



American Citizens Abroad *The Voice of Americans Overseas*

Why FATCA is Bad for America and Why it Should be Repealed Now!

ACA Report: July 2011

The Foreign Account Tax Compliance Act (FATCA) will have a devastating impact on the U.S. economy, U.S. financial markets, American businesses operating abroad and American citizens who work and reside overseas.

American Citizens Abroad (ACA) is workingⁱ with a coalition of organizations in the United States and with the community of Americans residing overseas to inform Congress of the multiple dangers of FATCA, and to bring about repeal of FATCA legislation before it becomes active and wreaks irreparable harm on the economic interests of the United States. All of the members of the coalition support the goal of fighting tax evasion. They strongly disagree, however, with the methods and means employed in FATCA implementation.

In support of the U.S. economy, increased exports and U.S. citizens living abroad, ACA strongly urges you to join the movement to have FATCA repealed before it is too late.

- **Write to your Congressmen and encourage all of your American friends in the United States as well as those residing overseas to support a massive write in campaign. ACA has prepared a [model letter \(www.aca.ch/fatcaml.doc\)](http://www.aca.ch/fatcaml.doc) .**
- **Contact ACA at info.aca@gmail.com if you have suggestions as to how to reinforce the campaign or have personal contacts in the United States or abroad who may be able to contribute to the goal of eliminating FATCA.**

What is FATCA?

FATCA was initially introduced to target those who evade paying U.S. taxes by hiding assets in undisclosed foreign bank accounts. With such a noble goal, and with the strong backing of the Administration, Congress quickly drafted the FATCA legislation and quietly slipped it into the HIRE (Hiring Incentives to Restore Employment) bill signed into law by President Obama in March 2010. Most members of Congress are unaware of the unintended negative consequences this legislation will have when implemented in 2013. Hence, our call to Congress to repeal FATCA before its negative consequences start seriously impacting the U.S. economy.

Key provisions of FATCA

FATCA requires foreign financial institutions (FFI) of broad scope – banks, stock brokers, hedge funds, pension funds, insurance companies, trusts – to report directly to the IRS all clients who are U.S. persons.

Starting January 1, 2013, FATCA will require FFI's to provide annual reports to the Internal Revenue Service (IRS) on the name and address of each U.S. client, as well as the largest account balance in the year and total debits and credits of any account owned by a U.S. person.

If an institution does not comply, the U.S. will impose a 30% withholding tax on all its transactions concerning U.S. securities, including the proceeds of sale of securities.

In addition, FATCA requires any foreign company not listed on a stock exchange or any foreign partnership which has 10% U.S. ownership to report to the IRS the names and tax I.D. number (TIN) of any U.S. owner.

FATCA also requires U.S. citizens and green card holders who have foreign financial assets in excess of \$50,000 to complete a new Form 8938 to be filed with the 1040 tax return, starting with fiscal year 2011.

Those affected by FATCA

FATCA will have serious negative ramifications on the entire U.S. economy and more specifically on

- U.S. financial markets and financial institutions
- U.S. businesses operating in global markets
- American citizens residing overseas

The dangerous ramifications of FATCA

FATCA constitutes a breathtaking extension of U.S. legislative overreach, purporting to impose upon every FFI, corporation and partnership on the planet the obligation to examine whether and to what extent it must adhere to the application of U.S. law. In many cases, entities electing to comply with FACTA will find themselves in violation of local law. Pursuing this illusory track will lead to a massive reporting bureaucracy of very high cost – billions of dollars – for foreign and U.S. financial institutions, as well as for Americans residing overseas, not to mention for the IRS itself. Much more significant than the cost and time burden, FATCA creates a direct financial and legal threat to all foreign financial institutions. For this reason many institutions will not enter into agreement with the IRS and will stop all banking relationships with the United States. Those that feel they must enter into agreement with the IRS will reduce their financial activities with the United States and will refuse to provide banking access to American citizens and American companies working overseas (this is already happening now).

