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C. Alex Naegele on FATCA—Effective tax administration or costly and burdensome regulation?

By C. Alex Naegele*

Introduction

With the introduction of new international tax law under the Hiring Incentives to Restore Employment (“HIRE”) Act of 2010,¹ international tax compliance will become ever more complicated, time-consuming, and administratively costly for U.S. taxpayers with foreign assets abroad and foreign financial institutions.

The HIRE Act of 2010 was enacted on March 18, 2010 primarily to provide payroll tax breaks and incentives for businesses to hire unemployed workers.² It was frequently touted by the media as a “jobs bill”³ and is explained by hireact.org as “Tax Breaks for Small Businesses.”⁴ Even the IRS on their website lets taxpayers know about the HIRE Act’s special tax benefits.⁵

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¹ PL 111-147, 124 Stat 71 (2010).

² HR 2847, 2011 HR 2847 (Sept 7, 2011).

³ Brian Montopoli, *Jobs Bill Signed Into Law by Obama*, CBS News, Mar 18, 2010; Kay Bell, *Jobs bill includes tax changes*, MSNBC, Mar 23, 2010; *Jobs bill passes Congress*, Pacific Daily News, Mar 18, 2010.

⁴ 2010 HIRE Act: Tax Breaks for Small Business, hireact.org.

⁵ *HIRE Act: Questions and Answers for Employers*, <http://www.irs.gov/businesses/small/article/0,,id=220745,00.html>.

However, deeply ingrained in the back of the HIRE Act were several changes to international tax provisions that increased reporting of financial assets of U.S. taxpayers and put considerable new reporting requirements on foreign banks.⁶ These sections of the HIRE Act in Title V, Subtitle A, are entitled “Foreign Account Tax Compliance,” and are referred to as FATCA.

FATCA attempts to combat offshore tax evasion through increased reporting and tax withholding requirements. In addition, FATCA requires Foreign Financial Institutions (“FFIs”) to disclose a large amount of information about U.S. Investors.⁷ While FFIs technically include private equity, venture capital funds and hedge funds, the largest group of foreign financial institutions that will be hit with a large compliance bill is foreign banks.

This article analyzes the forces that led to the enactment of FATCA, then turns to the technical analysis of the provisions of FATCA, and finally analyzes the taxpayer and foreign financial institution commentary in response to FATCA to determine whether or not FATCA will help combat offshore tax evasion the way Congress intended.

FATCA Background

For several years, Congress has been attempting to combat offshore tax evasion unsuccessfully. In recent years, however, Congress has taken an increased interest in combatting offshore tax evasion following an investigation that showed U.S. taxpayers held accounts in the Swiss Bank Union Bank of Switzerland (“UBS”) without paying taxes on these accounts. The investigation revealed U.S. taxpayers held about 19,000 accounts with UBS, with an estimated \$18 billion to

⁶ PL 111-147, 124 Stat 71, Sections 501-562 (2010).

⁷ Shahzad A. Malik, *Foreign Account Tax Compliance: Problems and Complications*, LexisNexis® Emerging Issues Analysis, 2010 Emerging Issues 4952 (April 2010).

\$20 billion in assets.⁸ Following the revealing of the investigation, UBS agreed to pay \$780 million to the U.S. government, with \$380 million representing disgorgement of profits, and the remainder representing United States taxes UBS failed to withhold on its accounts.⁹

Subsequently, the U.S. government filed a civil suit against UBS to reveal the names of its 52,000 U.S. customers.¹⁰ That suit was ended by a settlement agreement in which UBS agreed to report income and other information about U.S. clients.¹¹

During the G-20 meeting on April 2, 2009, the Organization for Economic Cooperation and Development (“OECD”) issued a report on national cooperation for tax information exchange, which included a list of four “uncooperative” jurisdictions, called the “black” list, and a “gray list” that included Switzerland, Austria, Belgium, and Luxembourg among others. Issuance by the OECD of such a list caused many of the countries to renegotiate tax information exchanges to be removed from their status as “black” or “grey” on the list.¹²

