

Input on Bipartisan Tax Reform

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Input on Bipartisan Tax Reform

to: United States Senate, Committee on Finance
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SUMMARY

The Existing Citizenship-Based Taxation (CBT) and US-Personhood-Based Taxation must be changed to Residence Based Taxation (RBT). All information reporting of non-resident activity outside of US should be stopped. (US activity of non-residents can be controlled according to simple methods similar to non-resident Aliens)

FBAR is unconstitutional, illegal, draconian, unnecessary, and unfair and must be stopped. Changing to RBT will ensure this for non-residents.

FATCA is unconstitutional, insulting to Americans, discriminatory, dangerous, and unfair and must be stopped.

The 1933 Bank Securities Act should apply to US residents in USA. Outside of USA, it should not be applied differently for US persons than it applies for non-US persons.

All exit taxes must end.

These changes are more than 30 years overdue. There must be no delay.

MY SITUATION

I am a registered voter in Wyoming living in Sweden. I work as a consulting engineer and manager in the vehicle industry and the oil/gas industry in Sweden and Norway. In many of my jobs, my work is to enable technical, commercial, and customer issues regarding the use of tens of millions of dollars of American oilfield equipment in Norwegian applications. There are many people from Wyoming who make their living around the world by helping USA to increase its exports.

I would prefer to own my own consulting business in Sweden. However, IRS reporting for any business may require half-man year of IRS preparation time.

I have also seen that it is nearly impossible to invest in mutual funds. Any investment in international funds would be labeled a "PFIC" and would lead to hundreds more IRS forms hours. Whereas my non-US-citizen neighbors can purchase US stocks at any local bank, I (a US person) is disallowed from investing in US funds at a local Swedish bank due to regulations from the 1993 Bank Securities Act. Since most mutual funds have a percentage of US investments, most of the local banks prohibit US citizens from making any investments at all. With the rise in further regulations, my US Fidelity account has also banned me from mutual funds.

I usually spend more than 50 hours a year doing my US taxes. Recently, I have learned that it is not possible for me to do them correctly, and I will now have to pay someone more than \$1000

each year, still spend more than 50 hrs of my own time. Here is a typical US-nonresident 2012 tax year return (for a "simple" filing of a single person).



Because of the tax treaty and Sweden's high tax rate, I never owe tax to USA, except for when there is a mismatch in taxation methods and I end up being taxed/up by USA or double taxed.

THE SITUATION OF ALL OF AMERICA'S DIASPORA (EXPATS).

Approximately 2.5% of US citizens reside outside the fifty states or territories. Just as in the states from where they've originated, they are of diverse backgrounds, incomes, ethnicity, and occupations. They are constituents of each and every district. US citizens abroad are spreading American values, furthering US trade, and contributing to the communities where they reside. US citizens abroad can help ensure America's prosperity, help grow America's economy, create American jobs, help open more markets for U.S. exports, and ensure American businesses can successfully compete in the 21st century global economy. We know that no one and nothing can represent America overseas better than American citizens.

More than half of a million US citizens are registered to vote overseas. Their Senators come from every state: from Florida to Alaska, and from Maine to Hawaii. They are expecting for their Senators to represent them fairly as their constituents.

With FATCA, USA now wants all of the eligible population of 7,6 million US citizens to file , of which 82% will raise no revenue for USA (and the other 18% will unfairly raise revenue to USA). The costs of this processing will overcome the revenue (unfairly) gained.

Meanwhile, FATCA hired 800 additional IRS agents and drastically increased audits of international tax returns. In high tax countries (82% of returns), none of those audits would gain revenue.

FATCA now requires any bank to identify all US customers and segregate them for unique treatment from customers of any other nationality.

RESIDENCE BASED TAXATION (RBT) VERSUS TODAY'S CITIZENSHIP BASED TAXATION (CBT)

Background and Current Situation

International taxation of American individuals was created in the 1860's and has survived for more than 150 years. During those years, all other developed countries and have moved to Residency-Based Taxation (RBT), whilst US remains unchanged with Citizenship-Based Taxation (CBT) and a very wide overseas definition of "US persons for tax purposes". RBT is also the norm for each of the US states and territories.

