 2, 2014 ^[102] | Parliamentary approval obtained; ^[121] insufficient supporters for a referendum. ^[122] |
|  Turks and Caicos Islands | 1 | December 1, 2014 | | |
|  United Kingdom | 1 | September 12, 2012 | June 30, 2014 ^[123] | Presented to parliament in September 2012. ^{[124][a]} |

1. In the UK, formal approval of treaties before ratification is not requirement, although according to the Ponsonby Rule, they need to be presented to Parliament with an explanatory memorandum, which the government did in September 2012.

The following jurisdictions have also reached "agreements in substance":^[103]

Model 1

-  [Algeria](#)

Model 1

-  [Dominican Republic](#)

Model 1

-  [Malaysia](#)

Model 1

-  [Serbia](#)

Model 2

-  [Armenia](#)

-  [Angola](#)
-  [Anguilla](#)
-  [Antigua and Barbuda](#)
-  [Azerbaijan](#)
-  [Bahrain](#)
-  [Belarus](#)
-  [Cape Verde](#)
-  [Cambodia](#)
-  [China](#)
-  [Colombia](#)
-  [Croatia](#)
-  [Dominica](#)
-  [Georgia](#)
-  [Greece](#)
-  [Greenland](#)
-  [Grenada](#)
-  [Guyana](#)
-  [Haiti](#)
-  [Iceland](#)
-  [India](#)
-  [Indonesia](#)
-  [Kazakhstan](#)
-  [Kosovo](#)
-  [Kuwait](#)
-  [Montenegro](#)
-  [Montserrat](#)
-  [Panama](#)
-  [Peru](#)
-  [Philippines](#)
-  [Portugal](#)
-  [Qatar](#)
-  [Romania](#)
-  [Saint Kitts and Nevis](#)
-  [Saint Lucia](#)
-  [Saint Vincent and the Grenadines](#)
-  [Saudi Arabia](#)
-  [Seychelles](#)
-  [Slovakia](#)
-  [South Korea](#)
-  [Thailand](#)
-  [Trinidad and Tobago](#)
-  [Tunisia](#)
-  [Turkey](#)
-  [Turkmenistan](#)
-  [Ukraine](#)
-  [United Arab Emirates](#)
-  [Uzbekistan](#)
-  [Vatican City](#)
-  [Iraq](#)
-  [Macau](#)
-  [Nicaragua](#)
-  [Paraguay](#)
-  [San Marino](#)
-  [Taiwan](#)

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3. [111 Cong. Rec. S1635-36](#) (daily ed. Mar 17, 2010) (statement of Sen. Levin) ("Right now, thousands of U.S. tax dodgers conceal billions of dollars in assets within secrecy-shrouded foreign banks, dodging taxes and penalizing those of us who pay the taxes we owe. The Permanent Subcommittee on Investigations... estimated that these tax-dodging schemes cost the Federal Treasury \$100 billion a year.")
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5. e.g., [26 U.S.C. § 61](#), [§ 6012](#)
6. See [26 U.S.C. § 1441](#).
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10. [26 U.S.C. § 1441](#)
11. U.S. Government Accountability Office (GAO), [Offshore Financial Activity Creates Enforcement Issues for IRS: Testimony Before the Committee on Finance, U.S. Senate, March 17, 2009](#) (statement of Michael Brostek, Director, Strategic Issues Team) at 10, [hereinafter "GAO Report"]
12. GAO Report at 10-11
13. GAO Report at 5 (referring to the FBAR filing requirement)
14. 111 Cong. Rec. S10,778 (statement of Sen. [Max Baucus](#)) ("This bill [S. 1934] would improve tax compliance without raising taxes on anyone. These are taxes that are already legally owed.")
15. 111 Cong., S.A. 3310
16. [26 U.S.C. § 1471\(c\)\(1\)](#)
17. [26 U.S.C. § 1471](#)
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23. [Internal Revenue Service](#) (January 15, 2013). ["Do I need to file Form 8938, 'Statement of Specified Foreign Financial Assets'?"](#).
24. [26 U.S.C. § 6662\(j\)\(3\)](#)
25. [26 U.S.C. § 6501\(e\)\(1\)](#); the limitations period was presumably extended because it was determined that international audit cases can take an additional 500 days to fully investigate. GAO Report at 1.
26. [26 U.S.C. § 871\(m\)](#); dividends such as those paid by a U.S. corporation are U.S. source and therefore subject to the 30% withholding tax for foreign payees. [26 U.S.C. § 871\(1\)\(A\)](#), [§ 861\(a\)\(2\)](#). The loophole was based on reclassifying the payment as income derived from the residence of the foreign payee and therefore exempting the payment from U.S. taxation.
27. Morgenson, Gretchen (March 26, 2010). ["Death of a Loophole, and Swiss Banks Will Mourn". The New York Times](#).
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29. [31 C.F.R. 1010](#)
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