

## Defense Bill Amendment Would Offer FATCA Same-Country Exception

by Andrew Velarde

An amendment to the National Defense Authorization Act offered by a high-ranking House Democrat would provide a long-sought-after same-country exception from the Foreign Account Tax Compliance Act, though questions remain on practical implementation.

House Oversight Committee Chair Carolyn B. Maloney, D-N.Y., offered an amendment to the must-pass legislation sometime after July 5. If included in the legislation, it would modify sections 1471(d)(1) (withholding to a foreign financial institution) and 6038D (information reporting) to provide an exception for some individuals living abroad.

Specifically, the amendment would provide an exception under section 1471(d)(1) to reporting requirements that would apply to a qualified individual who is a natural person in a foreign country where the FFI is licensed to do business, unless an FFI elects otherwise. Section 6038D would likewise be amended for individuals living abroad so that the general reporting provision would not apply to qualified foreign accounts. The amendment would be effective as of the date of enactment.

Under the amendment, a qualified individual is defined in relation to section 911(d). A qualified foreign account is an FFI account that is licensed to do business in a foreign country where the individual is a qualified individual.

Section 911(d) provides rules for establishing an individual's tax home in a foreign country.

The amendment also states that an FFI can request that Treasury modify agreements under section 1471 to account for the proposed changes.

Chip Collins of UBS AG said the amendment would address long-standing FATCA grievances but noted that the reporting exception would not apply in all cases. The exception focuses only on retail banking relationships and would not cover custodial accounts, he said, adding that depository accounts at a bank that is unlicensed to do business in the country the person is living in would not be covered. He also noted that since the exception was elective for the bank, the bank could decide to report anyway.

Collins noted that while the exception would amend the existing statute, that is not the only vehicle used to implement FATCA. He pointed to the many intergovernmental agreements between the United States and other countries, most of which did not involve an agreement between the IRS and an FFI.

"I'm not sure that this is going to change those agreements automatically," Collins said, noting that only Model 2 IGAs had a specific agreement between the IRS and a bank. "[For Model 1 IGAs] there's no agreement there to be modified. . . . I don't know what agreement they're referring to."

Laurie M. Hatten-Boyd of KPMG said the amendment's effect on IGAs is interesting, noting that FFIs in Model 1 jurisdictions comply with FATCA through local law.

"It is conceivable that the Model 1 countries would amend their local law to allow the FFIs operating in those jurisdictions to exclude the reporting of these deposit accounts," Hatten-Boyd said. "While such a change isn't consistent with the language set forth in the IGA, it would be consistent with U.S. law, so I wouldn't expect Treasury to take issue with that."

### Years of Trying

Maloney has been pushing for some relief from FATCA for overseas Americans for years. In 2015 she and several other lawmakers asked the IRS to provide an exception from FATCA reporting for financial accounts from countries where U.S. citizens are bona fide residents.

Charles M. Bruce, counsel for American Citizens Abroad, said that his organization was in strong support of and grateful for the amendment.

"A same-country exemption was inches away, in late 2016, from being put in the FATCA regulations but exasperatingly fell out," Bruce said. "The problem is 'lockout' of Americans abroad from their local foreign financial institutions — banks and the like. This does what should've been done years ago. There should be no controversy here."

Leading up to the final regs (T.D. 9809), interest groups lobbied Treasury to provide a same-country exemption, arguing that foreign banks simply refused to deal with U.S. customers and the reporting requirements of FATCA. They

argued that allowing the exemption would increase voluntary compliance, and some practitioners have posited that U.S. expatriations may also decline. But in deciding not to adopt the exception, Treasury reasoned that FATCA's goal to use reporting to tackle tax evasion extended to U.S. taxpayers living abroad. ■