**Title:** Why All of the Fuss?

**Subtitle:**

**Meta Description:** Why All of the Fuss?

**Date:** 0-5-2012

**Author:** James F. McDonough

**Formatted Content:**

**Raw Content:** I was surprised by the public excitement raised in reaction to Mitt Romney’s disclosure about having signatory authority over foreign bank accounts.  I expected that the US media and the public would accept the fact that we are in a global economy and that US persons will do business cross-borders and sometimes exclusively outside the US.  The US reporting requirements have persons with signatory authority over financial accounts to report the existence of the account to the US Treasury.  I would have been surprised, given Mr. Romney’s position at Bain Capital,  if he had no foreign accounts.  That would have been a story in itself.
There are two parts to this story. One aspect focuses on the reporting of foreign account requirements, while the second focuses on the structural aspect of foreign accounts. Persons required to report foreign accounts include those you might not otherwise thought of as being subject to reporting, such as:
(1) An employee or officer of a covered entity who has signature or other authority over and no financial interest in a foreign financial account of another entity more than 50% owned, directly or indirectly, by the entity (a controlled person); and
(2) An employee or officer of a controlled person of a covered entity who has signature or other authority over and no financial interest in a foreign financial account of the entity or another controlled person of the entity.
This caught some by surprise, so the IRS 2011-57, 5/31/11, announced an additional extension of the Report of Foreign Bank and Financial Accounts (FBAR) filing deadline until 6/30/12 for the these individuals.  A public corporation, with numerous foreign subsidiaries, may have hundreds of foreign accounts.  Some accounts receive deposits from customers and clients, others may purchase products. Accounts may also hedge currency and commodity (e.g. oil, sugar or cotton) risk.  The point is that there are many persons in corporate America with signatory authority over such accounts whose pictures do not appear in annual reports. Even your neighbor may have to file because of tasks assigned in the ordinary course of employment.
The second part is flexibility. US hedge funds also do not want to become subject to the same restrictions and registration requirements as a mutual fund under the<a href="http://www.sec.gov/about/laws/ica40.pdf"> Investment Company Act of 1940</a>.  One need only look at a mutual fund prospectus to realize that there are costs for advertising, answering telephones, mailing statements and prospectuses.  Avoiding registration permits more leverage, short selling and purchases on margin.  Finally, the advisor need not register as an investment advisor under the<a href="http://www.sec.gov/about/laws/iaa40.pdf"> Investment Advisors Act of 1940</a> if certain other requirements are met. There are also registration requirements under state blue-sky laws that would potentially apply as well (imagine the headaches of 10 investors in ten different states). Thus, a foreign registration in the Cayman Islands or anywhere else makes sense.
Where will our jobs come from in the future?  We recognize that old-line manufacturing has moved offshore. We must also recognize that there are compelling reasons to locate the newest chip plant overseas. Contract research and development for pharmaceuticals is performed in Hong Kong and Singapore. The US must grudgingly acknowledge the new reality that capital will flow to locations that provide the best opportunity and tax policy must adapt as well.  The fact that the location chosen was the Cayman's and not New York should tell us something.