The Foreign Account Tax Compliance Act, or FATCA, was drawn up largely in response to the UBS scandal and subsequent Offshore Voluntary Disclosure Program (“OVDP”) that the IRS created to encourage the reporting of offshore bank account and pay tax on these amounts. FATCA was originally introduced as the Foreign Account Tax Compliance Act of 2009.¹³

⁸ Evan Perez, *Offshore Tax Evasion Costs U.S. \$100 billion, Senate Probe of UBS and LGT indicates*, The Wall Street Journal, July 17, 2008, available at http://online.wsj.com/article/SB121624391105859731.html?mod=googlenews_wsj.

⁹ *UBS Enters Into Deferred Prosecution Agreement*, US Department of Justice, Feb 18, 2009 (available at <http://www.usdoj.gov/opa/pr/2009/February/09-tax-136.html>). See also *UBS Will Pay \$780 million to Settle U.S. Tax Claims*, Bloomberg.com (Feb 18, 2009).

¹⁰ *US v UBS AG*, 2009 US Dist LEXIS 66739 (SD Fla 2009).

¹¹ *UBS Settlement Agreement* (Sept 19, 2009), available at http://www.irs.gov/pub/irs-drop/bank_agreement.pdf. See also IR 2009-75 (Aug 19, 2009).

¹² Carol P Tello, Esq, *Reporting, Withholding, and More Reporting: HIRE Act Reporting and Withholding Provisions*, BNA Tax Mgmt Int'l Journal, Vol 39, No 5 (May 14, 2010).

¹³ HR 3933, 2012 HR 3933 (Feb 7, 2012); S 1934, 2011 S 1934 (Dec 1, 2011).

Later, a revised bill changed the effective date from January 1, 2011, to January 1, 2013.¹⁴ Due to “overwhelming interest abroad”, on July 12, 2013, Treasury announced that the compliance date will be extended until July 1, 2014.¹⁵

FATCA imposes new reporting obligations on U.S. taxpayers with foreign accounts abroad, as well as reporting and withholding obligations on Foreign Financial Institutions.

The Individual Requirement

[1] Report Foreign Assets Over \$50,000

FATCA added a new IRC Section 6038D, entitled “Information With Respect to Foreign Financial Assets.”¹⁶ IRC Section 6038D requires individuals who are taxed as U.S. citizens or residents to file an information statement when they have foreign assets over \$50,000.¹⁷ This requirement is similar to the filing requirements of the Report of Foreign Bank and Financial Accounts (“FBAR”) that require taxpayers to provide Treasury information with respect to foreign bank accounts that the taxpayer has signature authority over with a total aggregate value of \$10,000 or more.¹⁸

¹⁴ Tax Extenders Act of 2009, HR 4213, 2010 HR 4213 (Dec 8, 2009).

¹⁵ Notice 2013-43; U.S. Department of the Treasury Press Center: *Treasury Engaging with More than 80 Countries to Combat Offshore Tax Evasion and Improve Global Tax Compliance*, available at <http://www.treasury.gov/press-center/press-releases/Pages/jl2012.aspx>

¹⁶ Notice 2011-55 (June 21, 2011).

¹⁷ IRC § 6038D(a).

¹⁸ See Form TD F 90-22.1.

[2] IRC Section 6030D Requirement Supplemental to FBAR Requirement

A next logical question would be “doesn’t this seem to overlap with the current requirements of FBAR filings which require reporting when the dollar amount is over \$10,000?” The answer is yes, it does overlap, and yes, both statements are required.

