

Bowman Offshore Bank Transfers: Is it Dangerous to Transfer Your Offshore Money into the U.S.?

This is a question we receive often. With the implementation and enforcement of FATCA (Foreign Account Tax Compliance Act), the United States is increasing enforcement priority of noncompliant US account holders.

More than 100 countries and tens of thousands of foreign financial institutions have agreed to report US account holder information to the United States.

But I am not a U.S. Citizen?

This is a common misconception. The requirement for FATCA reporting is for the individual to be a US account holder – not a US citizen. In other words, whether you are a US citizen, Legal Permanent Resident, Visa Holder who meets the substantial presence test, or a former green card holder who was considered a long-term resident – you are generally considered a US person.

As a US person, you are required to report your foreign accounts and global foreign income to the United States (the United States taxes individuals on their worldwide income). With that said, the question generally arises as to [whether a person can transfer their money from an offshore account into the United States](#), without issue?



Transferring Your Money to the United States

The fact of the matter is, the money overseas is your money. The IRS is not seeking to penalize you for the mere fact that you are transferring your foreign money into the United States (presuming the money was received legally). Rather, the United States is penalizing you for failing to report the existence of this money to the US government while it was overseas in a foreign account.

There are many individuals who have a reporting requirement because the value of their foreign accounts/specified assets exceeds \$10,000 in annual aggregate total on any given day – but do not have any taxable income. In this situation, there is a reporting requirement, but no taxation (since there was no foreign income earned). Nevertheless, they still must report the accounts properly. If the money was “earned” income and U.S. Taxes weren’t filed and/or paid to report the money, it can complicate the situation – but through voluntary disclosure a person can usually get into compliance relatively simply.

Depending on the facts and circumstances of your case, you may be able to avoid penalties altogether. The following is a summary of the basic requirements of individuals who were considered “US persons” and therefore may have a foreign account reporting and/or foreign income reporting requirement:

FATCA & Reporting Foreign Income – The Basics

Golding & Golding is a flat-fee, full-service firm; we are lawyers who assist international clients in reporting their offshore accounts to the IRS. Most recently, many of our clients learned about Foreign Bank Account reporting requirements when they received a FATCA Letter from their Bank, asking them to certify their U.S. Status by submitting either a W-9 or W-8 BEN.

Who Has to Report?

We have represented numerous clients worldwide with issues similar to yours:

- **Expats** who relocated overseas and did not know they had to report their foreign accounts.

- **U.S. Citizens** who live overseas and may or may not earn significant income, but have accounts in a foreign country.
- **Legal Permanent Residents** of the United States who relocate back to a foreign country but are unaware that they are still required to report the foreign accounts.
- **Non-Residents** who meet the substantial presence test and therefore are required to report foreign bank and other accounts to the US government.

The Basics

These are the most basic rules when it comes to foreign accounts and foreign income:

Foreign Income

If you are either a US Citizen, Legal Permanent Resident (aka Green Card holder or recently gave up your Green Card) or foreign resident who meets the substantial presence test, then you are required to report your worldwide income to the IRS. This means that even if you do not have any US-based income, you are still required to report your worldwide income (even if it is the type of income which is not taxed in your home country such as interest and dividend income in most Asian countries). And, if you have enough foreign income to meet the minimum threshold for having to file a US tax return, then you are required to do so even if it is based on your foreign income alone.

Foreign Accounts

If you meet the requirement for being a U.S. “Taxpayer” (even if you do not meet the threshold for having to file a US tax return), you are still required to file an annual FBAR (Report of Foreign Bank and Financial Accounts). The threshold is as follows: if at any time during the year, you have more than \$10,000 in foreign accounts (whether the money is in one account or spread over numerous accounts), you are required to file an FBAR.

In addition, if you have significant amounts of money overseas, then you may also have to file additional forms such as an 8938 (FATCA Form) or 8621 (Passive Foreign Investment Company, which includes Foreign Mutual Funds along with as many other passive investments). There are many other forms you may have to file, but we determine those on a case-by-case basis.

Fines & Penalties

Unless you are criminal, chances are the IRS or Department of Justice will not be banging down your door to come drag you to jail. With that said, the fines and penalties can be very steep and depending on your particular circumstances, may include penalties upwards of 100% of the value of your foreign account. If the IRS believes you were willful (aka intentional), then they may launch a criminal investigation against you and the penalties and fines can get much worse from here, including Liens, Levies, Seizures...and worse.

Customs Holds and Passport Revocation

With the implementation of FATCA (Foreign Account Tax Compliance Act), the United States is heavily cracking down on offshore tax evasion and unreported foreign accounts in general. The IRS and US government have the power to both revoke your passport as well as possibly hold you at the airport “customs hold” to question you on the spot (usually outside the presence of your attorney).

Getting Into Compliance

Getting into compliance should be mandatory on your “to-do” list. Even though our firm, Golding & Golding, is based in Newport Beach, we represent clients worldwide. A majority of our clients live

overseas in over 40 countries. We have helped numerous clients get into compliance and are regarded as one of the top Offshore Disclosure Law Firms worldwide.

To that end, there are three main methods of compliance:

(1) Streamlined Compliance

This program is for individuals who were unaware of any requirement to file an FBAR and/or report their income on a US tax return. The penalties under the streamlined program are significantly reduced and may possibly be waived depending on whether a person qualifies under the strict definition of foreign resident for offshore disclosure purposes.

(2) OVDP

This program is mainly for individuals and businesses who were willful, aka were aware they were supposed to report their foreign accounts but intentionally hid or kept the account/income information secret.

(3) Reasonable Cause Statement

This is not a particular program; instead, it is a method for getting to compliance while attempting to avoid any penalty. There are many pros and cons to this method depending on your specific situation, which must be evaluated carefully with your attorney before making a decision.