A 30% withholding tax on income transferred overseas, such as dividends and interest, is recognized as a fair and effective way of collecting taxes and is built into most double taxation treaties signed by the United States and other countries. But FATCA provides in addition for a 30% withholding of capital transfers and imposes the 30% withholding tax on ALL U.S. source transfers to non-compliant foreign financial institutions. This is completely different and is confiscatory. FATCA rests on a fallacy: guilty (of tax fraud) until proven innocent; this is a denial of justice as it is known in our Western world.

Foreign divestment of U.S. investments is a serious risk

The FATCA threat of a withholding tax of 30% on funds transferred from the U.S. to foreign financial institutions will incite foreigners to divest out of U.S. securities and investments. Many foreign banks throughout the world have already indicated their intention to do so and have advised their institutional and private clients accordingly.

- The Japanese Bankers Association stated very clearly: *“In the event that the implementation of FATCA is not practically feasible for the Japanese financial services industry, it would result in substantial confusion in the industry and could ultimately lead Japanese financial institutions to withdraw their investment from U.S. financial assets.”*ⁱⁱ
- The European Banking Federation and the Institute of International Bankers, which in their own words *“represent most of the non-U.S. banks and securities firms around the world that are affected by the FATCA provisions”*, highlighted their concerns: *“... many FFIs, particularly smaller ones or those with minimal U.S. investments or U.S. customers, will opt out of U.S. securities rather than enter into a direct contractual agreement with a foreign tax authority (the IRS) that imposes substantial new obligations and the significant reputational, regulatory, and financial risks of potentially failing those obligations, or may disinvest their U.S. customers in order to reduce their compliance burdens under an FFI Agreement.”*ⁱⁱⁱ
- This warning from Europe was reiterated in June 2011. *“Last month, George Bock, a Luxembourg-based KPMG partner and head of tax at KPMG, told reporters at a funds event in London that FATCA could cause investors to sell out of U.S. stocks, bonds and other investments, affecting the price of U.S. shares as well as those of other countries in ways that are not yet fully clear.”*^{iv}
- KPMG conducted a survey in 2011 of leading fund promoters in 12 countries.^v The majority of respondents had assets under management in excess of EUR 10 billion, and more than half of the respondents distributed their shares/units in more than 10 countries. The survey asked: “Further to FATCA, could your fund intend to disinvest (directly/indirectly) from the US?” For both the U.S. fixed income market and the U.S. equity market, 6% answered yes. Another 10% for the fixed income market and 7% for the equity market stated that it was thinkable to divest from the U.S. A whopping 29% for the fixed income market and 26% for the equity market replied that divestment depended on the detailed implementation rules for FATCA. In other words, for funds managers worldwide, divestment from U.S. securities markets is a real option.

These statements must be taken seriously and should not be ignored. According to the U.S. Bureau of Economic Analysis, total foreign investment in the United States exceeds \$21 trillion.^{vi} Foreign investment in U.S. securities alone exceeds \$10 trillion. The capitalization of the two U.S. stock exchanges is \$18.6 trillion.^{vii}

The financial weight of foreign financial institutions is enormous. The 100 Top Financial Institutions worldwide command total assets of \$77.6 trillion. More than \$55 trillion or two-thirds of this financial power is controlled by non-U.S. financial institutions. Among the top ten alone are seven non-U.S. financial institutions with combined balance sheet assets of \$16.7 trillion.^{viii}

In addition to direct control of assets, foreign financial institutions have very significant client funds under management, funds which do not appear on their balance sheets. Among the top 15 Global Money Managers, 7 are non-U.S. financial institutions. The assets under management of just these 7 non-U.S. financial institutions are close to \$9 trillion.^{ix}

These are big numbers. Foreign financial institutions have significant power through the *allocation of their assets* and this should be taken into account in a cost/benefit analysis of FATCA. ^x The United States should not be playing with fire when it comes to keeping the country attractive for foreign investment.

