

To the Editor,

Stuart Haugen's FATCA (Foreign Account Tax Compliance Act) op-ed is an accurate portrayal of FATCA's repercussions, but a thoroughly inaccurate report on non-partisan efforts to limit its impact to its intended targets, the tax cheats.

Democrats Abroad and several non-partisan organizations of Americans abroad have lobbied for four years for a Same Country Safe Harbor provision (SCSH) to provide relief to law abiding citizens and lessen the burden on financial institutions without giving cover to US citizens hiding taxable assets in accounts in countries where they do not reside. The SCSH would exempt from FATCA reporting the accounts of American citizens who are legally resident in the country in which the account is held. The Democratic National Committee called for FATCA reform eight months ago, Mr. Haugen take note.

The Treasury Department could implement the SCSH without legislation (which Mr. Haugen and repeal sponsors themselves admit is unlikely in this or the next Congress).

If the FATCA Legal Action lawsuit were ever to succeed, it would take years. Right now, the SCSH that Democrats Abroad and others representing Americans abroad are working for is the best hope for urgent FATCA relief.

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An American Tax Nightmare

By STU HAUGEN MAY 13, 2015

SAINT-GERMAIN-EN-LAYE, France — No one likes tax cheats. They should be pursued and punished wherever they are hiding. But recent efforts by the United States Congress to capture tax revenues on unreported revenues and assets held in foreign accounts are having disastrous effects on a growing number of Americans living abroad.

The Foreign Account Tax Compliance Act, or Fatca, signed into law in March 2010 but only now coming into full effect, has been a bipartisan lesson in the law of unintended consequences. Pressure is growing to halt its pernicious impact.

Intended to crack down on people who stash taxable income abroad, the law requires foreign banks to identify American clients and report all of their financial account information, including transaction details on checking, savings, investment, pension, mortgage and insurance accounts, to the United States government. Banks and financial institutions that do

not comply are subject to a 30 percent withholding tax on revenues generated in the United States, a crushing penalty in today's cross-border financial markets.

The bureaucratic burden of identifying, verifying and reporting has caused many banks to regard American clients, particularly those of moderate means, as more trouble than they are worth. Middle-class Americans living abroad are losing bank accounts and home mortgages and, in some cases, having their retirement savings exposed to debilitating taxes and penalties.

Sounds far-fetched? Here are some examples collected and documented by American organizations overseas:

- An American woman and her Swiss husband, married for more than 20 years, were told that they would lose the mortgage on their family home due to the law's reporting requirements.
- An American man, living in Brazil, had a promising career in management with a French multinational corporation. He was told that he would be passed over for promotion, effectively ending his career with the company, because as Country Manager he would have signatory authority over the French company's local bank accounts. The law would require that all transactions on the company accounts, despite not being taxable in the United States, be reported to the American Internal Revenue Service.
- An American couple, living in Australia for many years, received notice that the merchant banking account for their chain of retail stores was to be canceled, as Fatca reporting demands overwhelmed their bank's capabilities. Without banking and credit card facilities, their business would be doomed.

And there are many more examples. There is no recourse and no appeal process. Those impacted are left with the choice of uprooting their families (including foreign spouses and children), careers and businesses to re-establish a life in the United States; or to make the painful decision to renounce their citizenship.

Without significant and timely changes, that will only be the tip of the iceberg as foreign financial institutions continue their search for unprofitable American accounts. Remember, the vast majority of those renouncing citizenship are not wealthy tax evaders trading their passport for income tax savings; they are middle-class Americans, living overseas, fully compliant with their U.S. tax and reporting obligations.

An option for some might be to transfer assets to American bank accounts. But opening accounts in the United States for those living abroad has become virtually impossible in the post- 9/11 world, foreign employers will typically only pay salaries into local accounts, and this option does not address home mortgages, insurance policies, etc. (Foreign branches of American banks are not exempt from the law's reporting requirements either.)

To do nothing is a disaster scenario for Americans overseas. Middle-class taxpayers will continue to lose the financial accounts critical to their daily lives at an accelerating rate or they will, in desperation, renounce their U.S. citizenship. Either way, America's international presence and competitiveness will be hurt.

Worse yet, the law has spawned a potentially more intrusive program known as the Global Account Tax Compliance Act, or Gatca. The proposal, developed by the Organization for Economic Cooperation and Development, calls for data from accounts opened by a foreign national to be automatically reported to that person's homeland tax authorities. While Gatca is in an early stage of negotiation and implementation, observers believe that as many as 65 countries will ultimately be involved.

Fatca, and by extension Gatca, are forming more links in the chain of global government snooping into the lives of innocent individuals under the guise of identifying criminals and tax cheats. For Americans, it is a massive breach of the Fourth Amendment, which forbids unreasonable search and seizure.

The repeal of Fatca is the only way to end this dangerous and growing government overreach. A bill has been introduced in the United States Senate to repeal provisions of the law but, in the heat of the approaching presidential campaign, congressional repeal is not going to happen.

The only viable option is legal action to challenge the law's constitutionality in the courts. We, a bipartisan group of Americans living overseas, have formed a group called Fatca Legal Action to fund and mount this challenge. The Republican National Committee and Republicans Overseas have endorsed the legal repeal of Fatca. To date, neither Democrats Abroad nor the Democratic National Committee has done so, but there is strong and growing support among rank-and-file Democrats living overseas, several of whom have agreed to be named as plaintiffs when the lawsuit is filed in the next few weeks.

If the law is voided in the United States on constitutional grounds, it is likely that Gatca, without the support of the world's largest financial community, will not survive either.

Stu Haugen is an American marketing, sales and general management expert who has lived and worked overseas for 29 years.

A version of this op-ed appears in print on May 14, 2015, in The International New York Times.