



British Embassy
Washington

6 August 2010

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I am writing in connection with the HIRE Act, passed in March of this year, which contains the Foreign Account Tax Compliance provisions (hereafter referred to as FATCA). This letter sets out our initial view on the legislation, recognising that much of the detail is still to be worked out by the Department of the Treasury and the Internal Revenue Service. We have appreciated the willingness of your colleagues to engage with our concerns so far, and look forward to continuing in this spirit of cooperation.

Firstly, I should stress that the UK is supportive of the aims of FATCA. Tackling tax evasion is a priority of the UK Government and, as you know, the UK and US have a long history of cooperation in tackling tax evasion, primarily through our Double Taxation Agreement.

However, we have some concerns at the provisions of FATCA, particularly the proportionality of the measures relative to the expected benefit.

As we understand the legislation, FATCA will create significant burdens for UK businesses. Financial institutions will have to make costly adjustments to their systems and processes for identifying their customers. We are concerned that, unless carefully targeted, the cost to firms and their customers will far outweigh the benefit to the IRS. In this difficult period for the global economy, we are worried about the prospect of extensive new regulatory burdens on UK financial institutions.

The consequences may not only fall on foreign institutions. These regulations could have a detrimental effect on the free international flow of capital. The cost of compliance may be so high that some firms will choose to exit the US market entirely, restricting the supply of credit and the choice available to US consumers and firms. In the future, UK

firms considering offering products or services to US consumers and firms may think twice.

In addition, our legal advisers have noted the potential for conflict between the FATCA requirements and UK law. It is likely that the requirement for financial institutions to transfer customer data to the IRS could result in breaches of UK data protection laws, unless customer permission to relay the information is obtained (if such permission were required to open or maintain an account, we would expect that actual tax evaders would merely shift to other institutions, resulting in a burden on honest account holders and no net benefit to the US).

Furthermore, some financial institutions may not be able to apply the required withholding tax on payments to recalcitrant account holders if they do not have the ability to process such payments in the US. This is because UK financial institutions do not have any legal powers under UK law to collect tax in the UK on behalf of foreign jurisdictions. In these cases, the financial institution would have no choice but to elect to be withheld upon, and waive the rights guaranteed by the Double Taxation Agreement.

Additional technical issues have become apparent on analysing the legislation, and Embassy officials would be happy to discuss these in detail with your Treasury and IRS staff.

The worldwide system of taxation operated by the US requires cooperation from the international financial sector in order to tackle tax evasion, especially given that the US taxes individuals primarily on the basis of their US citizenship rather than of US residence. Such cooperation should be achieved with minimal burdens to business, which brings valuable investment to the US. In order to ensure that financial institutions are able to comply both with US and local laws, FATCA must be implemented in a way that is proportionate and sensitive to the laws of sovereign jurisdictions, especially those that are willing partners in the fight against tax evasion. I hope that we can work together to manage the potential effect of FATCA on the UK financial sector.

I am copying this letter to Gary Locke (Secretary, Department of Commerce), Ronald Kirk (US Trade Representative), Larry Summers (Director, National Economic Council) and Douglas Shulman (Commissioner, Internal Revenue Service).

Nigel Sheinwald