In the 1770's, Britain began to use an iron fist to enforce taxation upon its diaspora colonists in America. In 2010's, America began to use its FATCA iron fist to enforce taxation upon its diaspora throughout the world. Britain sent warships. America sent FATCA. The Colonists defended themselves. America's diaspora have been trying for years to work with the system for change--but to no avail.

In 1978, the late Roger Conklin explained to the US Congress that US taxation policy of expats (CBT) was the major contributing factor to bring about the US trade deficit. In his latest report to Ways and Means¹, he gave examples of large export contracts being lost because US tax policy did not allow Americans to sell these American products and services overseas. Hence, non US firms had been taking away business from US firms. His submission should be studied in detail. Since 1978, many approaches have been taken to try to solve the US trade deficit, without result. Congress has yet to address the problems with CBT and America is yet to see a return to trade surplus.

Many US citizens have never as adults set foot on US soil, or have never been on US soil at all. Many have never spoken English and many of those have no access to English translators. Many live in countries where their income is less than the cost of hiring a US accountant. Some could be of poor parents who had received Temporary Protected Status from any trouble spot. Many of them don't even know that they are US citizens. Most of them would never have believed that they were obliged to file US taxes from their remote location, simply due to their place of birth. Whereas FATCA is said to be chasing after the lawbreakers which make up a small percentage of US domestic society, FATCA will actually enforce US CBT upon hundreds of thousands of persons unable of comprehending their US citizenship.

A recent insult to US citizens abroad, who are not eligible for Affordable Care, must fill out a form to exempt themselves from penalty from not purchasing health insurance. In addition, the ACA "tax on the rich" can be applied to self-employed US citizens overseas who have no potential to use the plan.

¹ Roger Conklin Ways and Means Testimony, Statement of (late) Roger Conklin, Retired International Sales and Marketing Executive: The Negative Consequences of Citizenship-based Personal Taxation on the Competitiveness of American Companies and the Resulting Destruction of Jobs for American Workers http://waysandmeans.house.gov/uploadedfiles/retired_international_sales_and_marketing_executive.pdf

There are more than 50 forms which are specifically aimed at non-resident US citizens. Many of them are information reporting forms with unfair penalties, which are not applicable to US-resident US citizens. It is impossible for a US citizen to know how to file all of the forms necessary to live overseas.

CBT's misguided goal is to collect and process reams of paper from 7.6 million US citizens overseas, of which 82% produce no revenue and 18% produce unfair and insignificant revenue.

The attached RBT proposal, which was submitted by another individual, should be implemented. I support this submission.²

I also support a similar submission by Republicans Overseas³

Today, there is an exit tax for those leaving the US. Exit taxes are for the USSR or for the Weimar Republic. USA should not have any exit taxes of any kind (Other proposals have come forth which propose exit taxes upon an individual's unrealized total value gain as the individual changes residence.) Taxes can and should be imposed only upon real gains which might occur when truly selling assets in a particular resident country. Any "settling up" of capital gains could be achieved according to existing tax treaties..

Comment [YES1]: The Senate Republican report recognized the ACA proposal which had proposed an exit tax methodology when leaving residency--- somehow as a pre-negotiated compromise. An exit tax is a bad idea.

All exit taxes should be eliminated.

FOREIGN BANK ACCOUNT REPORT ("FBAR" OR FINCEN FORM 114) AND IRS FORM 8938

Background and Current Situation

Whereas US overseas taxation laws were written to meet the needs of the Civil war, asset reporting requirements were written to meet 1970's domestic problems. The FBAR form's intent was to provide additional methods to convict and penalize domestic persons assumed to be avoiding income tax by transferring money out of IRS reach.

However, because of CBT and FBAR's methodology, the law does not control just the thousands of US residents with international investments. Its greater impact is upon 7.6-7.8 million US law-abiding citizens abroad. It also affects their family members, business partners, volunteer organizations, and employers.

