



17.1.2023

DRAFT MISSION REPORT

following the fact-finding visit to Washington D.C. (USA) from 18 to 22 July, 2022, to raise awareness and discuss about the impact of the US Foreign Account Tax Compliance Act (FATCA) on EU citizens and hold exchange of views with representatives from the US Congress and the US government to find concrete solutions for the problems of the numerous EU citizens and their family members impacted by the extraterritorial application of citizenship-based taxation, as raised in Petitions Nos: 1088/2016, 1470/2020, 0323/2021, 0394/2021

Committee on Petitions

Members of the mission:

Yana Toom	(Renew) (Leader of the mission)
Alexander Bernhuber	(PPE)
Cristina Maestre Martín De Almagro	(S&D)
Marc Angel	(S&D)
Ulrike Müller	(Renew)
Kosma Złotowski	(ECR)
Mario Furore	(NI)

Introduction

The US' Foreign Account Tax Compliance Act (FATCA), obliges European and other foreign financial institutions to report to the US tax authorities all holdings of their customers who have or had links to the USA. FATCA is implemented through intergovernmental agreements (IGAs), which the United States bilaterally negotiated with 113 countries, including Member States. FATCA was purportedly targeted at fighting tax evasion by US resident taxpayers, but in practice it has affected a large number of European citizens and in particular so-called 'accidental Americans', citizens who received American citizenship upon their birth on US soil or through their American parents but who have virtually no connection to the US, as well as their non-US family members. Because the legislation imposes severe financial consequences (a percentile amount on the value of US assets) for non-compliance by financial service providers with the requirements imposed by FATCA, it results in a number of financial institutions avoiding all commercial business with customers presenting any US connection, whether actual or not. Such discrimination can cause breaches to the Payment Accounts Directive (2014/92/EU) under which all residents in the EU have the right to a payment account with basic features. Another problem faced by residents, financial institutions and governments of the EU Member States in relation to FATCA include issues with regard to reporting data in the absence of a US tax identification or social security number. In spite of the relief measures taken thus far by the US authorities as regards individuals with US nationality wishing to relinquish their US nationality (measures previously reported by the Commission services to the Committee on Petitions), EU citizens with US nationality are still experiencing concrete difficulties (e.g. complex procedures and high renunciation fees – around 2 300 US dollars). The US Internal Revenue Service (IRS) indicated its willingness to better understand the circumstances under which Foreign Financial Institutions (FFIs) are not able to report a taxpayer identification number (TIN). The IRS indicated that such information would allow the US administration to give further consideration as to whether additional measures could be taken to encourage TIN reporting, and whether additional relief could be provided to FFIs or US taxpayers resident abroad.

Given that FFIs have to report financial data about customers with ties to the US, questions have also been raised about compliance with EU privacy regulation. Article 96 of the General Data Protection Regulation (GDPR)¹ and Article 61 of the Law Enforcement Directive (LED)² are of relevance in this regard. According to these articles, existing international agreements involving international transfers of personal data which comply with Union law as applicable prior to the entry into force of the Regulation or Directive remain in force until amended, replaced or revoked.

The European Data Protection Board (EDPB) considers that, in order to ensure that the level of protection under the GDPR and the LED is not undermined when personal data is transferred outside the Union, consideration should be given to the aim of bringing these agreements in

¹ Regulation (EU) 2016/679 of the European Parliament and of the Council of 27 April 2016 on the protection of natural persons with regard to the processing of personal data and on the free movement of such data, and repealing Directive 95/46/EC (General Data Protection Regulation) (Text with EEA relevance), *OJ L 119*, 4.5.2016, p. 1–88.

² Directive (EU) 2016/680 of the European Parliament and of the Council of 27 April 2016 on the protection of natural persons with regard to the processing of personal data by competent authorities for the purposes of the prevention, investigation, detection or prosecution of criminal offences or the execution of criminal penalties, and on the free movement of such data, and repealing Council Framework Decision 2008/977/JHA, *OJ L 119*, 4.5.2016, p. 89–131.

line with the GDPR and LED where this is not yet the case.

On that basis, in the same statement, the EDPB invited Member States to assess and, where necessary, review their international agreements that involve international transfers of personal data, such as those relating to taxation (e.g. to the automatic exchange of personal data for tax purposes) to determine whether further alignment with current EU legislation, case law and EDPB guidance might be needed.