Briefly, the current form entitled Report of Foreign Bank and Financial Accounts (“FBAR”) derives its authority from the Bank Records and Foreign Transactions Act of 1970, commonly referred to as the Bank Secrecy Act (BSA) of 1970¹⁹. The BSA is codified entirely within Title 31, “Money and Finance” of the United States Code, and not Title 26, “Internal Revenue Code” and the authority for the FBAR is found in Title 31, Section 5314.20 It requires U.S. citizens or residents to file an information return when they have signature authority over more than \$10,000 in total in foreign bank accounts.²¹

Since the legal requirements to file an FBAR form do not arise under Title 26, FBAR is not a tax return²² and no tax is assessed in connection with the FBAR filing obligations under U.S.C. Title 26.²³ Hence, Congress needed a way to attach the filing requirements of foreign financial accounts to the Internal Revenue Code so that the Internal Revenue

¹⁹ PL 91-508, 84 Stat 1114 (Oct 26, 1970).

²⁰ Treasury Inspector General for Tax Administration, *New Legislation Could Affect Filers of the Report of Foreign Bank and Financial Accounts, but Potential Issues Are Being Addressed*, Sept 29, 2012, Reference Number 2010-30-125, available at <http://www.treasury.gov/tigta/auditreports/2010reports/201030125fr.pdf>.

²¹ See Form TD F 90-22.1 and instructions.

²² Michael J. Miller and Ellen S. Brody, *Foreign Asset Reporting Under Code Section 6038D*, International Tax Journal, March-April 2012, available at http://www.robertsandholland.com/siteFiles/News/March-April%202012_Anti-Deferral%20and%20Anti-Tax%20Avoidance%20For....pdf.

²³ Mark E. Osborne, *Offshore Account Reporting Requirements: FBAR and § 6038D*, University of Texas School of Law, 59th Annual Taxation Conference, December 7-8, 2011, Austin, TX.

Service could use its investigation tools and tax penalties to enforce the reporting requirement.

In a study issued by the Treasury Inspector General For Tax Administration, the Treasury Report noted “[u]nlike its FBAR compliance efforts that rely on delegated authority from the FinCEN and that are restricted due to concerns in the use of tax return or tax return information under IRC Section 6103, the new provision under IRC Section 6038D eliminates these concerns and allows the IRS to use its own tax administration authority. This authority should allow the IRS to develop a matching system where it can verify the IRC Section 6038D data against the Automatic Exchange Information Program data to identify undisclosed accounts or assets.”²⁴ Moreover, this same report to Treasury confirmed that some taxpayers will need to file both forms.²⁵

[3] Individuals Must Disclose Foreign Assets in Excess of \$50,000

IRC Section 6038D requires U.S. citizens and resident aliens to attach to their tax return new Form 8938 describing information related to foreign assets if the total value of all foreign assets exceeds \$50,000.²⁶ The penalty for failure to file this information return is \$10,000, and therefore makes the penalty much larger than regular penalties for understatements of tax resulting from a regular audit.²⁷ The foreign financial assets included in \$50,000 calculation includes: 1) Bank accounts 2) Stock or other securities 3)

²⁴ Treasury Inspector General for Tax Administration, *New Legislation Could Affect Filers of the Report of Foreign Bank and Financial Accounts, But Potential Issues Are Being Addressed*, September 29, 2012, available at http://www.treasury.gov/tigta/auditreports/2010reports/201030125_oa_highlights.html.

²⁵ *Id.*

²⁶ IRC § 6038D(a).

²⁷ See e.g., IRC § 6662.

Financial instrument of contract for investment, and 4) Interest in foreign entities.²⁸

While real estate, the single most logical asset that would cause a U.S. person to go over the \$50,000 asset mark, was not included explicitly on this list, it would appear that if an entity such as a corporation owned the real estate, and the U.S. person owned the stock of the corporation, such ownership would trigger a reporting requirement under IRC Section 6038D.

One possible reason real estate was left off the list is because the IRS proposes to use their “matching” or Automatic Exchange Information Program audit technique to compare the results of the U.S. taxpayer on form 8938 against the information supplied from foreign financial institutions as required under FATCA²⁹, and real estate is not typically reported by a foreign bank or other foreign financial institution.

