



AMERICAN CITIZENS ABROAD  
EDUCATE, ADVOCATE AND INFORM  
AMERICAN CITIZENS ABROAD  
*global foundation* FOR EDUCATION AND RESEARCH

Washington, DC  
January 13, 2023

The US Treasury Department announced Notice 2023-11 on December 30, 2022 that it was providing additional filing relief for foreign financial institutions (FFIs, typically banks) that have US citizens as account holders and where some of those account holders lack US Social Security Numbers (technically, Tax Identification Numbers (TINs)). Taxpayers need a TIN to file their US tax return, including Form 8938 which is an attachment to the return. With respect to Foreign Account Tax Compliance Act (FATCA) requirements imposed on the FFI, a TIN for the account holder in its bank is necessary in order to for the FFI to report information, as required, to the IRS. Frequently this is done by the FFI reporting to the local foreign tax authority which, in turn, reports to the IRS, but sometimes directly to the IRS. The FFI obtains the TIN from the taxpayer. Information might be transmitted using a paper form (Form 8966) or, much more likely, electronically via a specially constructed data exchange service and following a specific set of rules governing the structure and content of files.

The US Treasury has been made aware of serious issues in the procurement of US Social Security number for individuals who may have never received one at birth and never applied for one during their lifetime. These individuals are living overseas and as a result of the FATCA legislation must provide their financial institutions with a TIN or risk having their financial accounts closed or be denied financial accounts.

[ACA's summary](#) acknowledges that the recent relief, which will allow for the use by foreign financial institutions of temporary codes for individuals that still do not have US Social Security numbers to mitigate account closures and denials, is welcomed and will assist with some of the issues of foreign financial “lock-out.” However, ACA reminds the US Treasury that the lock-out from foreign financial institutions is not solely related to the lack of taxpayer identification numbers. Many US citizens continue to be refused financial accounts or risk having their accounts shuttered due to foreign financial institutions’ concerns of harboring undeclared US taxpayers, even those with US Social Security numbers.

Acknowledging the US Treasury’s desire to provide rules that meet the needs of curtailing tax evasion, which FATCA was intended to do, ACA recommends that the US Treasury consider the application of “safe harbour” regulations that would go a long way to ensuring that US citizens overseas, who legitimately need foreign financial accounts for their day-to-day lives, can access foreign financial products while also protecting against tax abuse. [ACA’s “Same Country Exemption”](#) footnoted in ACA’s comments to the US Treasury, removes from FATCA reporting the foreign financial accounts of US citizens who attest under penalty of perjury that they are legitimately resident in the country where they hold the foreign financial accounts and are US tax compliant.

“Some in the overseas community may think that the US Treasury notice is leading to some sort of amnesty and a way for those without a Social Security number to maintain banking relationships without ever applying for one and without actually filing US tax returns,” said Charles Bruce, ACA Legal Counsel and ACAGF Chairman. “However, individuals should pay close attention as to what the latest notice is saying. This is temporary relief with the

expectation that individuals will eventually procure Social Security numbers and will become compliant. Treasury may consider future programs to make it easier for taxpayers to ‘catch up’ and to mitigate some of the consequences, including penalties, but nothing is leading to anything approaching amnesty,” added Mr. Bruce.

The silver lining is that Treasury understands that there is a growing problem with tax compliance for the overseas US citizen community. Treasury has in hand [ACA’s two research studies](#) from 2017 and 2021 on the tax, investment and demographic make-up of the community of US citizens overseas. This data was not available when FATCA was implemented and many of the assumptions on revenue generation were made without a clear understanding of the size and make-up of the community.

“Treasury and the IRS can do a better job with regulations by referencing ACA’s work,” said Marylouise Serrato, ACA Executive Director, adding, “We believe that more pressure on Treasury, together with a strong call from Congressional offices and the community, will push Congress and the Administration to finally consider tax reform for US citizens overseas.”

ACA’s summary concludes with a call for Congress to hold hearings so that ACA’s research and information, along with data from other organizations, groups and individuals, can be put on the public record. “It’s time for Congress to stop ‘band-aiding’ the problems of US citizens living and working overseas. The time has come for Congress to get a full understanding of the problems and put their nose to the grindstone and begin coming up with legislative and regulatory solutions, Residence-based taxation (RBT) being the best. Let’s get hearings done in this Congress and start the process.”, said Jonathan Lachowitz, ACA Chairman.

Contact:

Marylouise Serrato  
[info@americansabroad.org](mailto:info@americansabroad.org)  
+1 202 322 8441