Risk of funds withdrawal from U.S. bank deposits held by non-resident aliens

In addition to investments in securities, foreigners hold over \$1 trillion on bank deposit in the United States because those deposits are tax free and the United States represents a safe haven for non-resident aliens. Congress has deliberately established this policy to attract foreign funds so necessary to the U.S. economy. But if a 30% withholding tax may potentially be applied upon transfer of those deposits to an overseas account, the attractiveness of United States banking services disappears.

The foreign direct investment component is also vulnerable

If future financial transfers out of the United States are perturbed by FATCA, the direct investment component of the U.S. economy may suffer as well. A pull back in foreign direct investment in the U.S., which now represents an accumulated \$2.7 trillion, would negatively impact the growth of the economy. Attracting foreign companies to invest in the United States requires not only good business prospects but also a free flow of capital both into and out of the country. With the economy seriously underperforming, unemployment high and budget and trade deficits ballooning, this is not a time when the U.S. can afford to lose any kind of investment in its economy, but that is exactly what FATCA will provoke.

The huge potential foreign investment losses largely outweigh FATCA revenues

Sale of just a portion of foreign holdings of U.S. securities, transfer of some of the foreign-owned bank deposits out of the United States and reduced foreign direct investment would severely damage the U.S. securities markets, the solvability of certain U.S. banks and the growth of the entire U.S. economy. The potential losses of trillions of dollars due to foreign institutions and foreigners divesting out of the United States totally outweigh the meager tax revenue that the IRS will actually collect as a direct result of this deeply flawed legislation. The Joint Committee on Taxation (JCT) estimated that the FATCA bill would raise \$792 million of additional taxes a year in the next ten years. ^{xi} And this projection is just that – a guess by the JCT which most likely is on the high side.

Congress never requested a full GAO (Government Accountability Office) cost/benefit study on FATCA, and requested only one limited to FATCA's administrative costs. These will in themselves be very burdensome and costly for the IRS, U.S. taxpayers and, most importantly, for the *subset* of financial institutions which despite a precarious situation in global financial markets, have no option but to spend hundreds of millions of dollars on compliance. This subset will comprise a handful of large, well-capitalized and internationally established banks active in the global financial markets. Entities not fitting this description will have no incentive or means to pursue FATCA compliance.

FATCA will create a two-tier international banking system and the U.S. will be the loser

The U.S. financial industry is one of the nation's most competitive sectors in world markets today, and the open access and ability to freely transfer funds into and out of U.S. financial markets has historically been a key reason for that strength. This competitive position will be erased by FATCA which imposes the threat of withholding tax on financial transfers. The U.S. financial industry will find itself isolated

from many international transactions. Foreign investors will avoid U.S.-based hedge funds. Foreign hedge funds will avoid investing in U.S. securities and will refuse U.S. clients.

Foreign financial institutions will create dedicated entities for handling transactions with the United States, separate from their other business. This will erode the influence of the U.S. banks as the indispensable counterpart when trading with the dollar. As the *Financial Times* stated: “...one of Asia’s largest financial groups is quietly mulling a potentially explosive question: could it organize some of its subsidiaries so that they could stop handling all US Treasury bonds? Their motive has nothing to do with the outlook for the dollar. ...Instead, what is worrying this particular Asian financial group is tax. In January 2013, the US will implement a new law called the Foreign Account Tax Compliance Act. ... These rules...would partly put the responsibility on the bank or asset manager – not just the individual – to make this filing...the new rules leave some financial officials fuming in places such as Australia, Canada, Germany, Hong Kong and Singapore.”^{xii}

There is no doubt that in a FATCA world, China will be the winner and the United States the loser. The Chinese will circumvent FATCA by passing all foreign currency transactions through government-owned banks, as this category of bank is exempted from the FATCA regulations. This provides China with a unique competitive advantage over publicly and privately owned banks in the rest of the world. It gives China an opportunity to transform the Yuan into a more attractive reserve currency for international transactions. It is known that the Chinese want to develop an alternative to the U.S. dollar domination in international transactions. FATCA provides the Chinese with a perfect platform for doing just that.

