



AMERICAN CITIZENS ABROAD

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WRITTEN SUBMISSION OF AMERICAN CITIZENS ABROAD, INC. SUGGESTED IMPROVEMENTS TO FATCA

This submission is made on behalf of American Citizens Abroad, Inc. in response to Chairman Meadows' invitation at the recent hearing on REVIEWING THE UNINTENDED CONSEQUENCES OF THE FOREIGN ACCOUNT TAX COMPLIANCE ACT (held on April 26, 2017) to provide recommendations on how to improve FATCA.

ACA is pleased to submit the following three recommendations.

1. SAME COUNTRY EXEMPTION

When considering problems with FATCA, Members of Congress, including Chairman Meadows and Senator Rand Paul, and taxpayers state that FATCA has caused some foreign banks to simply deny services to Americans rather than navigate the burdensome costs of compliance. At its heart, this is the problem of "lockout" of Americans abroad from banking services by foreign banks.

As a means of addressing this issue, ACA recommends that a "Same Country Exemption" be adopted. The "Same Country Exemption", for purposes of FATCA, would exclude from the definition of a "U.S. account" accounts held by U.S. individuals resident in the same jurisdiction as the Foreign Financial Institution (FFI) with which the account is held. Simply put, it removes from the force of FATCA accounts at neighborhood banks used in the day-to-day conduct of an individual's life. A complete description of the workings of Same Country Exemption can be found at

https://www.americansabroad.org/media/files/files/1e6c1a35/Treasury_Ltr_Same_Country_ACA_160429_FINAL_As_Published_on_TaxNotes.pdf

- Implementation of a Same Country Exemption is simple. The taxpayer residing abroad need only elect to have it apply, give a copy of this election to his or her local bank and attach a copy to his or her regular federal income tax return.
- The bank need not "look behind" the election. It does not need to make a determination whether the individual is really a "resident" of the country in question. A signed election in effect "inoculates" the bank from complicated FATCA due diligence and reporting rules.
- Americans abroad want a Same Country Exemption. "Eighty-six percent (86%) of respondents said that FATCA needs to be reworked to allow Americans overseas access to banking services and include a 'Same Country exemption' provision (i.e., no reporting requirement for accounts held in the same country of residence)." University of Nevada, Reno, and American Citizens Abroad Global Foundation, "A Study of the Consequences of the Foreign Account Tax Compliance Act on Americans Living Overseas: Survey Results and Interpretations" (Jan. 2016) (<https://www.unr.edu/Documents/business/accounting/FATCASurveyReportFinalDraftDecember2015.pdf>)
- The Same Country Exemption is widely supported. Not only is it supported by individuals living overseas, but also by groups, such as, American Citizens Abroad, FAWCO (a global women's NGO comprised of an international network of independent volunteer clubs and associations with 64 member clubs in 34 countries worldwide), AARO (Association of Americans Resident Overseas), and others, Members of Congress (including the bipartisan Congressional Americans Abroad Caucus), and the National Taxpayer Advocate. In fact, while some might prefer that FATCA be repealed, if it is not repealed, to our knowledge no one has said that some version of a Same Country Exemption would not be a step in the right direction.



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- A significant number of foreign banks, we believe, would react favorably and be more likely to welcome Americans as customers. Over about a 12-month period, ACA spoke with a variety of foreign banks. Most FFIs, we learned, would be delighted to have American customers if they could be “inoculated” from FATCA. They noted that their participation – that is, treating the individual as not subject to FATCA – would be entirely voluntary. Also, the individual taxpayer’s participation would be voluntary. If the individual does not want to make the election, he or she could skip it. The account in question would remain subject to the FATCA rules.

2. FOREIGN PENSION PLANS

Under the provisions of FATCA Intergovernmental Agreements, foreign pension funds that generally correspond to pension funds established in the US are treated as exempt from the due diligence and reporting rules in FATCA. What is not clear is whether and how foreign pension funds should be reported by taxpayers on Form 8938 (Statement of Specified Foreign Financial Assets). (In addition to enacting withholding tax rules, FATCA also added new Internal Revenue Code section 6038D (“Information with respect to foreign financial assets”), which mandates Form 8938.) For a discussion of this problem, see Bugnion & Singer, “Proposal for Fair US Tax Treatment of Foreign Pensions, Tax Notes”, May 30, 2016 (<https://www.americansabroad.org/media/files/files/1df5babd/bugnion-singer-final-5-30.pdf>).

Congress should provide statutory provisions, and not leave it to regulations or Intergovernmental Agreements, to the effect that a foreign pension fund that is comparable to a US pension fund need not be reported on Form 8938. In order to make life simpler, the IRS should then provide a list of such funds, country-by-country. An example would be the typical Australian Retirement Fund, commonly referred to as a Superannuation Fund.

3. MELD FBAR AND FORM 8938 REPORTING REQUIREMENTS

FATCA adds to the paperwork burden on persons, including Americans abroad, who have foreign bank accounts, which they use in the normal conduct of their lives. FATCA should be amended with respect to the requirement to file Form 8938 as an attachment to Form 1040. This requirement should be changed so as to permit any US taxpayer to not file a Form 8938 if the only foreign financial assets that would have been reported on such form are properly reported on a Foreign Bank Account Report.

ACA thanks the Subcommittee for its consideration of these recommendations.

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For additional information, go to <https://www.americansabroad.org/> or contact Marylouise Serrato at info@americansabroad.org.

ACA is a nonprofit, nonpartisan, volunteer, membership organization. It is qualified as a tax-exempt social welfare organization (section 501(c)(4) of the Internal Revenue Code. Alongside it is American Citizens Abroad Global Foundation, organized as a publicly-supported charity under section 501(c)(3).

This submission was prepared by Marylouise Serrato, Executive Director, Charles M. Bruce, Legal Counsel, and Glen Frost, Assistant Legal Counsel, on behalf of ACA.