



May 19, 2017

Committee on Oversight and Government Reform
U.S. House of Representatives
2157 Rayburn House Office Building
Washington, DC 20515

RE: Recommendations for Reforming FATCA

Dear Chairman Meadows and Ranking Member Connolly,

During the House Subcommittee on Government Operations hearing, “Reviewing the Unintended Consequences of the Foreign Account Tax Compliance Act,” held on April 26, 2017, Chairman Meadows asked the panel of witnesses to each submit three recommendations to improve FATCA, particularly with regards to its unintentional consequences for U.S. citizens living abroad. While FACT recognizes that the implementation of this important tax-evasion law is far from perfect and has adversely affected a subset of U.S. taxpayers, we believe many of the issues with FATCA can be addressed while keeping the intent and spirit of the law intact. The FACT Coalition is therefore pleased to submit for the record the following three recommendations to improve FATCA and address the grievances of U.S. taxpayers living abroad:

1) Waive the individual taxpayer requirement to submit Form 8938 if the taxpayer’s assets are reportable under the FBAR, and permit the IRS to access FBAR filings for tax compliance purposes.

Critics of FATCA contend that the new reporting requirements under FATCA force taxpayers to spend time and money reporting information that is either similar or identical to information they already report through other disclosure forms, even when they owe no additional tax liability. FATCA requires all taxpayers with foreign assets that exceed the reporting thresholds outlined in the law to submit Form 8938 as an addendum to their annual tax form. Like many U.S. tax forms, individuals may feel as if they require professional help to accurately file Form 8938. Further, the accounts and assets that must be reported on Form 8938 are also reportable under the Financial Bank Account Reporting – or FBAR – form. According to the Taxpayer Advocate Service, an estimated 41 percent of the approximately 170,000 taxpayers who filed Form 8938 in FY 2011 also filed an FBAR form.¹

While there are some differences in the types of assets that are reportable under Form 8938 and the FBAR, for many taxpayers much of the information reported is duplicative.² The FACT coalition recognizes the legitimate complaints of Americans who are burdened, financially or otherwise, by the requirement

¹ Taxpayer Advocate Service, “2013 Annual Report to Congress [Most Serious Problems #23],” 9 January, 2014, <https://taxpayeradvocate.irs.gov/2013-Annual-Report/downloads/Volume-1.pdf>

² Generally, the types of assets that must be reported under FATCA are broader than under the FBAR, while the reporting threshold for FBAR is lower than the FATCA threshold. The IRS has created a useful chart to compare reporting requirements across FATCA and FBAR, which is accessible here: <https://www.irs.gov/businesses/comparison-of-form-8938-and-fbar-requirements>.

to report such duplicative information. To alleviate the compliance burden associated with completing Form 8938, the FACT Coalition proposes an exemption to Form 8938 for taxpayers with assets already reported through the FBAR form. To ensure the IRS has access to the type of information necessary to match data supplied by financial institutions to that reported by taxpayers, the IRS should be granted access to the FBAR data to assist in its tax compliance efforts.

2) Harmonize FATCA reporting requirements with the Common Reporting Standard (CRS) and permit Foreign Financial Institutions (FFIs) to use the CRS for FATCA reporting.

A second common criticism of FATCA is the purported implementation costs for financial institutions. During the hearing, witness Elise Bean briefly described the Common Reporting Standard, a financial information-sharing standard that has been adopted by over 100 countries.³ Because CRS was in part modeled after FATCA, the two share many similarities, with the information to be collected under CRS being, if anything, more broad and far-reaching.⁴ Given the number of countries that have committed to sharing information under CRS, many financial institutions will find themselves responsible for designing and implementing systems to transmit information under both FATCA and CRS.

To reduce compliance burdens for financial institutions, FATCA reporting requirements should be harmonized with CRS reporting requirements, and FFIs should be permitted to report on U.S. accountholders using the CRS reporting standard. This should reduce the time and financial costs associated with implementing FATCA. Making FATCA less time-consuming and less expensive to implement should have the effect of reducing the number of FFIs who refuse to accept clients with American citizenship, as well as reduce the overall cost to financial institutions of complying with new global information standards.

3) Expand the foreign earned income exclusion to include capital gains and other forms of passive income.

New compliance measures, such as those mandated by FATCA, are often viewed negatively by citizens living abroad as just one more way in which they are treated unfairly by the U.S. government. For many U.S. citizens abroad, it appears their real grievance is not with FATCA, but with how their income is taxed under the U.S. citizenship-based taxation system. U.S. citizens living abroad are subject to U.S. taxation of their worldwide income, regardless of whether they have established permanent, long-term residency in a foreign country. U.S. citizens can take advantage of a fairly generous earned-income exclusion of approximately \$100,000 that is adjusted annually for inflation.⁵ The exclusion, however, only applies to *earned* income, with passive income, such as interest, dividends, and realized capital gains, only being eligible for a credit for foreign income taxes paid. While this works well in countries with income-based tax systems like the United States', citizens may feel they are being treated unfairly if, for instance, their country of residence collects revenue primarily through other types of taxes, such as a high consumption-

³ For more information about CRS, the list of countries currently committed, and the principle of automatic information sharing in a globalized world, visit: <http://www.oecd.org/tax/automatic-exchange/common-reporting-standard>.

⁴ PWC Indonesia, "The Common Reporting Standard," 2015, <https://www.pwc.com/id/en/publications/assets/financialservices/crs-hought-leadership.pdf>

⁵ Internal Revenue Service, "Foreign Earned Income Exclusion," 14, April 2017, <https://www.irs.gov/individuals/international-taxpayers/foreign-earned-income-exclusion>

based tax, that they cannot claim an offsetting credit for because it does not meet the definition of an income tax.⁶

While all Americans have a legal obligation to abide by current U.S. tax law, the FACT Coalition recognizes that the laws currently in place to protect taxpayers from double taxation do not always work well in practice. Yet rather than repeal FATCA, the U.S. government should strive to improve the overall fairness of the tax system. One simple step would be to amend the earned-income exclusion to cover investment and other sources of passive income. This should more effectively protect most citizens living abroad, particularly retirees, from perceived or actual “double taxation.”

If you have any follow-up questions, feel free to contact Richard Phillips at rphillips@itep.org.

Sincerely,

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⁶ American Citizens Abroad, “Revising the Taxation of Americans Abroad,” n.d., <https://www.americansabroad.org/revising-the-taxation-of-americans-abroad>.