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Expatriate Services

A Guide to FATCA for Brits in the US and Americans in the UK

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Introduction

As an international financial services organisation who specialise in cross-border financial planning, any piece of new legislation which focuses on offshore assets typically comes across our desks sooner rather than later.

Such was the case with FATCA, a US-led initiative which primarily focuses on large banks and financial institutions, but which, nevertheless, has extremely important knock-on effects for individuals. In particular, you are likely to be affected by FATCA if you are a UK national resident in the US, or if you are a US national resident in the UK.

In the following sections of this guide we'll introduce you to the FATCA legislation and discuss what it means to you; you'll see that there are separate areas of the guide to help each of the groups mentioned above, as well as an overall summary of how FATCA came to be, what it means and how its laws are applied. We have been dealing with the implications of FATCA now for several years and, in this guide, we'll try to give you a sure footing on which to make decisions about whether you might have a liability and need to investigate further. Make no mistake: FATCA could be a severe threat to your wealth.

Needless to say, as is typical with any US financial legislation, FATCA is a very complicated beast, but we're dedicated to making things as easy as possible for you, so this guide is designed to be understood by all, even if you have little knowledge of financial planning and accounting. If you do find you get 'stuck', our contact details can be found towards the back of the guide and we're always happy to have initial no obligation conversations about your questions and requirements.

Finally, if you do think that you have a liability that has come to the fore since the introduction of FATCA then it cannot be stressed enough that you should seek expert advice from a financial adviser who has permissions in both the US and the UK. Each circumstance will be different and securing for yourself the best possible advice based on your individual circumstances is extremely important.

We hope that this guide helps in your understanding of FATCA and invite you to get in touch further, should you require any further assistance from ourselves at The Alexander Beard Group.



What is FATCA?

The Foreign Account Tax Compliance ACT (FATCA) became law in March 2010. The objective of FATCA is to ensure the US Government gets its tax dollar of assets that US taxpayers have hidden or not reported outside of the US. That might not seem as though it applies to you, but do read on; many people who have been surprised by FATCA were not aware that their assets fell under its ruling, or even that they were counted as having assets outside of the US!

Currently the US Internal Revenue Service (IRS) estimates that they lose \$100 billion in unpaid taxes annually. FATCA is not predicted to contribute a huge amount to that figure, but it is at least a start in plugging the gap, with receipts of \$8.7 billion expected over the next 10 years.

The approach FATCA takes is interesting and an example of the US' ability to flex its monetary and political muscle.

Under FATCA rules, the IRS has the ability to investigate US citizens' international money holdings, which they achieve with the compliance of many territories' banks. The territories involved include the UK, as well as previous tax havens, such as Switzerland. As many of these banks and financial institutions also operate within the US, the US government was able to organise an arrangement with these banks that boiled down to releasing data about the holdings of US residents, or face increased taxation on activities within the US. Needless to say, a huge number of financial institutions opted for 'FATCA compliance'.

Whilst the US government has access to information on the foreign assets, a key focus of this piece of legislation is a mandate for extra reporting by US tax payers of certain foreign financial accounts and offshore assets. This means that the IRS can in theory compare the two separate reports; one a disclosure by the individual and one a disclosure by the financial institution. If either is deemed to have completed the information incorrectly (deliberately or by omission) or submits the information late then substantial fines are applicable.

Because FATCA is, by its very nature, a tax focused on those who operate across borders, the potential for US nationals in the UK and UK nationals in the US to be caught out by the ruling is high. With offices in both countries, we have been helping both of these groups to understand whether they may have a FATCA liability since before the law came into force.



Implications for Brits in the USA

Given the aims of FATCA explained in the previous section, you can see why many Brits who emigrate to the US do not consider themselves to be affected by FATCA.

The issue comes from the fact that the majority of Brits in the US will have left accounts / investments behind. As soon as you become resident in the US, for tax purposes, then these accounts can potentially become the foreign investments FATCA is looking for, meaning both you and your bank will need to report on them.

FATCA will also look at the underlying structure of the account / investment and if they deem it non-compliant, there could be further taxes to pay. An example of this is an Offshore Investment Bond which would likely be deemed as a Passive Foreign Investment Company (PFIC) and would have its own tax consequences.

For a good number of reasons, Brit Expats in the US may want to keep assets outside of the US denominated in Great British Pounds. There are IRS compliant investment options to cater for this scenario. This will allow a Brit Expat in the US to retain GBP investments outside of the US and become tax compliant. It will also allow them to manage currency risk by allowing you to switch to US Dollars should it be advantageous to do so (and back again if required).

However, without these arrangements and because of FATCA, extra care will be needed when it comes to leaving assets in the UK. As mentioned, the UK banks are part of the FATCA arrangement and are obligated to report on assets held for those resident in the US, regardless of whether you report them or not.

Aside from FATCA, the US and the UK have a robust double taxation agreement which should mean that tax is paid in only one country. Usually this will mean that you will be taxed at source in the UK, although there is an option to apply for a UK NT (No Tax) code that allows income to be paid without tax and then taxed in the US.