One of the very undesirable consequences of FATCA will be the creation of a two-tier banking system, an upper tier of the larger financial institutions which will comply with the FATCA legislation and continue to deal with U.S. financial institutions and a lower tier, which will refuse to do so. The latter group will provide a perfect cover for precisely the undesirable transactions that the legislation is intended to curb. **FATCA’s means are diametrically opposed to its ends. It is not only self-defeating, but as an added bonus it fosters irreparable damage to the economy at large and in particular erodes the competitiveness of the U.S. financial sector.**

The complexity of compliance by FFIs is overwhelming

FATCA uses a bulldozer to go after an ant hill, which is already creating serious backlash against the United States. The complexity of compliance for foreign financial institutions is enormous; after two rounds of Treasury Department draft regulations, fundamental questions remain open about the feasibility of compliance.

Just the question of client identity is a major issue since FATCA requires FFIs to identify, and report on, all clients deemed to be “U.S. persons”. The Japanese banks have several hundred million bank accounts, all with opening forms in Japanese and many not digitalized. Today, banks in Canada are not required to know the nationality of their clients; to conform to FATCA Canada would have to change its privacy laws. Many countries find themselves in the same conflict with regard to privacy laws. This invasion of U.S. law into other countries is a source of bad will for the United States. The *Calgary Herald* published an article entitled “*Note to Obama: Canada is not the Cayman Islands.*”^{xiii} The *Globe and Mail* reported: “*In a recent letter to Finance Minister Jim Flaherty, Canadian Bankers Association President Terry Campbell complained that the U.S. law takes an end-run around the Canada Revenue Agency and ‘attempts to coerce foreign financial institutions into a reporting and withholding relationship with U.S. tax authorities.’*”^{xiv}

Passthru payment control is another mindboggling issue of FATCA. In its June 7, 2011 reply to the U.S. Department of Treasury Notice 2011-34,^{xv} the second round of draft regulations, The British Bankers

Association (BBA) stated in paragraph 6: *“While we understand and support the goals of preventing tax evasion, the most problematic proposal in the Notice is Passthru Payments. We understand the US Government’s concern with the potential for using non-participating FFIs as a blocker to shield US taxpayers from identification and reporting and the intent of the proposal to encourage FFIs to become compliant with FATCA. However, in its current form the proposals are unfortunately unworkable for a deposit-taking global institution. We explain our concerns in more detail starting in paragraph 44.”*

Paragraph 44, the first paragraph under *Section II: Passthru payments: A. General Rule*, states: *“The BBA is far from clear as to what is meant by “Passthru Payment Concept”. The Notice provides an illustration which is confined to a fund context. On reading the Notice on Passthru Payments, it would appear that the concept applies very broadly.”* The next nine paragraphs specify why the Passthru Payment Concept is unworkable.^{xvi} The most salient of these comments is Paragraph 51. *“These complexities and their associated costs would create a powerful incentive not to enter into an FFI agreement.”*

Anyone who has the fortitude and time to read the more than 100 submissions^{xvii} made by banking associations, insurance companies and political authorities worldwide to comment on the proposed Treasury regulations for FATCA will notice a uniform, systematic and recurring theme: disenchantment and disagreement with this attempt to unilaterally impose extraterritorial observance and enforcement of U.S. laws. It is also obvious that the complexities of FATCA are already employing thousands of lawyers, tax specialists and bankers around the world to try to understand and interpret what is at stake as well as thousands of software engineers to develop the software programs needed for the electronic records that the IRS requires.

FATCA is ruinous for Americans and for American business overseas

FATCA has turned Americans into pariahs in the international financial world.