As also indicated in the EDPB statement, national data protection authorities, as the enforcers of the data protection rules, have a fundamental role in providing assistance and advice to Member State authorities in this context.

Petitions and petitioners

The following petition served as the basis for this fact-finding visit:

- Petition No 1088/2016 by Mr J.R. (French) on the US' Foreign Account Tax Compliance Act's (FATCA) alleged infringement of EU rights and the extraterritorial effects of US laws in the EU
- Petition No 1470/2020 by Ronald Ariës (Dutch) on problems with FATCA following a change of bank
- Petition No 0323/2021 by G.L. (French), bearing four signatures, on alleged infringement of certain rights of bi-national European/American citizens resulting from FATCA
- Petition No 0394/2021 by Lee Nicholas (American) on exemption of US nationals from PRIIPS regulations due to FATCA

Summary account of meetings

Monday 18 July 2022

15.45 - 16:55

Elise BEAN, Former Staff director and chief counsel, U.S. Senate Permanent Subcommittee on Investigations

Members of the PETI Delegation were briefed by the interlocutor about the genesis of the US' Foreign Account Tax Compliance Act. Ms Bean noted that the reason for the drafting of the legislation was to combat tax avoidance and tax evasion by high net worth US citizens who exploited loopholes to hide assets from US fiscal authorities by acquiring resident status and financial services in countries outside the US. Members were briefed that FATCA was instrumental in forcing financial institutions and US citizens to unveil assets previously hidden from the US Internal Revenue Service (IRS) or resulted in their repatriation. Ms Bean stressed that lower net worth individuals or normal citizens only bear a slight administrative burden to conform with FATCA, as there are rather high thresholds for assets above which the US would actually deploy

extraterritorial taxation. Ms Bean also questioned the veracity of claims of ordinary citizens resident in the EU being refused banking services.

During the questions and answers session, the following Members of the Delegation made questions and comments:

Yana Toom asked the interlocutor if she did not think that the scope of FATCA captures too broad a group of people for whom it was not necessarily intended to be subject to the legislation and whether the intergovernmental agreements signed by the US bilaterally with other countries were identical. She also noted of some EU citizens with US links, or double citizens who have been refused banking services. Ms Toom also asked about the proportionality of the data that is being sent from the EU to the US. She asked for data on the quantitative effects of FATCA.

Marc Angel commented that there was a lack of proportionality in the application of FATCA. He asked whether the Common Reporting System of the OECD (CRS) is not a stronger instrument than FATCA. He asked about the accidental Americans who do not have a Tax Identification Number (TIN) and are refused banking services. He also asked if there was any willingness to improve on the proportionality aspect of FATCA.

Alexander Bernhuber asked if it is optional for banks to participate in FATCA and whether all EU countries signed IGAs for FATCA.

Ms Bean noted that there are some elements of the Inter-Governmental Agreements (IGAs) that are slightly different, without significant variations. She expressed her doubts whether the refusal of providing banking services is a result of FATCA and whether it is widespread. She also noted that the data being exchanged is restricted to tax authorities and for the reasons of combating illegal practices. As such, she noted that privacy protection is superseded by law enforcement investigations. She noted that most dual citizens are not subject to FATCA, since there are thresholds under which no taxpayer is obliged to report (USD50k in cash or assets for US residents and significantly higher thresholds for non-US residents). She highlighted that most large banks have registered under FATCA, so they are compliant and as such there should not be problems in providing services. In the CRS vs FATCA information exchange, she noted that CRS asks for additional information compared with FATCA, including account balance and beneficial ownership. FATCA will not provide account balance, but income earned, which in her view is a deficiency as a lot of criminals exploit this by opening non-interest bearing accounts. In Ms Bean's view the penalty towards financial institutions in FATCA does not exist in CRS. Regarding TINs, she noted it is a fairly easy process to get one.

