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FATCA FACT FINDING FORUM

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Part 4 of 9

**John Richardson
Presentation of FATCA Principles Video**

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5 **MR. JOHN RICHARDSON:** On the issue of privacy and the issue of sort of looking for US Persons in Canada, I came across a video that I think is worth the five minutes. I know a lot of YouTube is not, but I think this definitely is.

10 So, have a look at this particular bank's particular interpretation of what FATCA requires of them to do.

Video: Features of a US Connections Real Person

15 *[Basic Excerpt: Film will be updated on issuance of final regulations. Enquiries about this film to info@lessonslearned.co.uk]*

Indications of US Status

1. *US resident or citizen*
2. *US Address linked to account*
- 20 3. *US place of birth*
4. *US-based power of attorney or authorized signatory*
5. *Regular transfers to US or instructions from a US address*
6. *'Care of', 'Hold Mail' or PO box address only*

25 *In the cases of potential US cases, of which if even just one applies, then the account will be treated as a US account unless the account holder can provide evidence to the contrary.*

And, Nolan and I will now outline these indicators with the benefit of a few examples.

Well, first up, met Renaldo. He works in Singapore and lives there much of the time. He trades very actively on the global markets using investment accounts in Tokyo and London.

30 *He presented a US passport when opening these accounts and gave his US residential*

address rather than his address in Singapore. Documentary evidence of US residency for citizenship, for example Renaldo's passport and a US address linked to an account are both very strong indicators of US status. So Renaldo's accounts, if they have an average balance of more than \$50,000, must be treated as US accounts in accordance with FATCA rules.

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Renaldo's case is pretty straightforward but let's have a look now at Natalie. She's French and has a French passport to prove it. She lives and works in Paris with her husband, Robert, who has a Swiss passport. Natalie and Robert hold a joint account in Paris. At account opening they presented their passports and gave their Paris residential address.

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This information is on all held on record by the account holding institution together with other details, including Robert's place of birth, which is given as Boston, Massachusetts. Natalie's and Robert's passports confirm that they are not US citizens nor do they live in the US nor is there a US address linked to their account. However, Robert was born in the US and for FATCA purposes this marks him out potentially as a person with US status. In

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theory, this means that the account he shares with Natalie could be treated as US account for FATCA unless they prove otherwise. Now, in practice, Robert, Natalie and the institutions they bank with would have plenty of evidence in the form of passports and other records to demonstrate that the US connection is neither relevant nor current and therefore should be able to confirm their accounts as being other than US accounts for FATCA purposes. But,

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Right, next up is Reginald. Hey, Reg. Reginald is British born and lives his full time in London. He has a number of accounts in the Cayman Islands but has little to do with their day-to-day management and did not give his London address when setting them up. Reg's Cayman accounts are in fact managed by his authorized intermediary, an attorney based in Miami. From his Miami offices, Reg's attorney issues regular monthly instructions for transfers to and from Reg's Cayman accounts. Reg is British through and through. However, his authorized intermediary is based in the US. His Cayman accounts are

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managed by instructions that have been issued in the US and furthermore only a PO box address has been recorded with the account opening information for his Cayman accounts. Under FATCA rules, these last three points are all indicators that Reginald's Cayman accounts might need to be treated as US accounts for FATCA purposes. The Cayman institutions holding Reginald's accounts may therefore need to request documents in addition to the ones they already have as evidence to verify or disprove that his accounts should be treated as US accounts for FATCA purposes.

And remember, if a client fails to cooperate, for example by failing to provide requested evidence or other assistance to FFI's who are trying to establish or disprove the US status of their accounts then their accounts must be treated as recalcitrant accounts with all the attendant withholding tax and financial penalty implications which that entails.

Let's move on now and look at accounts held by so-called artificial persons or entities such as corporations and trusts. Which of your existing relationships with entities such as companies, trusts and financial institutions are likely to be affected by FATCA? Let's look at some examples. We'll start with Alma Industries. It has significant operations in the US as well as in a number of other countries and is in fact already documented as a US taxpayer for purposes other than FATCA. So all the industry accounts are presumed to be US accounts for FATCA tax purposes as well. Very straightforward.

