

Frozen bank accounts of US citizens in Europe – what does it mean for Canada?

Moody's
September 5, 2019

Why are French and British banks threatening to freeze or close the bank accounts of US citizens?

French and British banks are looking for ways to comply with a 2010 US law known as the Foreign Account Tax Compliance Act (FATCA). The law, a US predecessor to the Common Reporting Standard (CRS) adopted by many countries, is an attempt to fight tax evasion and increase transparency by forcing non-US banks to disclose the financial holdings of their US customers to the US Internal Revenue Service (IRS). This disclosure is done through information exchanges between the IRS and the respective national tax authority.

What's unusual about the US situation is that the United States both taxes its citizens whether or not they are US residents and deems most children born within its borders or to US citizen parents living abroad to be US citizens. So, while FATCA does help catch tax evaders trying to stash money in offshore accounts, the combination of its breadth and the idiosyncrasies of US tax and nationality law ends up capturing a lot of "accidental Americans" and other US individuals who did not realize they were noncompliant with US requirements.

At the end of 2019, an extension period set up by the IRS in 2017 for banks to collect US taxpayer-identification numbers from their US customers will end, meaning that non-US banks that do not obtain these identification numbers from US customers will be considered noncompliant with FATCA. Noncompliance translates to an imposition of a 30% withholding tax by the United States on the banks' US income, which obviously gets their attention. If a bank has a US customer who will not provide a US taxpayer identification number, it may thus look to close that person's accounts as the most efficient way to remain FATCA-compliant.

What does this mean for other countries? Could this happen in Canada?

This certainly could happen in Canada since Canadian banks are subject to the same expiring grace period as are banks in France and the United Kingdom. However, given the close integration of the US and Canadian economies, it would not be surprising if Canadian banks foresaw this as an issue requiring attention before some of their European counterparts did and have already addressed the issue with most of their customers. Further, the Canada Revenue Agency (CRA) has already provided official guidance to Canadian banks on this issue, so this is likely not as much of a surprise in Canada as it appears to be in some other countries.

So what exactly is an 'Accidental American' and how do I know if I am one?

An “accidental American” is someone who is a US citizen but doesn’t realize it. This situation could occur for several reasons, the most common being that the individual didn’t know that he or she became a US citizen at birth, or he or she erroneously thought US citizenship was lost upon naturalization in another country.

Like many countries, the United States automatically makes all children born within its borders citizens, with narrow exceptions for children born to diplomats serving at missions located in the United States. So, it is not uncommon for a person who was born in the United States but who may have left as an infant and grown up entirely in another country not to realize that he or she is a US citizen. It’s also not unusual for someone who was born outside the United States to be a US citizen through descent. Many children born to one or two US citizen parents outside the United States are US citizens at birth. Especially key in either circumstance is that US citizenship is not optional — even if a child was never registered with the US government, he or she was a US citizen from birth.

We also meet many individuals who thought that they lost US citizenship when they became citizens of another country, perhaps decades ago. If the individual were issued a Certificate of Loss of Nationality (CLN) by the US Department of State when that naturalization happened then he or she would have lost US citizenship at that point. But without a CLN an individual will almost always still be a US citizen. Simply acquiring another nationality is not enough to lose US citizenship; the person needs to intend to lose US citizenship and provide notice to the US government of that intent. The law does not allow retroactive renunciation: a person can notify the US government that he or she intended to give up US citizenship upon acquiring another citizenship years ago, but the loss of US citizenship will be effective for tax purposes only as of the date that the US government received notice. Individuals under the age of 18 generally cannot renounce US citizenship, and all renouncers must demonstrate basic mental capacity, namely that they understand the consequences of renunciation.

Based on that definition, I could be considered a US citizen. Does this mean I should be paying US taxes?

Annually filing a US tax return? Almost certainly yes. Paying US taxes? Probably not. US citizens with all but the lowest of incomes must file US tax returns regardless of where in the world they live. But most US citizens living outside the United States don’t end up paying tax to the IRS because they’re granted credit for taxes paid to their countries of residence (regardless of whether a country has a tax treaty with the United States). US citizens living in Europe, Canada, Australia, and New Zealand — where personal tax rates tend to be higher than in the United States — often pay no US tax.

Where US citizens may face exposure is on penalties that are imposed for not disclosing non-US assets, such as bank accounts or shares in privately-held corporations in the country of residence. It’s perfectly legal in most cases for US citizens to own non-US assets, but these assets have to be disclosed, and if they’re not, the penalties are severe. For example, penalties for late-filed information reporting forms start around \$10,000 (USD) per form, per year.

How do I obtain a tax identification number? What if I was never issued one?

The appropriate tax identification number for a US citizen is a Social Security Number (SSN). US citizens living in Canada must visit a Social Security Administration office in the United States. US government staff can advise what documents are required depending on the individual’s circumstances and assist with the application process.

What can I do to avoid the freezing of my assets?

Get a US SSN and get compliant with your US tax filing obligations. That can be easier said than done, and it may not feel fair, but just hoping for the problem to go away is not advisable. FATCA is a powerful tool and, so far, lawsuits challenging both it and the US citizenship-based taxation system have been filed and struck down in several countries including Canada, the United States, France, and Israel.

The good news is that the IRS recognizes that many individuals affected by these laws were not deliberately trying to hide assets but did not know about all the US requirements that applied to them. The IRS thus offers an amnesty program, called the “Streamlined Foreign Offshore Procedures,” under which US citizens living outside the United States may come forward voluntarily and file late tax returns with no penalties. This program limits the “look back” period for years that have to be filed, results in relatively efficient processing of returns, and ensures that the taxpayer only pays any tax and interest for those years rather than penalties.

I don't want to be a US citizen anymore, what are my options?

Adult US citizens (age 18 and over) have the right to renounce citizenship but doing so is not as simple as just making an appointment at the closest US embassy or consulate. Like many countries, the United States has an “exit tax.” Because the US tax system is based on both citizenship and residency, this tax can be triggered when an individual chooses to renounce citizenship. In brief, unless they are willing to pay the exit tax, all renouncing US citizens must demonstrate compliance with their US tax filing obligations for the five calendar years preceding the year of renunciation. Many renouncers will also be subject to net-worth and tax-liability tests or the exit tax will be imposed.

What a renouncer says in a renunciation interview is also crucial as there can also be severe immigration consequences: individuals deemed to have renounced to avoid tax can be barred permanently from returning to the United States, even as just tourists. Careful planning is required on all fronts.

Consider attending one of our complimentary US citizenship renunciation seminars taking place across the globe. [Click here to learn more or register.](#)