FBAR does not investigate income nor income tax. FBAR is an unconstitutional requirement of self-reporting of any asset values above \$10,000. Because of CBT, not only are US residents required to file FBAR for distant foreign accounts, US citizens abroad are also required to report their neighborhood checking and savings accounts. US residents are NOT required to report their local checking and savings accounts--thus differentiating (discriminating) citizens because they live abroad.

² Elimination of Citizenship Based Taxation, submission to Senate Finance Committee, <https://drive.google.com/file/d/0B7VqDyDIAgW2SVZPSE1aX0xoZzg/view>

³ the submission by Republicans Overseas to the Senate Finance Committee for tax reform. Michael DeSombre, Worldwide President, Republicans Overseas

Constitutional violations

FBAR penalties are not assessed for income tax evasion. FBAR penalizes for not self-reporting asset values.

FBAR violates the 8th Amendment with regards to its excessive fines .

The archaic FBAR reporting requirements were virtually unknown and unenforced until the 2000's. Instead of repealing this archaic law, the law has been re-awakened.

If an expat (non-resident US citizen) had "nonwillingly" not reported his neighborhood checking and savings, he can be assessed up to \$10,000 per violation. An expat who "willfully" does not report his assets (for example if he is afraid to or is confused) can be subject to the greater of 50% or \$100,000 per violation (one account could have multiple violations!) and years of imprisonment. An expat could have paid all (or nearly all) of his taxes on all of his income (in fact FBAR violations are not income tax violations at all!). However (s)he might receive an FBAR fine. The FBAR penalty structure is unrelated to any potential missed income tax. In most cases, the FBAR fines are many multiples of any tax penalty .

FBAR has unconstitutionally-questionable applicability related to a person's thoughts: behavior can be determined to be "willful" versus "non-willful"

The FBAR form requires expats to yearly report themselves and their asset values to a policing agency called the Financial Crimes Enforcement Network. Those that have not reported in are subject to the penalty structure. FBAR has serious flaws with respect to 4th Amendment Search and Seizure provisions .

The FBAR form requires US persons to report the financial assets they share with their non-US-resident non-US-citizen spouses. This unfairly extends FBAR laws to spouses. This aspect of FBAR creates serious friction in marriages--to the point where many US citizens have been forced to split up their joint accounts. This can put US citizens at risk. Many spouses would rightfully refuse to be reported and hence marriages have seen strains that have led to breakups. Many spouses have been forced to choose between their family or their US citizenship.

The FBAR form requires expats to report any accounts upon which they might have signature authority. This would occur is a US expat might be a book keeper at a volunteer organization such as a sport club or church. The normal discriminatory response to this FBAR requirement is that US citizens are denied the ability to volunteer for financial-related volunteer activity.

Expats would also be required to report any company accounts for which that person has signature authority. Imagine an expat reporting the confidential financial details of a non-US corporation to FINCEN. This could even mean that a US expat will be required to report his corporation's assets even if it is a violation of local law or the confidentiality agreement in his employment contract. The normal discriminatory response to this FBAR requirement is that US citizens are denied the ability to have financial responsibilities at foreign companies. This makes US citizens undesirable for critical positions such as CEO, CFO, business manager, purchaser, or accounts payable administrator of international companies.

With FBAR, expats are required to report the assets of their non-US-citizen business partners. The normal discriminatory response to this is to deny US citizens to be partners with local residents.

IRS form 8938 and others

8938 form is duplicate requirement to FBAR with ADDITIONAL PENALTIES for non-self-reporting. This is double jeopardy. It has the same constitutional problems as FBAR. It includes penalties which increase monthly, which is grossly unfair.

There are a number of additional form requirements in addition to form 8938, which are very time consuming to expats. An expat's local trusts, mutual funds, and business are normally fully regulated by local governments. However, a US citizen uniquely is required to also report back to the IRS upon these items. These forms are more extensive than those required of US residents. They can cause hundreds of hours to fill out, resulting in exhorbiant accounting costs. Most of these forms are simply for information and few of these forms generate US tax revenue.

