

American Citizens Abroad (ACA)

The Voice of Americans Overseas

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ACA Call for Repeal of FATCA Legislation

MM. Geithner, Shulman, Corwin and Musher,

American Citizens Abroad (ACA) has launched a campaign calling for the repeal of FATCA because this legislation works against the interests of the United States.ⁱ FATCA is misconceived and will not attain its objectives. To the contrary, it leads to a two-tier banking system, which is self-defeating as this creates a gaping loophole for those who wish to evade U.S. taxes. The Chinese will most likely not cooperate, and, in this case, the United States will facilitate the establishment of an alternative reserve currency, a stated goal of the Chinese. The Chinese will be the winner and the United States the loser.

FATCA is dangerous for the U. S. economy because it will lead to significant disinvestment out of the United States by foreigners, potentially trillions of dollars. The financial and legal risk is perceived as too high. Private bankers are publicly advising their clients to clear their portfolios of U.S. securities. The most chilling story comes from an American investment banker established overseas whose main activity is helping small and medium-sized U.S. companies obtain financing from foreign investors. He states that the market has completely dried up because of FATCA.

The FATCA requirement that 10% U.S. ownership in a foreign non-listed company or partnership be reported to the IRS is shutting Americans out of partnerships and joint ventures with foreigners

overseas. This will greatly handicap export development programs of small and medium-sized companies as well as entrepreneurial activities of Americans on the worldwide scene.

FATCA has already turned private American citizens residing overseas into pariahs in the international financial world. Bank accounts are forcibly closed and access is refused to foreign pension funds, insurance contracts and mortgages. Increasing numbers of dual-nationals are renouncing their U.S. citizenship because they cannot survive abroad with an American passport. Single passport Americans may be forced to return to the United States. How will the United States compete in world markets, if its citizens cannot function overseas? While the goal of FATCA is primarily to make wealthy U.S. residents comply with US tax law which requires reporting income on assets hidden in overseas bank accounts, the outcome is that FATCA is destroying the network of Americans residing abroad who represent the nation's interests.

The new FATCA requirement for U.S. taxpayers to report foreign financial assets on Form 8938 (to be filed with the 1040) creates a specific discrimination against the community of American citizens overseas as most long-term overseas residents have the majority of their assets abroad. Furthermore Form 8938 unnecessarily duplicates the FBAR filing. The penalties for errors in filing or non-filing are so confiscatory, under both the FATCA and FBAR legislation, that combined they could wipe out 100% of an individual's assets, even when that person owes no U.S. taxes because they pay taxes overseas. This is undue harsh punishment and anti-constitutional under the 8th Amendment of the Constitution.

Given the current serious economic turbulence in U.S., the devaluation of the dollar, the fiscal crisis and the political malfunction in Washington, there is already more on Treasury's plate than can be handled. Implementing FATCA will require increased intellectual force and many financial resources. The IRS has already had to delay the dates of compliance because after two rounds of proposed Treasury FATCA regulations, issues and procedures are still far from clear and many banks and financial institutions have raised serious concerns. The British Banking Association has stated outright that FATCA is unworkable, while the Japanese and Australian banks have stated that they will not comply.

To our knowledge a thorough cost/benefit study of FATCA has never been undertaken, yet FATCA will generate a massive and expensive bureaucracy. Furthermore, thanks to the IRS agreement with UBS and new cases against other foreign banks, the whistleblower program, the IRS voluntary disclosure program and all the other tools available such as, the QI program, the John Doe summons, Tax Information Exchange Agreements, Mutual Legal Assistance Treaties and the "Swift Agreement", the IRS already has thousands of cases involving foreign bank accounts that it is pursuing. Publicity about these successful prosecutions is no doubt already very effective in dissuading the flow of U.S. money into foreign bank accounts for tax evasion purposes. And many major foreign banks have already instituted policies refusing accounts of Americans resident in the United States in order to address the problem.

FATCA will provoke a serious backlash from foreign governments who find it unacceptable, and rightly so, that the United States unilaterally extend U.S. law worldwide. This is financial imperialism. At a time when the United States needs the cooperation of the rest of the world to help resolve its major

domestic debt problems and to reinvigorate its economy, it is counter-productive and dangerous to provoke foreign governments and force their financial institutions to become the policemen of the IRS, by requiring that they spend billions of dollars in compliance for the sole benefit of the IRS, and to force them to break their own domestic laws to do so.

FATCA is using a bulldozer to go after an ant hill. It should be abandoned. We urge you to work with Congress to repeal FATCA before it is too late. As Scott D. Michel and H. David Rosenbloom of the Caplan and Drysdale law firm stated in their call for the repeal of FATCA, "It is becoming increasingly apparent that the backlash from FATCA, the burden on IRS regulation writers, and the enormous cost of compliance are not worth the tax revenue that FATCA is likely to produce or to justify the other benefits of enhanced compliance."ⁱⁱ

Thank you for your consideration.

Sincerely yours,

Marylouise Serrato
Executive Director

Jackie Bugnion
Director

ⁱ American Citizens Abroad position paper calling for the repeal of FATCA can be found at <http://www.aca.ch/fatcapp.pdf>. American Citizens Abroad (ACA), the voice of Americans overseas, is a non-partisan, non-profit association of volunteers with worldwide membership.

ⁱⁱ Scott D. Michel and H. David Rosenbloom, « Fatca and Foreign Bank Accounts: Has the U.S. Overreached?» May 30, 2011, *Tax Analysis 2011*, pp. 709 - 713.