



American Citizens Abroad
The Voice of Americans Overseas

To: The Honorable Charles Rangel, Chair, W & M Committee: FAX: 202-225-0816
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The Honorable Richard E. Neal, Chair, Select Revenue Measures Sub-committee of the
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The Honorable Senator Max Baucus, Chair, Senator Finance Committee:
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November 3, 2009

Concerns: Foreign Account Tax Compliance Act – HR 3933

Dear Sirs:

American Citizens Abroad (ACA), the voice of Americans overseas, is a non-profit, non-partisan all-volunteer organization that represents the interests of Americans living and working outside the U.S. to the Executive Branch of the U.S. Government, the U.S. Congress, and the U.S. Federal Judiciary to insure that Americans overseas are treated with equality and fairness. ACA keeps Americans overseas informed and supports their role as informal representatives of the United States. More can be learned about ACA through our website, www.americansabroad.org.

We are submitting this written comment to the hearings on HR 3933 which will take place on November 5, 2009 and request that this submission be included in the record. These comments are addressed to the four members of Congress who jointly issued the Congressional press release of October 27, 2009 supporting HR 3933, as the close coordination between the Senate Finance Committee and the Ways and Means Committee on this issue is apparent.

American Citizens Abroad is dismayed to see the contents of the proposed **Foreign Account Tax Compliance Act** which, if passed, will create a backlash from foreign governments in response to what is openly referred to overseas as the financial imperialism of the United States. This legislation aims to significantly expand the reach of the Qualified Intermediary (QI) regulations. Whereas the current QI regulations are concerned principally with investment accounts, the **Foreign Account Tax Compliance Act** would apparently cover all bank activity, including current accounts. As stated in the joint press release, “The **Foreign Account Tax Compliance Act** would force foreign financial institutions, foreign trusts, and foreign corporations to provide information about their U.S. accountholders, grantors, and owners, respectively. The nonpartisan Joint Committee on Taxation has estimated the provisions of the **Foreign Account Tax Compliance Act** would prevent U.S. individuals from evading \$8.5 billion in U.S. tax over the next ten years.” This legislation would significantly enhance the authority of the Treasury in imposing the QI regulations and, in fact, requires foreign financial institutions to become policemen for the IRS. The administrative burden and costs associated with compliance will be significant for foreign financial institutions. And the associated legal risk is perceived as high.

As stated by Chairman Rangel in the Congressional press release, "This bill offers foreign banks a simple choice – if you wish to access our capital markets, you have to report on U.S. account holders. I am confident that most banks will do the right thing and help to make bank secrecy practices a thing of the past." In the same press release, Ways and Means Select Revenue Subcommittee Chairman Neal stated: "I believe this bill provides the Treasury Department with the tools it needs to crack down on those Americans hiding assets overseas."

This legislation assumes that banks will submit passively to the U.S. rules and that business will go on as usual. But this will not be the case. UBS in Switzerland has already announced that it will no longer accept as a client any American person residing in the United States. Many other foreign banks are adopting the same policy in a more discrete way.

With regard to American citizens residing abroad, a group of major UK banks has already stated that they will close accounts of American citizens if the proposed QI regulations of January 1, 2010 become effective. We know for a fact that Swiss, Dutch and Spanish banks are refusing American citizens residing in their countries as clients and are closing accounts. Do not forget that there are over 5 million American citizens residing abroad. These people need to maintain foreign bank accounts in the country where they reside to make current payments receive salaries and hold their investments. The proposed legislation and reinforced QI regulations will make it all the more difficult for overseas Americans to maintain a bank account where they reside.

Although ACA understands and sympathizes with the efforts of the U.S. Congress to close the door to tax cheats, you must remember that most Americans working and living overseas are not tax cheats but are performing significant services for the United States in representing American companies and products. The proposed legislation specifically discriminates against one category of U.S. citizens – those residing overseas. Imagine the uproar if Congress passed a law that all residents of New York would have their bank accounts submitted to special investigation, including the total of debits and credits in a year and the maximum balance in the account.

Closing accounts is just one reaction to the U.S. overreach. The United States imposing its laws on foreign countries is creating a poisoned atmosphere which will hinder the positive development of international trade and finance. One Swiss bank has already publicly announced that it will no longer invest in any American securities for any of its clients. Since that announcement, which received substantial press coverage, and the explanation of US tax legislation behind that statement, foreigners are already beginning to divest of U.S. stocks. The U.S. tax code states that if a foreigner owns more than \$60,000 of U.S. securities at the time of his death, his estate becomes subject to U.S. inheritance laws. At a time when the United States should aim to attract foreign capital, its legislation will discourage investment in the United States. As the United States government depends on foreign investors to purchase a large share of Treasury bills, the threat of a significant divestment out of the United States is not to be taken lightly.

While there is no doubt that the United States remains a financial powerhouse, it is no longer the only option for investment purposes. With the U.S. dollar devaluing against other currencies, many individuals are focusing investments in currencies other than the U.S. dollar. The United States risks losing investment flows into the country and compromising free flow of trade if people located outside of the United States view compliance as administratively too burdensome. Furthermore, the probable restriction on access to bank accounts overseas by American citizens and corporations will put a restrainer on the free development of trade. The new movement away from the U.S. stock market is just one form of backlash on American policies, and all of the publicity linked to the bank secrecy issue has made foreigners sensitive to the implications of any relationship with the United States.

The United States also risks facing measures of reciprocity from foreign governments. In fact, the perspective of the United States on bank secrecy and fiscal paradises is very hypocritical. On November 2, 2009, a Financial Secrecy Index was been published for the first time by the

International network for fiscal justice, co-founded by the South Alliance and the Declaration of Bern. Ranking number one in the overall index of secrecy is Delaware in the United States with a heavy weight in international transactions. In terms of secrecy, Delaware ranks on a par with the Cayman Islands, Bermuda and Dubai.

The U.S. one way approach has also been illustrated by the fact that when Mexico asked for United States assistance in providing the names of Mexican citizens with money hidden in the United States, the United States refused to collaborate. The OECD countries are also building up forces to obtain transparency of their nationals. This movement will extend to money held in the United States as well as to other foreign banks.

American Citizens Abroad fears that the current Congressional approach to stop the few thousand American citizens that evade taxes by imposing its laws on other nations risks to open up Pandora's box, to create suspicion and friction with many other governments and to have a long-term negative impact on U.S. trade and commerce in general. The costs to the United States could far exceed the \$850 million annual revenue projected to be collected by the Joint Committee on Taxation due to the proposed HR 3933. Right now the United States should be encouraging more foreign trade to increase the nation's exports, not develop legislation reaching beyond its borders, which will hinder that free movement of trade.

American Citizens Abroad supports Congress in its efforts to eliminate tax evasion, but asks that the current legislation be revised and rewritten so as not to discriminate against Americans living and working abroad and not to negatively impact continued foreign investment in the US. ACA feels it imperative to warn Congress of the serious risks for the United States related to the current drafting of the **Foreign Account Tax Compliance Act**.

We thank you for your attention.

Sincerely yours,

Marylouise Serrato
Executive Director

Jacqueline Bugnion
Director

cc: Americans Abroad Caucus
The Honorable Timothy F. Geithner, Secretary of the Treasury
The Honorable Paul Volcker, Chairman, Presidential Task Force on Tax-Code Review