Foreign Financial Institution Requirement

[1] Information Reporting or Tax Withholding Penalty

FATCA also added an entirely new chapter to the Internal Revenue Code, Chapter 4, which consists of new IRC Sections 1471-1474.³⁰ These new code sections impose a duty on foreign banks and other foreign financial institutions to report to the IRS

²⁸ IRC § 6038D(b)(2)

²⁹ Treasury Inspector General for Tax Administration, *New Legislation Could Affect Filers of the Report of Foreign Bank and Financial Accounts, But Potential Issues Are Being Addressed*, September 29, 2012, available at http://www.treasury.gov/tigta/auditreports/2010reports/201030125_oa_highlights.html. See also Treas Reg § 1.6038D-3T which only requires reporting of financial accounts maintained by a foreign financial institution, available at <http://www.gpo.gov/fdsys/pkg/CFR-2012-title26-vol13/pdf/CFR-2012-title26-vol13-sec1-6038D-3T.pdf>.

³⁰ PL 111-147, 124 Stat 71 § 501(a) (Mar 10, 2010); Notice 2010-60 (Aug 27, 2010).

information about accounts held by U.S. individuals and U.S. controlled foreign entities, or face a penalty of having to withhold 30 percent and pay it over to the IRS.³¹

In effect, all foreign banks, must by June 30, 2013 enter into a “FFI Agreement” that says that the foreign financial institution will provide the IRS with all of the information the IRS requires. ³² This was later extended until July 1, 2014.³³ Specifically, the IRS is requiring foreign banks to report 1) The name address, and TIN of each account holder, 2) The account number, 3) The account balance and 4) The gross receipts and gross withdrawals from the account. ³⁴

[2] Model Agreements and Withholding Requirements

While Treasury initially did not specify what an agreement between Treasury and a foreign financial institution might look like (“FFI Agreement”), it finally released a model “reciprocal” and “non-reciprocal” FFI Agreement on July 26, 2012.³⁵ The agreement was a joint effort among France, Germany, Italy, Spain, the United Kingdom and the United States to comply with FATCA.³⁶

³¹ IRC § 1471(a). See also *Foreign Account Tax Compliance Act (FATCA) and Related-HIRE Act Provisions*, LexisNexis® Emerging Issues Analysis, 2012 Emerging Issues 6174 (Jan 2012).

³² Notice 2011-53 (July 25, 2011). The deadline was originally schedule for January 1, 2013. See e.g. Dalton, Matthew, *IRS Plans to Retain January 1, 2013 Effective Date for FATCA*, Tax Notes (May 14, 2012). Comments from the tax community on the administrative burden of the January 1, 2013 date caused the IRS to recalculate the dates to June 30, 2013.

³³ Notice 2013-43; U.S. Department of the Treasury Press Center: *Treasury Engaging with More than 80 Countries to Combat Offshore Tax Evasion and Improve Global Tax Compliance*, available at <http://www.treasury.gov/press-center/press-releases/Pages/jl2012.aspx>

³⁴ IRC § 1471(c).

³⁵ Department of the Treasury, *Treasury Releases Model Intergovernmental Agreement for Implementing the Foreign Account Tax Compliance Act to Improve Offshore Tax Compliance and Reduce Burden*, July 26, 2012, available at <http://www.treasury.gov/press-center/press-releases/Pages/tg1653.aspx>.

³⁶ Joint Communiqué by France, Germany, Italy, Spain, the United Kingdom, and the United States, on the Occasion of the Publication of the Model Intergovernmental Agreement to Improve Tax Compliance and Implement FATCA, July 26, 2012, available at http://www.hm-treasury.gov.uk/joint_intl_statement_fatca_260712.htm.