FATCA requires foreign financial institutions to report to the IRS the names and assets of all clients who are U.S. persons. Consequently, foreign financial institutions – banks, insurance companies and pension funds – are already turning away American clients due to the costly IRS reporting requirements and the perceived significant legal and financial risks. ACA has received multiple testimonies from Americans abroad who have had their foreign bank accounts closed, been refused entry into a foreign pension fund, or who cannot enter into insurance contracts overseas. How can Americans abroad survive and U.S. businesses develop globally without access to foreign banks, foreign pension funds and insurance coverage? In many cases Americans have been unable to participate in company pension funds or conclude insurance contracts, and as a result are rendered unemployable by this punitive framework.

If a U.S. company aims to develop exports, either through a sales representative or its own sales subsidiary, it necessarily must have foreign bank accounts to facilitate payments from foreign clients and to pay local expenses. It must be able to contract insurance plans for its company’s assets and provide pension plans for its employees. FATCA creates an enormous barrier for U.S. companies attempting to penetrate foreign markets with U.S. products and services. This barrier adds to the already burdensome IRS reporting required for foreign controlled corporations

The 10% U.S. ownership rule

Section 1472, introduced into the Tax Code by FATCA, requires a withholding agent to withhold 30% on any payment made to a non-financial foreign entity unless the payee or the beneficial owner of the payment provides the withholding agent with either:

- 1) a certification that the foreign entity does not have a substantial U.S. owner (which is defined in FATCA as one holding 10% or more of the company) or,
- 2) the name and Tax I.D. Number (TIN) of each substantial U.S. owner.

Additionally, the withholding agent must not know or have reason to know that the certification or information is incorrect, and the withholding agent must report the name, address, and TIN of each substantial U.S. owner.

Hence any privately held, non-listed foreign company which may have financial dealings with the United States must be prepared to declare through the withholding agent any U.S. ownership of 10% or more in the company. There are millions of these companies throughout the world.

Furthermore, American citizens are required to report on the new FATCA Form 8938, to be attached to the 1040, the names and addresses of all issuers of foreign shares or partnerships not held with a foreign financial institution as well as the value of the American citizen's share of the capital. Hence, foreign companies will have their names appear in tax filings of U.S. citizens and the IRS will be able to put a value on the entire company.

These reporting requirements are already shutting Americans out of business ventures abroad. In one case, three partners, two foreigners and one American, were far down the road in developing their business plan for a joint venture, but when they went to the bank for financing, the banker advised the foreigners to evict the American partner because of the IRS reporting requirement. The American literally got pushed out of the venture he had initiated. In today's global market, this IRS requirement creates a devastating handicap for Americans eager to establish the relationships abroad necessary to promote American business in the global economy.

Imagine the reaction in the U.S. if Great Britain, Germany and Japan, to name just three major economic partners, imposed a similar rule. Imagine the problem if Joe's welding shop in Dubuque, Iowa has a German partner (with 11% ownership) and has to report to the *Bundes Steuer Amt* on its forms, in German, the names and German taxpayer identification of the German partner. And, if Joe's welding shop also had a Japanese partner and a French partner, each with 11% ownership, its compliance office would require a separate floor. A nightmare just to think of it!

The 10% U.S. ownership rule is both politically arrogant and economically unsound for business. In today's ever more global economy, the United States cannot risk having its citizens excluded from partnerships overseas with foreign entrepreneurs. In addition, the bureaucratic burden of such a reporting requirement on foreign companies and on the world's financial transfer system will be horrendous. Companies and partnerships will refuse to deal with Americans, or simply refuse to comply with the law. And who can blame them?

Reporting requirements of Form 8938 for Americans holding foreign financial assets

FATCA requires any American with more than \$50,000 in foreign assets to report (Form 8938) all foreign financial account assets – bank accounts, securities accounts, annuity contracts, rental properties, insurance contracts, pension plans, trusts and private investments in companies and partnerships. This reporting requirement commences for fiscal year 2011, i.e. it pertains to the 1040 to be filed by April 15, 2012, and this requirement is **in addition** to the FBAR reporting of foreign financial accounts already required by the Department of the Treasury.