Discussion of FBAR & 8938 '

Local Bank accounts are obviously needed by US citizens overseas. There is nothing suspicious about a neighborhood bank which is fully taxed and regulated by the local government. Double tax filing and double regulation are unnecessary.

FBAR, form 8938, and all of the other forms are very time consuming and expensive to overseas citizens. These are duplicate (and sometimes multiple) reports of the same information to both the IRS and FINCEN. These require detailed accounting of each and every monthly bank statement--to look for the highest yearly balances. The forms are complex, requiring complex and costly accounting help which is far beyond that required of US residents. The information for these forms is already controlled by the governments where these persons live--filing to US is duplicate.

These reporting forms generate no revenue to the IRS. However, these forms generate duplicate processing costs at both the IRS and FINCEN. With CBT, these multiple forms are demanded of a population of 7.6 million expats. The total administrative costs at the IRS and FINCEN have yet to be considered in a cost/benefit analysis.

FBAR and 8938 and other similar reporting forms require much more information than that which is required to collect taxes. Not only does this take the IRS away from its primary mission, it violates the privacy of US citizens.

FBAR reporting requirements are archaic. The reporting limits have not grown according to inflation. FBARs were originally demanded of US residents for a completely different purpose. FBAR requirements were previously unenforced, not well understood by accountants, and the written instructions were inadequate. The enactment of FATCA changed all of this. Instead of eliminating these archaic requirements, and instead of instructing citizens upon the use of FBAR, the FATCA program was created to entrap unaware and uninformed innocent expats.

The quantity of information report forms for US citizens overseas has not been analyzed by decision makers. If it were---it would become obvious that the reporting demands upon expats are drowning. The reporting demands upon expat business owners would show that a business owned by a US expat could drown in IRS reporting. No analysis has been done to understand the smothering requirements upon potential US citizen expat business owners.

The cumulative effects of the planned new enforcement of the archaic FBAR and the new 8938 have been terrifying to US citizens overseas. Their draconian penalties are what scare expats the most. In many cases, the stress upon US expats has led to stress-induced health issues.

As well, the over-reach of these forms strains the spouses and business partners of US citizens. Imagine that a Frenchman living in France might have to report his assets to the US government-- simply because he has chosen to marry a US person. In some cases, this has led to serious marital problems and divorce. As a result, many families have had to split their financial assets according to which spouse might be required to report to the IRS. When a US citizen with limited cultural and language skills is isolated from the family finances, that US citizen is put at a great risk.

With such strain caused by these unconstitutional and unfair reporting requirements, an astounding number of people have been forced to choose between the livelihood of their families or their US citizenship. US has been losing citizens at a rate never seen before. Losing citizenship can be one of the most depressing events happening in an expats life.

Summary & Recommendation: FBAR and form 8938 and other reporting forms:

- There is nothing inherently criminal about a person living overseas with a local bank account.**
- Congress has a responsibility to ensure proper tax compliance with laws that due not adversely affect law abiding citizens, according to the Constitution..**
- USA does not have a wealth tax. There is no need for USA to track asset values.**
- FBAR & 8938 are not directed at any particular criminal actors, they are directed at ALL US persons regardless. As they are today, create serious problems for a very large population of law abiding citizens.**
- FBAR & 8938 are constitutional violations of the rights of US citizens overseas. In plain terms, they are simply not fair to expats.**
- It's in our founding principles to have laws which meet their intent without causing harm to citizens.**
- The committee should study the costs of FBAR & 8938 reporting versus the tax revenue they generate**
- A change to CBT would eliminate FBAR & 8938 for overseas residents.**
- FBAR & 8938 have serious constitutional flaws which must be removed.**

FATCA

Background and Current Situation

Congress enacted FATCA (2010 HR 2847 HIRE Act) due to concerns of evasion by US residents with international accounts, prior to rethinking its taxing rules for nonresident US citizens, without considering constitutional issues, without considering the effects on US citizens overseas, without considering its effects on the US economy, and without a logical cost analysis.