Ms Bean noted that whereas it is optional for banks to sign up to FATCA, most did, as most of the EU has signed IGAs. She noted that data on FATCA effects are very sparse, verging on non-existence. She also stressed that individuals do not need to do any of the reporting, but it is the financial institutions which do so. Penalties are imposed on the financial institutions not on individuals, she added. She recognised that the US citizenship legislation is deficient and she expressed her belief that there is willingness to improve the proportionality when it comes to 'accidental Americans'. She concluded that FATCA resulted in a high level of tax-compliance. Ms Bean concluded that the lobbying against FATCA originates with high net-worth US individuals, and whereas the initial iteration of FATCA did cause distress to normal citizens, this is no longer the case. Ms Bean agreed that there should be some degree of proportionality of penalties for small and inadvertent non-compliance of citizens. She also mused that a declarative giving up of citizenship at birth should also be an option available to parents of infants born on US soil.

17:00 - 18:00

EP delegations Meeting with Stavros LAMBRINIDIS, EU Ambassador to the USA (together with the EU-US Delegation Members' Delegation)

The Ambassador briefed Members on the political situation in USA, marked by partisan division and the challenges faced by the US political establishment following the January 6 rioting in- and around Capitol. He gave an insight into some of the constitutional issues on the docket of the US Supreme Court. Ambassador Lambrinidis, when talking about the EU-US relations, noted that under the Biden Administration is more engaging and forthcoming with international partners, such as the EU and bilateral relations between the two are better than ever and that the perception of the European Parliament has improved markedly in recent years as well. There is awareness on the US side of the important legislation that the Parliament passed recently. Members were also informed of the efforts the EU Delegation put in since the adoption of FATCA to impress upon the US counterparts the need to mitigate its adverse effects on ordinary citizens with residence in the EU and with links to the US. Ambassador Lambrinidis noted that in the recent period there seems to be an openness to address the issues caused by FATCA. Mr Lambrinidis highlighted one of the challenges of the Biden administration in getting Congress to confirm commitments, the President has made, especially in light of the midterm elections. He stressed that Russia's aggression on Ukraine has changed the foreign affairs stance of the US somewhat, which now devotes more of its attention to Europe. He also gave an assessment of the US economic situation, which was under inflationary pressures.

During the questions and answers session, the following Members of the Delegation made questions and comments:

Marc Angel asked if the US counterpart knows now who to contact when wanting to reach out to the EU, as well as having women's right high on the agenda will have Democrats in the upcoming midterm elections.

Radoslaw Sikorski Queried the Ambassador about the US view of the Russian aggression in Ukraine.

Ambassador Lambrinidis answered Members' queries by noting that the improvement in EU-US relations makes getting political discussion on a regular basis more reliable. He also noted that there was an initial backlash on Democrats in some cultural and gender-politics debates in some of the more conservative parts of the US, but that this might not have a similar effects in the midterm elections.

09.30 - 10:15

Welcome by Joseph DUNNE, Head of the EP Liaison Office in Washington, D.C.

Mr Dunne welcomed the first ever visit of the PETI Committee to Washington D.C. He commended Members on already having had an effect on the US side by organising the Fact-Finding Visit on FATCA. He gave a brief history of the establishment of the European Parliament Liaison Office (EPLO) and its activities, which include frequent exchanges on policy, awareness-raising on issues of particular importance to the EP. The mission of EPLO is also to improve relations with the US Congress. Mr Dunne built on the briefing

of Ambassador Lambrinidis on the US political situation, the legislative priorities of the Biden administration, a process which due to the extreme small majority of Democrats in senate, is fraught with difficulties. He noted that bipartisan voting on legislation practically stopped in recent years. He also noted the presidential tool of Executive Order through which legislation can be passed, but it can be reversed by Congress. Mr Dunne informed Members on the internal turmoil in both political parties as regards their respective presidential candidates in the 2024 presidential race. He noted that one of the rare points of agreements between the US parties is their stance towards China. Mr Dunne stressed that the US side considers that recent EU legislation such as the DMA unfairly target US tech companies. He also highlighted that as opposed to the EP, the committee structure of Congress are much weaker and it is the leaders of Congress who hold the legislative power, while the typical Member of Congress usually operates in isolation, except for the votes.

During the questions and answers session, the following Members of the Delegation made questions and comments:

Marc Angel asked about the reasons why Members of Congress seldom visit the EP and whether in the Brussels US representation to the EU there was a homologue of Mr Dunne. He also asked about the attention on women's rights following the overturning of legislation guaranteeing the right to abortion.

