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Why ACA supports Same Country Exemption (SCE) rather than repeal of FATCA, and why SCE will work to correct banking lockout by Foreign Financial Institutions.

The FATCA legislation adopted in 2010 was intended to crack down on tax evaders, many of whom were resident in the United States but held taxable assets offshore. The legislation was not written to entrap Americans resident overseas or those who had legitimately made errors and omissions in their tax filings. However, in spite of the intent of the law, there were clearly grave problems in the way the provisions were applied, as reported by the National Taxpayer Advocate. See: <http://taxpayeradvocate.irs.gov/userfiles/file/2013FullReport/REPORTING-REQUIREMENTS-The-Foreign-Account-Tax-Compliance-Act-Has-the-Potential-to-Be-Burdensome,-Overly-Broad,-and-Detrimental-to-Taxpayer-Rights.pdf>

An unintended effect of FATCA legislation was that many Americans overseas, in effect, were “locked out” from local banking services in their country of residence. The basic financial needs of these Americans residing abroad, including local bank accounts, pension accounts, insurance policies, mortgages and more, were not sufficiently considered in the initial drafting stages. Safeguards against the potential negative effects of the legislation were not included in the bill’s language

ACA’s solution of Same Country Exemption (SCE) will resolve much of the overseas banking lockout problem as it addresses the root cause of the problem, which is fear by Foreign Financial Institutions (FFI) of servicing non-declared American clients, resulting in penalties, fines and potentially prosecution for FFIs. SCE eliminates these concerns for FFIs and relieves the American overseas of having annually to file a Form 8938. See full explanation of how SCE will help with banking lockout here: https://www.americansabroad.org/media/files/files/9d44e9cd/Treasury_Ltr_Same_Country_ACA_160429_FINAL.PDF

ACA works to find solutions to problems facing the overseas community that can be easily implemented. ACA does not believe that repeal of FATCA will be easy and it is seriously questionable if repeal will ever be enacted. The goal of the FATCA legislation is to identify individuals who have taxable income and are not reporting this income to the US. A move towards Residence-Based Taxation (RBT), of course, would greatly alleviate many of the problems created by FATCA, as it would remove from the equation income generated outside of the United States of Americans truly residing abroad. Under RBT, most income earned by Americans living outside of the US would not be subject to US tax. For these Americans, only US-generated income would need to be reported and tax paid.

However, Congress and the US Treasury will continue to be interested in the accounts and investments held outside the United States by Americans residing in the United States. The US Government will still want a tool that enables them to identify US taxable income hidden offshore for tax evasion purposes. So, from that standpoint, there is little chance that FATCA will be repealed. Might it be re-written or regulations revised? That is possible. But that the US Government will walk away 100% from legislation to crack down on tax evasion is unrealistic.

The US is not unique in passing anti-tax evasion legislation. Many other countries have implemented and continue to implement similar legislation. The European Union, for example, is quite concerned with tax evasion. European Union countries tax based on residence, unlike the US; however, they are still implementing FATCA-like legislation because they also want to identify taxable income being held outside the country of residence of their nationals. Much like in the United States, the problems for these countries are related to resident citizens who are living in-country but hiding assets and taxable income outside of the country.

ACA is funded nearly 100% by membership dues and, as such, ACA has a responsibility to use this funding in the most efficient and practical way to achieve tangible results for its members and for the American overseas community at large. ACA believes that advocating for revising regulations and educating decision-makers prior to drafting and passing legislation is the best use of our funding, time and energy. This is why ACA supports SCE.

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