

Are you an “Accidental American”?

British citizens born in the US risk having their UK bank accounts frozen and should act now

It has been widely reported that expatriate US persons must provide their US tax identification number (TIN) to their local banks with effect from the end of this year or risk having their bank accounts closed or frozen.

This stems from the Foreign Account Tax Compliance Act (FATCA) which came into force in July 2014, under which all foreign financial institutions (FFIs) have to identify their US clients and report them to the US Inland Revenue Service (IRS). This was intended to prevent US taxpayers from evading US income tax on offshore investments and assets.

The original FATCA regulations required FFIs to collect their US clients' TINs and dates of birth and report them to the IRS, but this proved to be an administrative strain so the IRS granted FFIs a three-year grace period under which they would only have to submit a US client's date of birth and only provide their TIN if the bank already had a record of it. FFIs were also required to ask for their TIN every year and to make electronic searches for any missing US TINs.

This period of grace comes to an end on 31 December 2019 and foreign banks with US clients are now pressing their clients for obtaining any missing TINs, even when one had never been issued.

Clients who don't provide their US TIN, including hundreds of thousands of so-called accidental Americans who have lived abroad all their adult lives, risk having their bank accounts frozen unless they have a “reasonable explanation” of why they have not obtained a US TIN.

The reason for the urgency in obtaining clients' US TINs is that FFIs continuing to service US clients without TINs risk having the 30 per cent FATCA withholding tax applied to all returns from their US investments.

The rules apply to any “partner jurisdiction” that has made a so-called Model 1 FATCA agreement with the US, which includes most European jurisdictions.

The European Banking Federation estimates there are nearly 30,000 accidental Americans in the EU.

Of the options available then, for such accidental Americans they should consider taking the following action:

- (i) Apply for a TIN without delay to enable any Bank in which they hold an account to comply with FATCA and provide the IRS with a TIN before 31 December 2019. On the basis an application may take up to 8 weeks this should be done without delay; or
- (ii) Relinquish any “unused” US citizenship so this FATCA compliance issue is resolved for good. This may be a last resort for those who like to maintain their US citizenship, but it remains the case that continuing with their US citizenship does come with additional compliance obligations and paperwork. This may take considerably longer to process so may not be a realistic option for many. It is worth noting also that giving up US citizenship does require being tax compliant for at least five years and paying an estimated fee of at least £2,000. In addition, there would be professional fees to consider.

To the extent clients are approached by Banks requesting a TIN they should generally respond to this immediately and tell them they are in the process of applying for one, unless they have a “reasonable explanation” they cannot do so. A serious or life-threatening illness or injury might be considered a reasonable excuse for preventing compliance.

For further guidance on these measures, please contact Robert Drysdale or any other member of our Wealth Planning team:



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