As with all taxation and investment affairs when moving to the US, it is imperative to take professional financial advice. The US and UK tax systems by themselves are complicated areas. Cross-border movement of assets is an even more complex which has been made even more obtuse with the advent of FATCA. A mistake in these areas can have the potential to seriously damage your wealth.

Please note: In the UK the Financial Conduct Authority does not regulate Tax Advice.



Using a QROPS and FATCA

Qualifying Recognised Overseas Pension Schemes (QROPS), now renamed ROPS by HMRC, are a legitimate retirement planning tool for British expatriates. They essentially allow a full and fair transfer from your British pension scheme to one in your new country of residence that meets with HMRC's approval.

However, care needs to be taken when you are a US resident using a ROPS as there could be significant disadvantages & pitfalls.

There is no structure in place to transfer a pension to the United States therefore those with UK based pensions are often advised to use ROPS as a solution to their pension planning. Because you cannot transfer to a ROPS within the US, ROPS is often used to transfer your UK pension to a third country, from which you can draw a pension in the US. ROPS are being used as a one size fits all approach without thought to how their country of residence views it.

For example, although transferring directly to the US is typically not possible, a UK based pension scheme is classed as a qualifying UK pension to the IRS. The double taxation treaty between the two countries clearly defines how benefits from a UK based pension are taxed. UK based pension schemes are also excluded from FATCA reporting, so you receive a lot of protection when using a UK based pension for your retirement in the US.

However, when a UK based pension is transferred to a third party country ROPS (Malta is a frequent jurisdiction used, along with a few others), the pension loses its qualifying status and also becomes reportable under FATCA. If you haven't amassed enough foreign tax credits, it is likely that the transfer to the ROPS could be considered a taxable event by the IRS.

Over the past few years, this transfer to a ROPS for a US resident hasn't been an issue as the IRS are rarely told the transaction has taken place. However, many of the territories previously used for this type of transfer, including Malta, have signed up to FATCA reporting, so now the IRS will know that a transfer has been made and will look to tax it appropriately.

As mentioned, UK pension schemes are excluded from FATCA reporting, however it is still reportable by the individual. One of the areas FATCA identifies is the structure of the underlying investment. If classed as non-compliant, there is also a 30% withholding tax levied. As you can see, FATCA puts those who transferred a UK pension into a ROPS whilst US resident into a difficult position, and certainly means that those who have not moved their pension yet but want to will have to think very carefully before following through.

Anyone considering using a ROPS for their retirement planning in the US must get specialist tax advice. FATCA reporting will shine a light on ROPS for US residents where previously this one size fits all approach seemed to work well.



Implications for Americans in Britain

As FATCA continues to gather steam in the US, an increasing number of American citizens abroad are being swept into its web, or coming to realise their new tax responsibilities. The main targets of the act, it has always been said, are wealthy individuals, using offshore accounts to protect their holdings, but if you are a US expatriate then it is likely you will be caught up in the FATCA laws at some point, or have already come into contact with them.

The reason for this is fairly simple as far as the FATCA reasoning goes: if you are a US national and you move abroad and complete fairly mundane financial activities (like starting a savings account here in the UK) then you are now in possession of a foreign investment and fall under the FATCA banner, necessitating reporting by the institution who holds your investment and by yourself.

As well as the reporting requirements, it is worth being aware of how FATCA has impacted Americans abroad in practical ways too. Whilst the requirements on banks to report on your foreign finances initially presents them with a tax worry, there are also logistical worries. On announcement of the new law, some institutions stopped offering US expats banking facilities, due to the reporting pressures such a move would place upon them. Reports of this sort of occurrence have slowed but, without a doubt, there are still potential problems for US expats in the UK or indeed Europe.

As with your British counterparts, it is vital to seek financial advice. The tax implications of moving money you have earned in the US over to the UK, for example, could be complicated by FATCA and other scenarios could see you exposed to large liabilities or fines for non-compliance.

There are, however, US tax compliant investment solutions for US citizens in the UK. This is an area we can assist you with.



Help with FATCA

Alexander Beard Group is an international services organisation with offices in six countries, including the USA. We specialise in helping families and individuals with their financial planning needs when they move from country to country, easing the journey by providing advice both from our head office here in the UK and our locations around the world.

If you are moving from the US to the UK, the UK to the US, or have already completed your move, then we are here to help.

One of the many ways in which we can provide assistance is through a solution called AMVEST, which we developed with our expert team of experienced international advisers and which is only available through Alexander Beard.

AMVEST presents a solution to the UK-to-USA pension movement problem. It works by keeping your pension under UK rules, but may be held in either GBP or USD, using one of America's leading fund managers. You have access to financial advice from a US-based investment adviser, rather than having to deal with someone in a far off jurisdiction like Malta or the Channel Islands, and can access your account online 24/7. Because the account is under UK rules, you can still take a tax-free lump sum from age 55. All benefits, including your lump sum, can be paid in GBP or USD.

We also provide specialist financial advice in the US and the UK, to US and UK citizens and residents. We are always willing and ready to have a no obligation chat about your requirements, before you formally appoint us as your financial advisers. We work with tax advisers in the US and the UK and are more than happy to suggest a reputable specialist in this area to you, or work with your already appointed adviser.



Contact

To talk to one of Alexander Beard Group's Financial advisers in the USA, simply contact us using the details below:

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