FATCA is the final closure of the unconstitutional entrapment process of CBT, FBAR, and IRS form 8938. FATCA's objective is to "catch" all of the unknowing US emigrants throughout the world and legal immigrants in USA. FATCA will locate US citizens globally, such as the children of those in US in temporary asylum from Bosnia, Serbia, Cambodia, Europe (WWI), or Korea. And countless "accidental Americans" such as [Katie of Canada](#) or [Tinna of Sweden](#).

Never before 2015 in US history, has a president proposed in his budget to rid our country of its citizens. ⁴ The FATCA/FBAR/CBT entrapment indeed has made new Executive branch policy and directives, including raising the expatriation charges from zero to \$450 to \$2350 to discourage departure.

The constitutional issues with FATCA

Who it affects:

This Act has ensnared many of the 7.6 million United States Citizens, legal immigrants, and all Green Card holders living overseas in its overzealous definition of "US persons for tax purposes".

- U.S. Persons (including citizens and Green Card holders) who Live and Work Overseas
- U.S. Owned Companies with Operations in Foreign Countries
- Non U.S. Individuals Residing and Working in the U.S.
- Foreign Nationals on Temporary Assignment in the U.S.
- U.S. Expatriate Employees – Past and Present
- U.S. Persons who worked in a Foreign Country & Paid into a Foreign-based Pension
- Foreign Owned U.S. Companies with Specified Foreign Financial Interests
- Spouses of US persons who share joint accounts.
- Business partners of US persons who share joint accounts
- Foreign Businesses whose financial actors are US persons (with signature authority)

What effects

FATCA's intent was to rout out the bad actors. Unfortunately, FATCA routs out *all* actors (US persons)--good and bad. It requires the identification of all US persons and eventually reverses the burden of proof--requiring them to prove their innocence. FATCA may indeed find some bad actors, but there is a greater number of good actors which FATCA assumes to be bad.

FATCA does not legally search for persons who are avoiding taxation. FATCA searches for the assets of persons living overseas. Note that there is no IRS tax revenue gained from financial assets (there are no US wealth taxes).

FATCA's indicia of suspicion are not tax flows and not even income. FATCA's indicia of suspicion are simply signs of persons suspected of being US citizens or US persons. Imagine a law where suspicion of a particular nationality is equated to suspicion of illegal activity! Now imagine that those assumed suspicious persons are Americans! However, one need not imagine, because FATCA and its bizarre methodology is real.

FATCA's methodology is not only bizarre, it is unconstitutional. The Fourth Amendment was passed in order to prevent the type of search and seizure experienced by the colonists. However, US and foreign financial institutions are required to report to the US government. And these institutions are required to not only report bad actors, but to report *all* persons suspected of being US citizens or US persons.

⁴ "US proposes relief for some who renounce US citizenship: Is FATCA a motivating factor?" Roy Berg <http://www.moodysgartner.com/us-proposes-relief-for-some-who-renounce-us-citizenship-is-fatca-a-motivating-factor/>

FATCA methodology requires adherence via a threat of 30% penalties upon the financial activities of any US or foreign financial institution. Thirty percent of any transaction is a very stiff penalty, which is to be questioned against the Eighth Amendment's assurance against excessive fines or excessive punishment.

Effects to Americans overseas as a result of FATCA.

Testimonies and media reports show that this new law and new enforcement of archaic laws is devastating to the population of US citizens overseas.

The families of US citizens are being closed out of investment and savings accounts at world banks.

US business partners and US financial decision makers are being excluded from their businesses by their partners.

Family members, members of volunteer organizations, and business partners are being stripped of their financial responsibilities and signature authority based upon their citizenship or personhood .

Security Issues

FATCA requires banks in all countries of the world to acquire and store the most personal data upon US citizens. This includes banks in the most troubled spots of all of the world.

FATCA IGAs are made with many governments which are not secure, where the governments are required to collect personal information of US citizens and store it. There is little that US can do to ensure the safety of its citizens whose private data is stored by foreign governments.

