

[TEXT OF THE FATCA COMMENT LETTER SUBMITTED BY  
THE CENTER FOR FREEDOM AND PROSPERITY AND  
THE COALITION FOR TAX COMPETITION]

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Re: Comments concerning implementation of the Foreign Account Tax Compliance Act ("FATCA")

Dear Sirs,

Inclusion of the Foreign Account Tax Compliance Act ("FATCA") provisions in the Hiring Incentives to Restore Employment Act, enacted into law on March 18, 2010, has significantly altered the U.S. approach to foreign financial institutions. The Center for Freedom and Prosperity and the Coalition for Tax Competition are pleased to have the opportunity to provide the U.S. Treasury and the Internal Revenue Service with comments regarding the implementation of FATCA provisions. Our concerns include the lack of a cost-benefit analysis regarding the burdens placed on foreign institutions, the degree to which banking opportunities will be limited for U.S. persons overseas, the double standard regarding U.S. attitudes toward financial privacy, the risk of discouraging investment in the U.S. economy, as well as the absence of safe harbor protections from civil or criminal penalties for foreign financial institutions that exercise due diligence.

To compel compliance, foreign financial institution (FFI) are threatened with a 30% withholding requirement if it has U.S. clients or holds U.S. assets of any kind. In order to avoid the 30% withholding tax, an FFI would have to agree to become a Qualified Foreign Financial Institution (QFFI), which requires giving up all client confidentiality to U.S. tax authorities, who can share such data with other countries around the globe. This will violate the privacy and confidentiality laws of many countries.

Protecting financial privacy should be recognized as an important human rights policy. In many nations, ethnic, religious, racial, sexual and political minorities are persecuted by those in control of government. Whether it be, ethnic Chinese in Indonesia, or homosexuals in Saudi Arabia, there are people all over the world who are now or have at one time been terrorized by corrupt and tyrannical governments. The availability of banks and other financial institutions which respect financial privacy protects assets from being subject to unlawful confiscation or as a tool for persecution. They are an important refuge for people trapped in nations suffering from high levels of crime, extortion and corruption.

The lack of a serious cost-benefit analysis to accompany this legislation is also troubling. American policy-makers should be aware of the burdens these new regulations place on FFI's, particularly on top of all the other U.S. rules and regulations they are already expected to follow. Foreign institutions will have to hire additional specialized lawyers and accountants to ensure they are in compliance with these regulations even if they simply want to invest in the U.S. By including not only FFI's that take on U.S. clients, but also any institution that invests in U.S. assets, the result of these rules will be a reduction in foreign investment in the United States and a moving of jobs overseas, as many FFI's will be forced to disinvest in the U.S. market to avoid the additional costs and burdens associated with holding U.S. assets. This will negatively impact the competitiveness of the U.S. economy and reduce job growth.

By further targeting those who simply "assist" U.S. nationals, the law places the burden on institutions to determine the tax status of their clients. This leaves managers in the difficult position of attempting to determine where their clients fall within the complicated U.S. tax system, while holding them liable for any mistakes. As an example, a manager of a large family trust with two dozen foreign nationals would have to somehow know if the tax status of any individual member were to change. It is unreasonable to expect that the bank must keep track of, for instance, whether or not a member of the trust has decided to attend university in the United States and take on a summer job.

In response to the U.S. decision to unilaterally impose excessive reporting requirements on the rest of the world, many foreign institutions are making it a policy not to take on American clients. Americans living overseas are finding it increasingly difficult to open bank accounts and engage in other routine financial transactions.

These recent changes in U.S. tax law and expansion of the Q.I. program pose serious legal concerns for foreign financial institutions with American accounts. The burden of proof has been unfairly shifted to intermediaries to prove that they have no U.S. customers. Without inclusion of an adequate safe harbor protection from unjustified criminal or civil penalties, foreign account managers will be reluctant to take on American clients, or invest in the U.S. If financial institutions are not protected from penalties and prosecution, despite having no evidence they are aware of any wrongdoing, it would greatly restrict the flow of capital and drag down the global economy.

The U.S. has long benefited from favorable laws which grant non-resident aliens the kind of financial privacy rules which we deny our own citizens. Should other nation's choose to retaliate or adopt similar policies of their own, trillions of dollars in foreign investment in the U.S. would be affected. While we are making it impossible for U.S. citizens to bank in the Caribbean ~ which invests almost \$ 2 trillion in the U.S. ~ or other similar financial centers with one hand, we use the other to hypocritically welcome their investments in the American economy when they originate from non-U.S. sources.

A sensible balance must be reached such that collecting taxes does not overwhelm all other economic, social, and foreign relations. We have contacted your offices to arrange a meeting to discuss further our concerns regarding the undesirable economic consequences of unjustifiably attacking fiscal sovereignty, financial privacy and the free flow of capital.

Sincerely,

Andrew F. Quinlan  
President, Center for Freedom and  
Prosperity  
Director, Coalition for Tax  
Competition