Penalties for **non-willful** failure to report Form 8938 are high: 40% of any under-reported position. The initial fine for not filing Form 8938 is \$10,000, rapidly increasing to \$50,000 for each fiscal year. The IRS issued its second draft of Form 8938 on May 27th 2011 (the first draft was useless) and has so far been

unable to provide any draft of the related instructions. Given the high degree of complexity and the breadth of this new reporting requirement as well as the uncertainties attached to Form 8938, there exists a substantial risk of filing error due to confusion and misunderstanding, particularly since the FBAR form uses different reporting criteria.

To have an overview of the complexity of the reporting requirement, bear in mind that the information required on Form 8938 includes the names of all financial institutions with which one has a foreign account, the account number, the maximum balance during the year (in U.S. dollars), the foreign currency rate at which foreign amounts were translated into U.S. dollars, the source of the foreign currency rate, whether the account was opened or closed during the tax year and a box to check if the account is jointly owned with spouse. Similar reporting is required for all other foreign assets. Then Part III requires reporting of a summary of tax items attributable to specific foreign financial assets with reference to the form and line or schedule and line where the income or gain is reported. This is a huge amount of information which leads to extremely burdensome reporting. Compliance with this additional requirement is simply not realistic for a vast swathe of the normally law-abiding filer community unable to afford the expensive services of a professional tax advisor.

FATCA specifically discriminates against Americans residing abroad

Americans residing overseas necessarily have bank accounts and other financial assets in their country of residence, just as Americans residing in Kansas have bank accounts, mortgage loans, and pension funds in Kansas and not in California or Virginia. Consequently, most if not all Americans residing abroad will be subject to the Form 8938 reporting requirement and will risk the penalties mentioned above, while only the very few Americans residing in the United States and owning foreign bank accounts or other foreign financial assets will be subject to the same requirements and risks. Hence, the law, as written, specifically discriminates against Americans residing overseas.

FATCA discriminates against Americans residing abroad in a second way. Americans residing in the United States are not required to report their assets for tax purposes, only their income, since federal taxes are levied only on income and capital gains. Why should Americans who are bona fide residents abroad be subject to a more extensive reporting requirement?

FATCA reporting by bona fide overseas residents will not bring in significantly more tax revenue since Americans residing abroad first pay taxes in their country of residence. Once foreign tax credits available to overseas filers are deducted from the theoretical IRS tax liability, the net tax revenue due to the IRS is minimal. Many Americans residing in such high tax countries as Canada, Germany, France, Great Britain, Australia and Japan owe no U.S. taxes when they file their 1040. The additional FATCA tax revenue cited in the calculations proffered by the Joint Committee on Taxation (\$792 million annually over the next ten years) will have to be sourced essentially from residents in the United States. In fact, as FATCA's legislative history makes abundantly clear, the principal target of FATCA is wealthy U.S. residents hiding assets overseas. The administrative burden of FATCA imposed on the 5 million overseas Americans is totally out of proportion with any potential tax revenue to be collected. Moreover, FATCA creates serious financial risks for Americans residing abroad as penalties for simple reporting errors could wipe out their entire savings, even though they may not owe any U.S. taxes at all.

For the reasons mentioned above, the community of Americans residing overseas is of the opinion that, if FATCA is not revoked in its entirety, bona fide residents overseas should be exempted from the reporting requirement of Form 8938.

Risk of identity fraud

Form 8938 provides full disclosure of personal assets and bank account information. It will be filed with the 1040 that details the tax filer's name, address, phone number and Social Security number, thus putting Americans abroad at high risk of serious identity fraud, in particular, since the IRS is pushing to have all of this reporting done on-line in the near future. James White, director of strategic studies for the GAO, told the House Oversight subcommittee on Government Organization that there were close to 250,000 incidents of taxpayers' identity theft in 2010, up from just under 52,000 in 2008.^{xviii} This is a five-fold increase in the number of instances in just two years. When 100% of all private financial information is acquired with such identity theft, the potential damage inflicted on Americans overseas will be substantial.