If the foreign financial institution does not enter into an FFI Agreement, then the payor or withholding agent must withhold 30 percent of the amount of the payment as a tax and pay it over to the IRS.³⁷ Typically, this will be a U.S. bank paying to a foreign bank.³⁸ The U.S. payor has an obligation to determine the payee's status with respect to the FATCA provisions, which it can do by looking at Form W-8BEN, or Form W-9 from each account holder.³⁹

[3] **Compliance Burden for Foreign Banks**

If the foreign bank does not want to lose customers because of the withholding obligation, then it must research all of its U.S. account holders in order to comply with the requirements of IRC Section 1471(c) to report them to the IRS. This can be a costly undertaking, because the foreign bank is required not only to research its accounts held by U.S. individuals and certain entities, the foreign bank is also required to research accounts held by foreign entities with "substantial U.S. owners" or owners with a greater than ten percent interest.⁴⁰

The Institute of International Bankers ("IIB") issued a report on November 12, 2010 in response to the enormous compliance burden FATCA places on foreign banks. In this report, the IIB estimated that, it would cost each bank on average approximately \$10 in labor to properly identify a bank account under the current FATCA regulations. They further estimated that a large bank with an average of 25 million accounts would

³⁷ IRC § 1471(b).

³⁸ Pamela Revak, *Proposed FATCA Regulations*, LexisNexis® Emerging Issues Analysis, 2012 Emerging Issues 6455 (June 2012).

³⁹ *Id.*

⁴⁰ Proposed Regulations § 1.471-5(a)(2), (a)(3).

therefore spend \$250 million dollars in compliance fees alone to comply with FATCA to avoid the 30 percent withholding payments.⁴¹ They further estimated that the compliance fees to the banking industry as a whole could be at least several billion dollars under a conservative estimate.⁴² The Wall Street Journal notes that the world's top 30 banks would therefore spend a total amount of 7.5 billion U.S. dollars on compliance fees for FATCA.⁴³

This could cripple banking industries like Japan, which has a total aggregate of 790 million customer accounts, with only 0.04 percent of the population being U.S. citizens, and only 2.4 percent being foreign national residents. The amount of additional tax collected by the IRS from the accounts would be de minimis compared with the administrative cost to Japanese banks.⁴⁴

In contrast to this number, the Joint Committee on taxation released a report that says FATCA is expected to add only \$8.7 billion in tax revenue to the Treasury over the next ten years.⁴⁵

Even if the tax revenue produced equaled or exceeded the administrative cost to foreign banks, FATCA compliance effectively forces administrative costs on foreign banks

⁴¹ Institute of International Bankers, *Comments on Notice 2010-60 Providing Preliminary Guidance on FATCA*, Nov 12, 2010, available at <http://cticompliance.com/assets/pdf/EBF-IIB%202010%2011%2012.pdf>.

⁴² *Id.*

⁴³ C.M. Matthews, *FATCA Creating a Compliance Gold Rush*, Wall Street Journal Blogs, May 1, 2012 (available at *FATCA Creating a Compliance Gold Rush*, Wall Street Journal).

⁴⁴ Institute of International Bankers, *Comments on Notice 2010-60 Providing Preliminary Guidance on FATCA*, Nov 12, 2010, available at <http://cticompliance.com/assets/pdf/EBF-IIB%202010%2011%2012.pdf>.

⁴⁵ Estimated Revenue Effects of the Revenue Provisions Contained in Senate Amendment 3310, the "Hiring Incentives To Restore Employment Act" Under Consideration by the Senate, JCX-5-10, Feb 23, 2010, available at <https://www.jct.gov/publications.html>.

commensurate with the additional tax Treasury would collect. Treasury has therefore effectively caused the foreign banks to “foot the bill” for U.S. taxpayer non-compliance.

Such “tax penalty” might seem appropriate for prior non-compliant banks such as UBS which was forced to pay a 780 million settlement.⁴⁶ But it hardly seems fair, or constitutional for that matter, to force Japanese banks and other banks in similar situations to pay for the non-compliance of Swiss Banks and other banks in similar situations around the world.