Let's look now at the Borason Trust. Unlike Alma Industries, the Borason Trust isn't a US taxpayer. However, the trust was incorporated in the US which means that it is presumed to be a US entity and its accounts are presumed to be US accounts for FATCA purposes. Next up, what about Challinex Ltd. Challinex isn't a US taxpayer and wasn't incorporated in the US. However, it is part owned by Alma Industries which has a 15% holding. Since Challinex is more than 10% owned by a US entity, then its accounts are presumed to be US accounts for FATCA purposes and must be treated and reported accordingly. Any entity that

is neither a US taxpayer nor a US incorporated nor more than 10% US owned is for FATCA purposes...

MS. ALLISON CHRISTIANS: Now just before you turn that off, notice that the view count is 1,350. That is pathetic, right? It should be a million, maybe 10 million and I think we'll see that this is amazing how little people understand just that.

MR. JOHN RICHARDSON: How many agree that we're seeing a transitional change in history? There's no doubt about it in my mind and you can say that you were here to witness it. We should hand out diplomas or something at the end of this.

I actually have a comment on the video as well. It's funny, I saw it before just trying to put this together. Did you get the feeling that these bankers were really excited; they found this exciting? You know, sort of about rooting these people out and to that I would add -- you know in Abby's presentation you know she talked about whistle blowers and the IRS is (and there's plenty of anecdotal evidence of this) is really pushing their whistle blower program. In other words, let's find that US Person and turn him over to the IRS for processing. Yeah, yeah -- it's not like you do this for nothing; it's a percentage of the take. OK, yes.

QUESTION: In my heart this is what I feel like. It feels like we are in World War II, that we are being weeded out like the Jews did. We're not going to be killed or anything and I don't want to try to lessen that, but I think that when you watch whistle blowers and being weeded away and segregated and everything else, to me I kind of know what that feels like. That's how I feel and I am just wondering if it's just me or do other people feel the same?

Yes, something that I put in the press release and wiser heads prevailed, is that I originally put it in there and it was taken out was that this FATCA makes our friend and ally look like a

schoolyard bully. He can't find the five \$1.00 bills that he thought he had in his pocket. He presumes they were stolen and he then hits every other occupant of the schoolyard with a 5 cent daily tithe until they are found.

5 **MR. JOHN RICHARDSON:** Well, that's an interesting perspective. Is there anyone else here that shares that general sentiment? Dorian, you do? Do you want to speak to it now? OK, that's fine then. OK, other comments now. Move along in the ...

Oh, I'm sorry; missed...

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MR. JIM JATRAS: From the schoolyard bully here (Jim Jatras) – was that produced by the bank itself or was that produced by an accounting or a consulting or a law firm, peddling their wares on compliance?

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MS. ABBY DESHMAN: To me, that looks like an advocacy campaign against FATCA. If you look at the website, it says "lessonslearned.uk.com for information about this video". So if I actually had to guess since I didn't see a bank's name, I'd guess that was a UK-based anti-FATCA.

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MR. JIM JATRAS: I don't see it that at all. The way I read it is there's somebody out there and whether it's a bunch of lawyers or accountants or software purveyors or somebody who is saying to banks and others ' these are the things that you're going to need to do. These are the accounts that you're going to have to fire it out and make distinctions of, you're going to need some expensive help to do that and we're available. That's what I

25 would have read into that.'

MR. JOHN RICHARDSON: I think that's very, very possible and of the points that I made this morning is that from the point of view of the legal and accounting community

and the compliance groups in general, FATCA is without a doubt the gift that just keeps right on giving. There's no question about it.

THE FOREGOING IS A TRUE AND ACCURATE TRANSCRIPT
5 OF THE PROCEEDINGS OF THE FATCA FACT FINDING FORUM
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