The IRS is already successfully tracking down tax evaders without FATCA

The IRS already has multiple tools to go after tax evaders – the QI program, the John Doe summons, the "Hague Convention on the Service Abroad of Judicial and Extra Judicial Documents in Civil and Commercial Matters", Tax Information Exchange (TIE) Agreements, Mutual Legal Assistance Treaties (MLAT) and the "Swift Agreement".^{xix}

FATCA is unnecessary because the IRS has already been highly successful in pursuing U.S. resident tax evaders. The IRS collected \$780 million in settlement of the recent charges facing UBS. The IRS has collected another \$400 million through the first Voluntary Disclosure Program, which elicited 14,000 filings. A second Voluntary Disclosure Program is currently underway. Thanks to the Voluntary Disclosure Programs and the information on 4,500 American-owned UBS accounts that was transferred to the IRS as part of the UBS settlement, the IRS now has information leads which will enable even more efficient tracking of tax evaders. Commissioner Schulman has been very vocal about the IRS successes. For these reasons, there is no need for FATCA.

Conclusion

FATCA legislation is predicated on the faulty assumption that foreigners throughout the world with no predisposition to favor the U.S. will react positively to its attempts to convert them into unpaid IRS agents. Faced with similar investment and personnel options without the legal jeopardy and financial risks, reasonable people will choose non-U.S. alternatives. FATCA implementation will constitute a major disruption of the entire international financial world as we know it today. Reasonable persons and entities will develop effective antibodies to this perceived infection, in ways too numerous and manifold to predict. What can be predicted is that the cumulative effect of this legislation will be a major blow to U.S. economic interests and prestige. At stake for the United States is the potential loss of trillions of dollars of investment, the opportunity for American companies and financial institutions to compete in a competitive global environment and the possibility for American citizens residing overseas to survive and thrive. In brief, the economic future of the United States.

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Write your Congressman – find his address at www.congressmerge.com

Footnotes follow:

i American Citizens Abroad (ACA) is a non-profit, non-partisan association which is the Voice of Americans Overseas. With worldwide membership and more than 30 years' experience, ACA works to represent the interests of the United States and the community of American citizens who reside overseas. www.americansabroad.org.

ii Japanese Banking Association comments to the U.S. Department of Treasury on the first draft of proposed Treasury regulations for implementation of FATCA.

iii Joint letter of the European Banking Federation and the Institute of International Bankers to the Department of Treasury, April 23, 2010: *Comments on Foreign Account Tax Compliance Act Provisions Incorporated into the Hiring Incentives to Restore Employment ACT ("FATCA")*

iv Helen Burggraf, report in the *International Advisor*, June 8, 2011.

v KPMG, FATCA and the funds industry: Defining the path, June 2011, p. 6. kpmg.com

vi U.S. Bureau of Economic Analysis, Survey of Current Business, July 2010. The data relate to 2009.

vii Patric Hale, « The 2011 Hale Index of Global Economic Entities », June 2011. Contact patrichale@gmail.com, Tel: 914.441.4512., page 15.

viii *ibid.* page 15. The 100 Top Financial Institutions, citing as source: Forbes 2000, April 2011; Capital Markets, May 2011. The seven include BNP Paribas with \$2.7 trillion, Deutsch Bank with \$2.6 trillion, HSBC Holdings with \$2.5 trillion, Barclays with \$2.3 trillion, Royal Bank of Scotland with \$ 2.3 trillion, Mitsubishi UFJ Financial with \$2.2 trillion, Credit Agricole with \$2.1 trillion.