(The following governments have been entrusted with the private data of US citizens via FATCA IGA's: Brazil, Croatia, Israel, Kosovo, Mexico, Qatar, Uzbekistan, Algeria, Azerbaijan, Bahrain, China, Columbia, Georgia, Serbia, Thailand, Turkey, Ukraine, UAE, Angola, Cambodia, Kazakhstan, Tunisia)

(Here are the quantity of FFI's in selected countries, whose data departments and IT consultants and employees are entrusted with FATCA data: Afghanistan: 15, Chad: 5. China: 1021. North Korea:1, Nigeria: 92. Iraq: 16. Russia: 1117. Ukraine: 217. Venezuela; 179. Yemen: 13)

FATCA is a contract with minimum requirements upon financial institutions. However, FATCA has little or no controls upon the maximum actions which any financial institution can perform against a US citizen.

Studies and hearings are due, so as to understand the dangers of having US citizen's FATCA data in the hands of foreign banks and governments. This could too easily be used for identify theft and targeting of US citizens and US persons worldwide. This study needs to be performed in this reform and the results must be applied to fixes.

The premise of FATCA and its IGAs are that all of the financial institutions and in all of the countries of the world, are entrusted with the most sensitive private information of US citizens, because US citizens are not trusted. This is ludicrous and far outside of America's values. It is necessary to fix FATCA's dangerously upside down and backwards logic.

Impacts

Comment [YES2]: (from RNC res: WHEREAS, FATCA requires foreign financial institutions to enter into an agreement with the IRS to identify their U.S. account holders and to disclose the account holders' names, taxpayer identifications, addresses, and the accounts' balances, receipts, and withdrawals (sometimes in violation of foreign privacy laws), opening up wide doors to identity theft and other crimes against Americans residing overseas;)

Comment [YES3]: WHEREAS, Time magazine reported a sevenfold increase in Americans renouncing U.S. citizenship between 2008 and 2011, and has attributed this at least in part to FATCA; and another surge in renunciations in 2013 to record levels has been reported in the news media, with FATCA cited as a factor in the decision of many of the renunciants; and WHEREAS, FATCA forces Americans living abroad to make a horribly unfair choice between renouncing their citizenship and abandoning their businesses abroad because foreign financial institutions won't handle their transactions or accounts; therefore be it

Many US citizens, US owned businesses, and US volunteer organizations are being shut out of the financial institutions in the places where they live. They've been shut out of investment vehicles, pension funds, and even mortgages. This affects not only the US person, but any accounts held by a spouse or business partner.

FATCA has a methodology requiring a minimum treatment of US persons at their financial institution. However, FATCA has no maximum limit upon what any institution may do. As a result, many foreign financial institutions have been acting as their own tax security guards and requiring US persons to show their private tax papers to the institution, in order to be allowed to continue their financial relationship.

With FATCA methodology and its implementation at financial institutions, US citizens have been exposed to discriminatory treatment they never could have imagined. As a result, they experience disbelief, anger, and a loss of confidence in the US government. Many affected US persons are now boycotting US products and especially have decided not to visit US for tourism. This hurts not only expats, but also any US domestic business who might benefit from their purchases.

In the past, US citizens had often felt that they were citizen ambassadors to the world-- representing US culturally, financially, and in education. With the discriminatory application of FATCA, the attitude of a large number of US citizens has turned and US is losing its citizen ambassadors.

Many citizens have forced to choose between the livelihood of their families or their citizenship. As a result, renunciation and relinquishment of US citizenship has skyrocketed. Families have been split according to the conflicting tax reporting of dual citizen Americans and their foreign spouses.

