POSITION PAPER ON FATCA

What is FATCA?

The Foreign Accounts Tax Compliance Act (FATCA) was passed in 2010 in response to a growing concern that Americans, mostly living in the US, were using offshore accounts for tax dodging and money laundering. The legislation mandates two things:

- Every American with signatory power over accounts in foreign financial institutions (banks, brokerage houses, etc) that, in aggregate, exceeded certain thresholds ($50,000 in the US and $200,000 abroad) file a FATCA report listing all such accounts and the amounts in each. Note that this applies not only to personal accounts but accounts over which the individual controls - but may not own - the funds. (A corporate treasurer or CFO, for example).

- Every Foreign Financial Institution (FFI) must report to the IRS the details of every account held by a US Person. Any bank or other FFI that fails to do so faces a withholding of 30% of all funds coming into that bank from US sources. This withholding is permanent.

The Unintended Consequences of FATCA

FATCA requires that every bank and other FFI outside the US report the details of every account over which an American has signatory power or face crippling fines. It doesn't matter if there's $10 or $10 million in the account; it has to be reported. This places both a burden and a risk on the bank and the result is inevitable. Banks all over the world are electing to close accounts controlled by Americans. It is increasingly difficult for an American to open a bank or brokerage account solely because she or he is American. More and more banks are asking people who apply to open an account "are you subject to US taxes?" If the answer is yes, the request is often denied.

Ordinary, middle class, law-abiding Americans are suffering solely because they happen to live outside the US. An American living in Toulouse, France, for example, has the same need for financial services as an American living in Pittsburgh. But the denial of basic financial services to Americans living abroad is a serious unintended consequence of FATCA.

Democrats Abroad conducted a survey in June/July 2014 which garnered about 6,500 responses in a matter of weeks. About 16% of respondents reported having an account closed and that percentage is certainly higher now. A one-page summary of the horrifying results of the survey can be found in an appendix.

The Safe Harbor Exemption

The language of the FATCA legislation gives Treasury the authority to grant exemptions from FATCA reporting and exemptions have already been built into the enforcement procedures. Democrats Abroad and American Citizens Abroad propose the **Safe Harbor Exemption** which, simply, would treat the financial accounts in the country in which an American is legally resident the same as an account in the US held by an American resident in the US. For example,

- An American living in Toulouse, France would not have to file a FATCA report with the details of any accounts he had in France; and
- Any FFI in France that held the account of an American legally resident in France would be exempt from reporting on that account to the IRS (and would not face any penalties for failing to do so).

Implementing the Safe Harbor Exemption (SHE)

Section 911 of the tax code grants an income tax exclusion to any American who is resident in a foreign country, thus establishing a mechanism for determining residency for tax purposes.

One files a FATCA report on Form 8938. We suggest creating a new form—say Form 8939—entitled "The FATCA Safe Harbor Exemption Form." In order to get the SHE, an American who is legally resident in a foreign county would:

1. List the FFIs with which she held accounts in her country of residence. It would not be necessary to provide any details of the accounts, just the names of the FFIs.

2. She would then send copies of Form 8939 to each FFI in her country of residence where she had an account. Once the FFI got that form, they would not have to file a report on that account.

The Safe Harbor Exemption is a Win-Win for Americans living abroad, the IRS and Treasury

- **The terrible unintended consequences of FATCA would be eliminated for all Americans living abroad with financial accounts in the country where they legally reside or in the US. Our 2014 survey data suggests this might include 85-90% of such Americans abroad.**
- **The IRS is greatly concerned by the fact that at least 80% of Americans living abroad do not file US tax returns. But those people are affected by FATCA just as much as Americans who do file. In order to claim the Safe Harbor Exemption, you'd have to file Form 8939 *with your tax return*. That is, you'd have to become US tax compliant in order to qualify for the SHE. This would surely increase the percentage of tax compliant Americans abroad.**
- **The IRS has had its budget cut and is now drowning in FATCA-related paperwork. IRS Commissioner John Koskinen has publicly expressed his concern that the IRS would not be able to process all these documents. Implementation of the SHE would cut the paperwork by 85% or more.**
- **If the SHE were implemented, it would be far easier to find the real targets of FATCA: the tax dodgers and money launderers, who would not use banks in their countries of residence to carry out their criminal acts. It would be much easier to find that proverbial needle in a much, much smaller haystack.**

There has rarely been an issue that so unites the community of Americans who live and/or work overseas. Everyone would benefit from the adoption of the SHE except those for whom the original legislation was intended.

Democrats Abroad does not support the repeal of FATCA. We think it's a good idea to make it more difficult for elite Americans living in the US to use offshore accounts, say, to carry out criminal acts.

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