



AMERICAN CITIZENS ABROAD
THE VOICE OF AMERICANS OVERSEAS

October 8, 2013

Dear Mr. Stack,

RE: FATCA: Issues of concern for Americans living and working overseas.

ACA would like to comment on your recent comments regarding FATCA. ACA fully supports the US government's efforts to combat tax evasion. However, ACA is evidencing how the unintended consequences of FATCA are negatively affecting Americans overseas. ACA believes that there is an opportunity for Treasury to make revisions to FATCA regulations that would alleviate some of the issues surrounding the cost of compliance and the denial of financial services facing Americans overseas and we would like to take this opportunity to comment.

ACA strongly believes that as part of the long-term strategy for tax reform, the United States needs to move to Residency-based taxation (RBT). ACA has submitted a proposal for its recommendation of RBT (<http://americansabroad.org/files/6513/6370/3681/finalsubrbtmarch2013.pdf>) to the JCT, Senate Finance Committee and House Ways & Means Committee. However, the immediate problem is to address the concerns of the community of 7 million Americans living and working overseas who face FATCA reporting requirements and the issue of bank account denials and closures by FFIs as a result. The application of a "home country" rule for both FFI reporting and taxpayer reporting should be adopted, i.e. financial accounts located in the country of residence would not be subject to FATCA reporting. Additionally, an ombudsman service for Americans who experience denial of financial tools needs to be created so that Treasury is aware of jurisdictions where the Americans abroad face discrimination. These suggestions would alleviate many of the current problems facing the community and would facilitate overall tax compliance.

ACA would like to share with you our thoughts on some of the areas of concern for our constituents based on your recent Treasury blog posting.

- The cost to participating FFIs has been well documented in the media and although Treasury has put in place high thresholds for identifying client accounts, the cost to FFIs to comply will be significant. The UK alone has estimated the ongoing annual cost to 50 to 90 million pound sterling (\$80 to \$150 million). ACA's concern is that it will be American clients who will bear these costs through higher fees and a reduction in services made available by FFIs to American clients. ACA is already seeing evidence of this with the closure of financial groups servicing American clients due to the increased cost of compliance. Many institutions that are keeping investment accounts for American clients are only doing so at very high thresholds (beginning at an average of \$1.5million in assets). This puts serious limits on the community of Americans overseas whose investment portfolios fall well below this level but above the \$200,000 FATCA reporting threshold for overseas resident filers.
- It is true that FATCA account reporting extends beyond just US citizens and includes anyone holding US securities investments. However, the perceived toxicity of maintaining American clients is a reality. I have included at the end of this email a list of recent testimonials from Americans overseas who have had bank account closures and have been denied financial services. I have also included a recent letter sent from UBS to pension fund holders announcing curtailed services and account closures based on US citizenship or US person identification. In ACA's meetings with Treasury we have stressed the importance of developing regulations that separate out those individuals using financial tools for tax evasion purposes from those who need them for pure survival. Americans in Japan, Australia, the UK, Egypt, Germany, Spain, France, Costa Rica, South Africa, Saudi Arabia, Belgium, the Philippines, Denmark, Taiwan, Canada, Italy, Switzerland, Hong Kong, Sweden, Brazil, Austria, and the Netherlands have reported bank accounts closures (many resulting in significant tax consequences) or have been denied banking services; everything from checking accounts to savings accounts, credit cards, mortgages, pension plans and insurance policies.
- Although many of the financial tools being denied, i.e. insurance policies, mortgages may not technically fall within the reporting requirements of FATCA, the reality is that FFIs are denying them to American citizens in order to reduce their risk of exposure. This effect has been widely documented in the media and continues to be a problem regardless of the recently signed IGAs as is evidenced by the cases ACA has received from France and the UK, both IGA signatories. Adding to our concerns is the

fact that there is no system in place, even with IGA signatories, to ensure that those Americans who do encounter problems have an avenue for redress. If the current IGAs include anti-discriminatory language, which we believe should be extended beyond just locally operating FFIs, there should also be a clear and defined process by which Americans who are refused services can seek redress via the US Treasury or a foreign agency. Doing so would give Americans overseas confidence that the US Treasury understands their community to be separate from those engaged in criminal tax evasion, increasing confidence in the compliance process and, giving FFIs the assurance that they can provide financial products to Americans overseas.

- Given the US's current system of Citizenship-based taxation, regulations and legislation for tax compliance do not present in themselves new tax obligations for Americans. However, FATCA does represent a new filing obligation, Form 8938. For many Americans overseas this is an overlap to an already existing filing obligation, the Foreign Bank Account Report, TD-90-22-1 (FBAR). ACA acknowledges that there is a large tax-gap for overseas filers. However, this is due in great part to Americans overseas being unaware of their filing obligations since they are already paying taxes to a foreign jurisdiction and believe they have fulfilled their personal tax obligation as a resident in a foreign country; they are essentially confusing the world-wide standard of Residency-based taxation with the US system of Citizenship-based taxation. As has been reported in the press, there is a highly diversified community of American overseas including many "accidental Americans". The vast majority are law-abiding citizens and this community should not be confused with those individuals resident in the United States who willfully knew they were evading US law.
- Complicating the problem is a serious fear permeating the community regarding how those who, through ignorance or error, can now come forward in the process without being financially ruined by penalty applications designed for criminal bad actors. Although this currently is in regards to FBAR penalties which are particularly severe for Americans abroad who have most of their assets in the country where they reside, the structure of FATCA penalties is also of serious concern to individuals who many unintentionally make future filing errors, in particular in the first few years of the new reporting of Form 8938. The current rigid policy related to entering into compliance is leading people underground and is adding to the disturbing rise in citizenship renunciations; most Americans who choose this route have done so in order simply to survive economically overseas because of their family situation or job

requirements. This was recently documented in an article by the BBC and also in a recent Tax Notes article.

<http://americansabroad.org/files/3313/7871/3435/expatriation-enigma.pdf>

<http://www.bbc.co.uk/news/magazine-24135021>

ACA acknowledges that the trend to global exchange of information to combat tax evasion is a reality and a necessity. However, concerns over increased risk of data theft, and privacy issues remain serious concerns in the eyes of many US citizens overseas. The IRS and Treasury need to send the message to Americans resident overseas that they are aware of the concerns of these individuals and that Treasury is addressing them in a practical way by adapting regulations to help alleviate problems. Therefore ACA recommends; inclusion of "home country" rule for FATCA reporting for FFIs and for taxpayers residing overseas, expansion of the anti-discriminatory clause for all participating FFIs and creation of ombudsman services through US Treasury or foreign agency for grievances resulting from denial of financial services.

ACA would welcome the opportunity to speak with you and Treasury directly about our suggestions however understand that Treasury is no longer accepting meetings or phone calls on the issue of FATCA therefore, please feel free to contact me directly if you have any additional questions or need more documentation for the information referenced herein.

Best,

Marylouise Serrato

Executive Director, American Citizens Abroad (ACA, Inc.)

info@americansabroad.org

Washington, DC

202 322 8441

For privacy reasons testimonials not included on the online version of letter.