Costs/Benefit Analysis of FATCA has never been done

The IRS's Taxpayer Advocate Service stated in its 2013 Annual Report to Congress "The Congressional Joint Committee on Taxation estimates FATCA will generate additional tax revenue of approximately \$8.7 billion over the next ten years. ⁵ By way of comparison, industry sources believe that overall private sector implementation costs could equal or exceed the amount that FATCA is projected to raise." ⁶

Indeed, one can look at Australia as a typical FATCA implementation example. Its characteristics are typical of many countries and of most of the EU countries, where tax rates are higher than

⁵ Joint Committee on Taxation, Congress of the United States JCX-6-10 (March 04, 2010) Estimated Revenue Effects Of The Revenue Provisions Contained In An Amendment To The Senate Amendment To The House Amendment To The Senate Amendment To H.R. 2847, The "Hiring Incentives To Restore Employment Act" Scheduled For Consideration By The House Of Representatives On March 4, 2010 <https://www.jct.gov/publications.html?func=startdown&id=3650>

⁶ The IRS's Taxpayer Advocate Service stated in its 2013 Annual Report to Congress on page 243 MSP #23 REPORTING REQUIREMENTS: The Foreign Account Tax Compliance Act Has the Potential to be Burdensome, Overly Broad, and Detrimental to Taxpayer Rights <http://www.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>

US and there is no logical need for fat compliance programs. With its highest marginal income tax rate of 45% and capital gains taxed as income, there is no reason for anyone in US to be sending money to Australia to avoid taxation. We can also be assured that none of the 77,000 US citizens living in Australia moved there in order to avoid taxation.

Australia estimates that its banks require 483 million AUS (419 million USD) over 10 years to implement FATCA, or 18 USD per capita.⁷ Data from Canada and U.K. can show even higher per capita figures. Without a study, one can only imagine the cost to implement FATCA in all of the world's banks in the world's 190 countries.

Knowing that there is no logical reason for US residents to send money to typical high tax countries such as Australia, the only reason for FATCA in Oceania and Europe could only be to find US citizens residing there. Since Australia has approximately 77,000 US citizen residents⁸, Australia's banks will pay in average more than \$5000 for locating each US citizen residing there. With similar data, it can be shown that UK will spend more than \$8000 to locate each US citizen residing there.

There are many US owned financial institutions located throughout the world. Each of these US-owned institutions incur their own FATCA implementation costs, reducing their earnings accordingly. Less corporate earnings yield lesser US corporate taxation. This also yields lesser US dividends and lesser US dividend tax revenue. Those factors have never been considered in any FATCA analysis.

Note that the implementation costs to foreign governments have never been revealed. Neither have the FATCA implementation costs of the IRS. There has been no analysis of the US domestic financial burden for implementing the FATCA 30% withholding methodology.

FATCA and FBAR are petty. The highest quantity of FATCA processing is of minor checking and savings accounts. With much of the world offering less than 1% savings interest, the entire expensive FBAR and FATCA regime is controlling global income activity down to yearly interest income of less than \$100 per year.

Revenue: With implementation, FATCA's *assumption* has been that somehow, the interest and dividends of allegedly-unreported capital of expats overseas is income which might be missed at the IRS. The reality is that most interest and dividends are already taxed in the countries where those US citizens reside. And the tax treaties would attribute that income to the residence location of the US citizen and the savings. So, even if any interest or dividends may have been unreported to the US, there would be no benefit attributable to US anyways.

⁷ TAX LAWS AMENDMENT (IMPLEMENTATION OF THE FATCA AGREEMENT) BILL 2014 (2013-2014), THE PARLIAMENT OF THE COMMONWEALTH OF AUSTRALIA, HOUSE OF REPRESENTATIVES, TAX LAWS AMENDMENT (IMPLEMENTATION OF THE FATCA AGREEMENT) BILL 2014, EXPLANATORY MEMORANDUM (Circulated by the authority of the Treasurer, the Hon J. B. Hockey MP), http://www.austlii.edu.au/au/legis/cth/bill_em/tlaotfab2014510/memo_0.html

⁸ *ibid.*

Effect to US economy & resulting loss of GDP (tax base)

FATCA has resulted in Americans who are living and working overseas finding themselves and their companies shut out from access to banks, insurance, loans, and investment opportunities. This is because many foreign financial services providers have concluded that doing business with Americans is simply too much trouble. Thus, opportunities could be lost and America's competitiveness overseas could be diminished.