ix *ibid.* page 16. The 50 top Financial Managers are ranked by the financial assets under management, citing as source: The P&I/Wyatt Watson list of the Top 500 Global Money Managers ranked by assets under management, as well as the Top 300 Public Pension Funds (October 2010 data). The 7 institutions include: Allianz Group with \$1.9 trillion, AXA Group with \$1.5 trillion, BNP Paribas with \$1.3 trillion, Deutsch Bank with \$1.3 trillion, Credit Agricole with \$918 billion, UBS with \$876 billion, HSBC with \$857 billion.

x *ibid.* page 7.

xi Joint Committee on Taxation, JCS-6-10, "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".

xii Gillian Tett, *US demands tax tolerance of foreign financial groups*, Financial Times, June 13, 2011. http://www.ft.com/cms/s/0/4e6e31a6-95e4-11e0-ba20-00144feab49a_i_email=y.html

xiii *The Calgary Herald* of Calgary, Robert Remington, "Note to Obama: Canada is not the Cayman Islands.", June 4, 2011.

xiv *The Globe and Mail*, May 29, 2011.

xv U.S. Department of Treasury Notice 2011-34, Supplemental Notice to Notice 2010-60 Providing Further Guidance and Requesting Comments on Certain Priority Issues Under Chapter 4 of Subtitle A of the Code.

xvi British Bankers Association, June 7, 2011 reply to the U.S. Department of Treasury Notice 2011-34

Section II. Passthru Payments A. General Rule

44. The BBA is far from clear as to what is meant by "Passthru Payment Concept". The Notice provides an illustration which is confined to a fund context. On reading the Notice on Passthru Payments, it would appear that the concept applies very broadly,

45. The requirement would adversely impact, in particular, large multi-national groups that are FFIs and engaged in varied international businesses with very significant transactional volumes. The BBA is of the strong opinion that it is unrealistic to regard an investment in such an FFI as an indirect investment in U.S. securities.

46. There would also be a considerable commercial risk associated with the publication of the U.S. asset ratio for each financial institution, with consequential implications in terms of the institution's relative attractiveness to investors and its credit rating and share price.

47. There would be a dramatic increase in the number of payments subject to withholding and retrospective reclaim, creating huge administrative burdens for investors (and potentially their taxing authorities), intermediaries and the IRS.

48. In the absence of enabling domestic legislation, banks operating in the UK are unable to legally apply a foreign (U.S.) withholding tax, as evidenced in the DLA Piper legal opinion of 9 July 2010 that you have already received.

49. Those that would remain invested in the U.S. would face formidable operational and systemic challenges to compute and apply the Passthru Payment Percentage (PPP). These challenges are further accentuated by the requirement at Section II B 1 to deem any uncalculated/unpublished PPP as being 100%, at Section II B 4 to identify and apply the PPP of each lower tier participating FFI and at Section II B 5 to render associated compliance undertakings.

50. The complexities noted above would almost certainly require an extended transitional period for implementation, far beyond 2013.

51. These complexities and their associated costs would create a powerful incentive not to enter into an FFI agreement.

52. The BBA believes that the Passthru Payment requirement would also create unintended detrimental effects in relation to the stability of the wider market in so far as the potential impact on net settlement systems is concerned. Given the inherent risk management implications, we believe that such a development would be of considerable concern to market regulators, market participants and investors alike. The BBA will revert with further information in due course.

53. The BBA understands the concerns expressed in relation to "blockers", however we believe that such concerns could be better addressed through the CCO certification route.

xvii http://www.deloitte.com/view/en_US/us/Services/tax/Tax-Controversy-Services/ffba750a5bbea210VgnVCM3000001c56f00aRCRD.htm.

xviii Bernie Becker, "GAO: Taxpayer identity theft on the rise", *The Hill*, June 2, 2011.

xix Tools available to the IRS as enumerated by Asher Rubinstein, Esq. in his article "Expatriate Americans living and working abroad: On the IRS Radar" of May 2010. Rubinstein & Rubinstein LLP, 18 East 48th Street, New York, N.Y. 10017, <http://www.assetlawyer.com>