Concerns Regarding Proposed Treasury Regulations

As with all new IRS rules and regulations, the IRS held a period following the FATCA rules and regulations allowing taxpayers to comment on the proposed rules and regulations. Overall, taxpayers comments to the proposed FATCA rules and regulations show great concern about the effectiveness of FATCA when comparing the burden to those affected by it.

While some early comments merely sought an exclusion for a particular class of individuals,⁴⁷ others, like the Institute of International Bankers, *infra*, brought greater concern to the overall benefits vs. burdens (and costs) to foreign banks.⁴⁸ Still, these comments did not propose an entire overhaul to FATCA, but rather cautioned Treasury of the timeframe it would take large banks to comply with the FATCA regulations, stating “the most optimistic estimated timeframe for a successful IT-build is 18 to 24 months or longer from the time the final regulations are

⁴⁶ UBS Settlement Agreement (Sept 19, 2009), available at http://www.irs.gov/pub/irs-drop/bank_agreement.pdf. See also IR 2009-75 (Aug 19, 2009).

⁴⁷ See e.g., FATCA Comment Letter, dated July 30, 2010, submitted on behalf of Western Conference of Teamster’s Pension Fund “Re: Announcement 2010-22 – Relief for Trustees and Fiduciaries of Large Employee Benefit Plans from Section 6038D Reporting,” by Dick Suringa of Covington & Burling LLP, Washington D.C., available at http://www.cticompliance.com/assets/pdf/FATCA_TeamstersComments.pdf.

⁴⁸ Institute of International Bankers, *Comments on Notice 2010-60 Providing Preliminary Guidance on FATCA*, Nov 12, 2010, available at <http://cticompliance.com/assets/pdf/EBF-IIB%202010%2011%2012.pdf>.

issued.”⁴⁹ These comments most likely had an effect on the decision of Treasury to extend compliance until July 1, 2014, as the IRS notes in Notice 2013-43:

Comments have indicated that certain elements of the phased timeline for the implementation of FATCA present practical problems for both U.S. withholding agents and FFIs. In addition, while comments from FFIs overwhelmingly supported the development of IGAs as a solution to the legal conflicts that might otherwise impede compliance with FATCA and as a more effective and efficient way to implement cross-border tax information reporting, some comments noted that, in the short term, continued uncertainty about whether an IGA will be in effect in a particular jurisdiction hinders the ability of FFIs and withholding agents to complete due diligence and other implementation procedures. In consideration of these comments, and to allow for a more orderly implementation of FATCA, Treasury and the IRS intend to amend the final regulations to postpone by six months the start of FATCA withholding, and to make corresponding adjustments to various other time frames provided in the final regulations, as described in section III below.⁵⁰

Other recent comments by the Organization for International Investment has stated that the hiring of U.S. citizens by foreign multinational corporations contributes greatly to the employment of U.S. citizens, and that “the goal of increased transparency must be balanced so that it does not have a discriminatory impact on foreign multinational corporations.”⁵¹ To this end, the Organization for International Investment proposed that if a U.S. taxpayer’s account is held by a foreign bank that has entered into a FFI Agreement with the IRS, as such information would be duplicative and unnecessary.

⁴⁹ *Id.*

⁵⁰ Notice 2013-43.

⁵¹ FATCA Comment Letter, dated Feb 17, 2010, submitted for the Organization for International Investment “Re: Comments of the Organization for International Investment in Response to Request for Comments Addressing Proposed and Temporary Regulations Under IRC Section 6038D” by Nancy McLernon, available at http://www.ofii.org/docs/OFII_Comment_Letter_%20Section6038D.pdf.