On May 28, 2013, Mr. Robert Stack of the IRS informed the European Parliament, that "I believe that the members here present today and the participants understand that the United States put its market at risk in doing FATCA"*⁹ Without a cost/benefit analysis, and with serious concerns about excessive cost and limited benefit, why should the IRS be putting the US financial market at risk? Shouldn't our Congress be looking for ways for American financial institutions be freed of risks and to be more attractive to the global marketplace?

FATCA's primary mechanism for enforcing compliance of foreign financial institutions is a punitive withholding levy on U.S. assets, which creates a strong incentive for foreign financial institutions to divest (or not invest) in U.S. assets. Less assets and less investment in US could mean fewer jobs and lesser domestic investment income. This could hurt not only the United States economy, but also any tax revenues which might have been associated with it.

FATCA's fixed implementation costs are simply too high for smaller institutions or for the financial institutions of developing countries to participate. Not only is this greatly unfair to these institutions and to developing nations, it stops US economic cooperation efforts with the developing world even before it starts. Statistic for FFI's for developing countries are significantly lower than those in developed countries.

If a cost/benefit/risk analysis had been done earlier, the negative revenue effects of current policy would have become obvious. A cost/benefit/risk analysis of FATCA is long overdue. This committee should at least have these issues investigated:

Cost analysis & benefit & risk & hearings required:

Foreign country costs

Cost to Global financial institutions (large and small)

Cost to foreign govts

Per capita costs

Cost compared to country GDP

Cost to implement and maintain FATCA at the IRS

Costs to US domestic financial institutions, and hence loss of US income tax revenue

Cost to US financial institutions overseas, and hence loss of US income tax revenue

loss of US tax revenue

Comprehensive tax revenue analysis considering all factors

In addition to studies, it is important for Congress to hear the effects of FATCA themselves. So far, none of the 7.6 million US citizens overseas have had any voice in the halls of their own US

⁹ Hearing in Brussels on 5/28/2013 discussing issues related the implement of the US FATCA legislation in EU Member States. Questions and answers with Robert B. Stack, U.S. Deputy Assistant Treasury Secretary for International Tax Policy
<https://www.youtube.com/watch?v=zRoU-JNFhr0>

government. Neither have their spouses nor business partners. It's time that the real effects of FATCA are heard from the real US persons who are affected.

Actions

For reasons of fairness and constitutionality to US citizens, and because of the negative impacts upon the US economy and US tax revenue stream, the following changes are needed.

Taxation based upon citizenship and personhood must be replaced by taxation based upon residency (RBT).

FBAR and IRS form 8938 reporting are grossly unfair and constitutional and must be repealed. RBT would eliminate the need for any such forms for US citizens overseas.

FATCA is grossly unfair, discriminatory, and unconstitutional for US citizens overseas. This law must be removed. (Enactment of RBT would make FATCA unnecessary.)

In the current situation, US citizens are being treated grossly unfairly. And in the current system, USA's global corporations are insufficiently staffed with US citizens.

All exit taxes must be removed. (USA should not have exit taxes which compete with Russian and Weimar Republic anti-emigration policies.)

The 1933 Bank Securities Act should apply to US residents in USA. Outside of USA, it should not be applied differently for US persons than it applies for non-US persons.

Please remember that tax reform is needed for *all* citizens, *including* US citizens abroad.. These changes must happen now, as the situation is extremely urgent for 7.6 to 7.8 US citizens abroad, tens of millions of dual-citizenship legal immigrants in USA, and countless numbers of deemed "US persons".

References

*STAFF REPORT ON COMPREHENSIVE TAX REFORM FOR 2015 AND BEYOND
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*Testimonials from accidental Americans in Canada
<https://vimeo.com/citizenshiptaxation/videos>

* Interview of accidental American in Sweden (click the right arrow on the picture twice to get a video with subtitles)

https://translate.google.se/translate?sl=sv&tl=en&js=y&prev=_t&hl=sv&ie=UTF-8&u=http%3A%2F%2Fwww.svt.se%2Fnyheter%2Fregionalt%2Fvast%2Fsvenska-banker-letar-efter-amerikaner&edit-text=