

Legislative Recommendation #7**Eliminate Duplicative Reporting Requirements Imposed by the Bank Secrecy Act and the Foreign Account Tax Compliance Act****SUMMARY**

- *Problem:* U.S. taxpayers with foreign accounts and assets are subject to two sets of information reporting requirements – one for the IRS and one for the Financial Crimes Enforcement Network (FinCEN). Much of the information requested by these two Treasury Department bureaus is duplicative. Yet individuals must complete separate forms for each and are subject to significant penalties for failure to report accounts or assets on one or both forms, even when the individuals owe little or no tax.
- *Solution:* Reduce taxpayer burden and government costs to process and store the same information twice by eliminating duplicative reporting requirements for taxpayers with foreign accounts and assets.

PRESENT LAW

The Bank Secrecy Act, found primarily in Title 31 of the U.S. Code, requires U.S. citizens and residents to report foreign accounts to FinCEN when the combined value of those accounts exceeds \$10,000 at any time during the calendar year.¹ Individuals comply with this requirement using FinCEN Report 114, Report of Foreign Bank and Financial Accounts (FBAR).

The Foreign Account Tax Compliance Act (FATCA) added § 6038D to the IRC (Title 26).² It requires U.S. citizens, residents, and certain non-residents to report foreign assets exceeding specified thresholds to the IRS. They must file IRS Form 8938, Statement of Specified Foreign Financial Assets, with their annual income tax return to comply with this requirement. IRC § 6038D authorizes the IRS to issue regulations or other guidance to provide exceptions from FATCA reporting, including when the reporting would duplicate other disclosures.³

REASONS FOR CHANGE

Many U.S. taxpayers, particularly those abroad, face increased compliance burdens and costs because the FATCA and FBAR reporting requirements significantly overlap.⁴ The duplicative reporting regime is also inefficient for the government, with the Government Accountability Office (GAO) reporting it “creates additional costs to the government to process and store the same or similar information twice, and enforce reporting compliance with both requirements.”⁵

1 31 U.S.C. § 5314; 31 C.F.R. § 1010.306(c). The authority to enforce the Foreign Bank and Financial Accounts (FBAR) reporting requirements has been redelegated from FinCEN to the IRS. See 31 C.F.R. § 1010.810(g).

2 Pub. L. No. 111-147, Title V, Subtitle A, § 511(a), 124 Stat. 71, 109-110 (2010).

3 The IRS has provided exceptions for assets reported on certain IRS international information returns and for assets held in the U.S. territories by *bona fide* residents of the territories. Treas. Reg. § 1.6038D-7(a)(1), (c).

4 For a comparison of the requirements, see IRS, Comparison of Form 8938 and FBAR Requirements, <https://www.irs.gov/businesses/comparison-of-form-8938-and-fbar-requirements> (last updated Sept. 18, 2024).

5 GAO, GAO-19-180, *Foreign Asset Reporting: Actions Needed to Enhance Compliance Efforts, Eliminate Overlapping Requirements, and Mitigate Burdens on U.S. Persons Abroad* 42-43 (2019), <https://www.gao.gov/products/gao-19-180>.

We believe two bureaus within the same cabinet department (Treasury) should harmonize their information collection procedures to reduce the significant burdens the current reporting regime creates for taxpayers. At the same time, we recognize there are complexities that can only be addressed through legislation. FATCA reporting and FBAR reporting serve different purposes, and while there is significant overlap between the two, they are not identical with respect to whom they apply, which assets must be reported, and the information collected.⁶ We also recognize the challenges the IRS faces when working with Title 31 requirements and FinCEN guidance that differ from the Title 26 rules. We concur with the GAO's assessment that a legislative change to the FATCA and FBAR statutes is necessary to eliminate overlapping reporting requirements and the collection of duplicative information, while still ensuring each agency retains access to the information it needs.⁷

The National Taxpayer Advocate recommends Congress amend Titles 26 and 31 to eliminate FATCA reporting when a foreign financial account is correctly reported on an FBAR. The National Taxpayer Advocate also recommends Congress provide a limited exception from FATCA reporting for financial accounts held in the country in which a U.S. taxpayer is a *bona fide* resident (commonly known as a “same-country” exception).⁸ If adopted, these recommendations would reduce compliance burdens for U.S. taxpayers who currently must navigate the complex and duplicative reporting regime themselves or pay higher fees to tax professionals to do it for them, and could reduce the government resources required to process and store the same information twice.

RECOMMENDATIONS

- Amend IRC § 6038D and 31 U.S.C. § 5314 to eliminate duplicative reporting of assets on IRS Form 8938 when a foreign financial account is correctly reported on an FBAR, while ensuring each agency's continued access to information.⁹
- Amend IRC § 6038D to exclude accounts maintained by a financial institution organized under the laws of the country of which a U.S. person is a *bona fide* resident from the specified foreign financial assets required to be reported on IRS Form 8938.¹⁰
- Authorize the Secretary of the Treasury to issue regulations under Titles 26 and 31 to harmonize the FATCA and FBAR reporting requirements and direct the Secretary to issue such regulations within one calendar year from the effective date of the legislation.

6 While FATCA reporting is focused on identifying income from foreign sources and curbing taxpayer noncompliance, FBAR reporting is focused on identifying money laundering and other financial crimes.

7 GAO, GAO-19-180, *Foreign Asset Reporting: Actions Needed to Enhance Compliance Efforts, Eliminate Overlapping Requirements, and Mitigate Burdens on U.S. Persons Abroad* 25-26 (2019), <https://www.gao.gov/products/gao-19-180>.

8 We understand that FATCA reporting burdens have caused some foreign financial institutions to decline to do business with U.S. expatriates, making it difficult for U.S. citizens to open bank accounts in some countries. An exception for *bona fide* residents of a foreign country would reduce those burdens without substantially undermining the purpose of FATCA, because individuals who open bank accounts in the country in which they reside are more likely to need the account for legitimate purposes and less likely to be engaged in tax evasion than individuals who open accounts in countries with which they have little connection. For additional discussion, see National Taxpayer Advocate 2015 Annual Report to Congress 353-363 (Legislative Recommendation: *Foreign Account Reporting: Eliminate Duplicative Reporting of Certain Foreign Financial Assets and Adopt a Same-Country Exception for Reporting Financial Assets Held in the Country in Which a U.S. Taxpayer is a Bona Fide Resident*), https://www.taxpayeradvocate.irs.gov/wp-content/uploads/2020/08/ARC15_Volume1_LR_05_Foreign-Acct-Reporting.pdf.

9 For legislative language taking a different approach to harmonization, see Tax Simplification for Americans Abroad Act, H.R. 5432, 118th Cong. § 4 (2023), which would amend 31 U.S.C. § 5314 to provide that a taxpayer could satisfy FBAR requirements by attaching information required under IRC § 6038D to the annual tax return.

10 For legislative language generally consistent with this recommendation, see, e.g., Overseas Americans Financial Access Act, H.R. 5799, 117th Cong. § 3 (2021).