Yana Toom noted that in the case of FATCA, the EU failed to get a negotiating mandate. She also asked on Mr Dunne's view on the chances of success in getting improvements in the application of FATCA. Ms Toom asked if there will be a change under a possible Republican control in the US stance towards the Russian aggression in Ukraine. She queried on the occasional effects of EP criticism of certain US policy.

Ulrike Müller asked about the legislative gridlock, where legislation is nigh-impossible to pass and expressed her concern that this impedes crucial legislation, such as on combating global warming, to be passed.

Mr Dunne responded that US Congress have a very limited number of standing delegations, this being the main reason. The structure tasked with interaction is the Transatlantic Legislative Dialogue. The US side has Friendship Groups, which are not very prominent in their activity. Congressional Delegations are sent under the control of the State Department and in cooperation with the military. Their way to operate is not very transparent, which makes interaction challenging. Mr Dunne also mentioned that there is a lot of interest in the European Parliament's organisation, as there is a need to reform the organisation of Congress. Some visits of Members of Congress could be an improvement, if the EP can allocate financial resources for this. He noted that although an office was offered in the EP for the US side, the offer was not acted on. Bills tabled in Congress in 2010 and 2011 to establish an office in Brussels have not gained a majority. He noted that the war in Ukraine brought the EU and US closer together and support for Ukraine in the US is bipartisan. At the same time, Republicans only give a qualified support for the effort. Mr Dunne stressed that on FATCA the PETI approach to reach out to individual Members is the right strategy and the PETI interlocutors are very senior and prominent Members and as such they are the correct entry point to the legislative. He also noted that the executive is rather powerful in the US system and planned meetings with the administrative side are very important. He also cautioned of the risks to the transatlantic relations in the case of a Republican majority in Congress. Mr Dunne stressed the need for more dialogue, while also acknowledging the need to punctually raise issues of concern. Mr Dunne

informed Members that the legislative system is blocked and the system is not delivering. Mr Dunne answered that women's rights are high on the agenda and are a major political battlefield.

10:30 - 12:00

Exchange of views with EU Member States' U.S. embassies tax counsellors working on FATCA

Tax attachés gave Members their views on the issues of FATCA application, ranging from the lack of reciprocity in the exchange of information, the difficulties faced by citizens in obtaining banking services, fulfilling their obligation to fill out tax returns, the costs and hurdles involved in achieving compliance, including obtaining a Tax Identification Number (TIN) and the complexities and costs involved in giving up US citizenship. They noted that the US Treasury did make proposals for improvement in the so-called 'Green Book' proposals (proposals for legislative measures), yet these are not moving forward in Congress. The importance of compliance guidelines published by Treasury was highlighted, as was the fact that these guidelines will lapse soon. The Commission representative noted that there have been achievements in improving the situation in recent years, but there remains a lot to improve upon. All interlocutors agreed that there are indications that the US side is more receptive on this issue as of late. The tax attaches also highlighted the fact that not only citizens encounter compliance challenges concerning FATCA, but EU banks as well. They highlighted that the EU also made proposals on compliance of banks. They expressed that guidance on compliance from the Treasury would be most welcome. The Irish representative gave the anecdotal evidence of a bank exiting Ireland and its clients being redistributed to other banks, which refuse to provide to some citizens they suspect could have links to the US. They concluded by noting that in the medium and long term there will be a need to change FATCA itself, as it would have to capture digital currencies and crypto assets.

During the questions and answers session, the following Members of the Delegation made questions and comments:

Yana Toom asked if the IGAs the EU Member States signed are identical. She asked if there is data on how many US citizens would want to give up citizenship and whether the interlocutors had any concrete examples involving individual citizens. She also asked whether the thresholds in FATCA do not mean that most of citizens are excluded from its application. The Head of Delegation also raised the issue of the IGAs and the disproportionate data exchange not being compliant with the GDPR and not having to be, as they were signed before the privacy legislation came into effect. She asked if there was any scope in improving the situation of data exchange mandated by FATCA.

Marc Angel queried about the difficulties in getting a TIN and about any concrete examples of citizens being refused services. He also queried if FATCA or CRS was more wide-reaching and where there was more information exchange involved. He queried if the French Presidency efforts on FATCA had any results.