However, perhaps the most stringent attack on FATCA has come from the American Citizens Abroad (“ACA”) in a recent commentary on April 4, 2012. In this report, the ACA informs treasury that FATCA “is the straw that has broken the back of American and green card holders residing overseas...FATCA has turned Americans abroad into pariahs in the international financial world.”⁵² The report states that in anticipation of the approaching dates when FACTA will apply, many foreign banks are closing their American bank accounts. This applies not only to Americans resident in the U.S., but also to Americans residing in the foreign country. The ACA report states:

Americans working abroad are also losing access to foreign pension plans and foreign life insurance contracts. Prepaid credit card companies are refusing Americans. Americans married to foreigners are being taken off of what was formerly a joint bank account, putting the American spouse into a very precarious financial position. American students studying abroad cannot open a bank account to pay tuition and living expenses and receive funds from the United States. Americans moving abroad for professional reasons face the same problem.⁵³

The ACA comments on FATCA also state that FATCA is forcing many Americans with long term residence overseas to renounce their citizenship.⁵⁴

These circumstances illustrate the unintended but harsh consequences of FATCA. Many foreign banks simply won’t comply with the new information reporting, and are attempting to skirt the

⁵² FATCA Comment Letter, dated April 4, 2012, submitted by American Citizens Abroad (ACA) The Voice of Americans Overseas, “ACA Comments on the proposed Treasury Regulations concerning FATCA, dated February 8, 2012,” available at <http://bsmlegal.com/PDFs/AmCitizensAbroad.pdf>.

⁵³ *Id.*

⁵⁴ *Id.*

requirements by closing all U.S. bank accounts. These foreign banks misunderstand FATCA, however, because just refusing to accept U.S. persons as account holders will not relieve the foreign entity from being subject to FATCA. It is the payment of U.S. source income that triggers FATCA, not only the holding of U.S. accounts.⁵⁵

As a solution, ACA recommends that Congress adopt a residence based taxation system, or alternatively make FATCA only applicable to Americans that are resident in the United States.

In their support, they cite that according to the Taxpayer Advocate Service, 91 percent of Americans overseas who claim a foreign tax credit on their tax return owe no U.S. taxes.⁵⁶

Adopting a residence based approach to FATCA would therefore be more or less revenue neutral to Treasury, and would help alleviate some of the problems in the ACA report.

In response to this and other criticism from American Citizens Abroad, Reps. Carolyn Maloney (D-NY), Mike Honda (D-CA), and Charles Rangel (D-NY) have introduced legislation that would create a Federal commission to study the impact of government policies upon the millions of Americans living overseas.⁵⁷ The Commission on Americans Living Abroad Act would fill an unfilled gap by making sure United States policies do not have unnecessary consequences for Americans living overseas.⁵⁸

⁵⁵ Carol P Tello, Esq, *Reporting, Withholding, and More Reporting: HIRE Act Reporting and Withholding Provisions*, BNA Tax Mgmt Int'l Journal, Vol 39, No 5 (May 14, 2010).

⁵⁶ *Id.*

⁵⁷ HR 6263, 2012 HR 6263 (Aug 1, 2012).

⁵⁸ *Rep. Rangel Joins Reps. Maloney and Honda in Introducing Bill to Create Bipartisan Commission on How US Government Services Americans Living Overseas*, US Federal News, HT Media Ltd, Aug 1, 2012, available at <http://rangel.house.gov/news/press-releases/2012/08/rangel-joins-reps-maloney-and-honda-in-introducing-bill-to-create-bipartisan-commission-on-how-us-go.shtml>.

Conclusion

While FATCA has yet to be implemented, the commentary on proposed regulations and implementation of FATCA show that there is considerable difficulty in implementing FATCA for foreign banks, and considerable backlash to FATCA from American Citizens Abroad. Further, the additional tax revenue to Treasury of \$8.7 Billion over the next ten years will result in an almost identical or greater cost to the top 30 foreign banks in compliance fees to comply with FATCA. Nevertheless, France, Germany, Italy, Spain, the United Kingdom have already signed FFI Agreements with Treasury, and other countries are also indicating they will comply. Americans living abroad who are seeing their foreign bank accounts being closed, however, are still angry with Treasury over the unintended consequences of FATCA. As FATCA begins to be implemented in 2014, we will see more pushback from foreign banks and Americans living abroad. However, both Treasury and the IRS have shown no indication that FATCA will not proceed as planned in 2014.