Cristina Maestre raised the issue of perception, whether it is not a risk that the EU side is diminished by the perception of trying to lobby for high net worth individuals. She also asked about the cost and complexity in giving up the US citizenship, as well as on the thresholds set in the legislation. She queried whether the vast amounts of data collected by the US side is not overwhelming for them and whether the EU side should not rather focus on the thresholds.

Alexander Bernhuber asked if the interlocutors had any knowledge whether FATCA had been effective in catching the large tax-avoiders/evaders or whether it brought in significant extra text revenue.

The interlocutors responded that all the agreements are the same in substance, but have small variations based on specificities, like different kinds of bank accounts, financial products, legal bases and the like. All agreements have the ‘most favoured nation’ clause, so if any facilitation is offered to any country involved, it will automatically apply to all other countries as well. They also noted that FATCA concerns only US citizens, whereas CRS concerns all those countries’ citizens that signed up to it. They also noted that there are two levels of compliance, namely ‘Model 1’ where the information is reported to the country which then sends it over to the US and Model 2 where the financial institutions transfer the data directly to the US. They reiterated that the citizens captured under the jurisdiction of FATCA do face difficulties, as they need to do tax returns, to hire professionals to assist with compliance. There is no scope to reach a solution on a single country basis, due to the ‘most favoured nation’ clause. Reciprocity is also important as whereas it is the IRS, who gets the data, they make it available, to other US institutions. The tax attaches also responded that there is no reliable data on the number of citizens in the EU affected by FATCA. On concrete examples, they noted that there are a lot, including jurisprudence in the Netherlands. Difficulties in getting the TIN is for people born in the 80s and 90s as these did not necessarily get a TIN and sourcing a birth certificate can be extremely difficult in some cases for people who have been resident in Europe. They noted that the tax code itself is the source of the problem, but changing it is nigh-impossible. Tax attaches responded that the thresholds in FATCA application still do not mean that banks do not have to perform due diligence on their US linked clients, also in order to get certainty whether the particular client needs reporting or not. They also noted that the OECD’s CRS itself is a result of FATCA deployment. The Irish tax attaché noted that there is anecdotal evidence of at least two citizens who turned to the Irish parliament for assistance as they were refused banking services. The interlocutors noted that there is a lack of statistical data on the effects of FATCA. On the GDPR compliance, they noted that compliance issues are unclear and unlikely to be improved as access to personal data is theoretically for law-enforcement purposes, and as such the US counterpart can argue that FATCA does not pose compliance issues. The French tax attaché stated that the ‘Green Book’ proposals and additional guidance could be a result of the push by the French Presidency.

16:30 - 18:00

Roundtable Discussion with experts and stakeholders on FATCA

Interlocutors outlined that the jurisdiction of FATCA captured so-called Accidental Americans and Americans working abroad in unintended ways, leading to problems in compliance. They also informed members that the US Internal Revenue Service (IRS) did not and does not have the capacity to process all the data that is being transmitted as part of data exchange to ensure FATCA compliance. In the beginning, subject to FATCA had to pay high penalties, even on small amounts of tax due, with a regressive penalty, where small amounts of tax dues were sometimes assigned penalties above six times the sum owed, while for high net individuals, this was only up to three times the amount owed. Administrative and legislative recommendations were made to congress by one of the interlocutors, who had previously served as the IRS’ in house taxpayer advocate. One of

the recommendations were to exclude the bona-fide residents abroad, yet this was not adopted. Another recommendation was on the streamlining of reporting, where the IRS and Treasury would accept reporting to the other. This latter recommendation did not gain adoption either. The tax experts and stakeholders also expressed that the administration of FATCA by the IRS is severely deficient, also according to the General Government Accountability Office and the Treasury Inspector for Tax Administration, as both noted that revenue projections made for FATCA were never met and the IRS is not pursuing a strategic plan for FATCA, but engaging in 'campaigns'. No evidence of tax revenue generated exists. The data of the IRS is of low value. The interlocutors stressed that the effort needed for compliance is disproportionate to the gains realised through FATCA. There is also a lack of data about Americans resident and/or employed abroad and how many are tax compliant. 'Same country exception' would be the legislative fix to exclude the real residents abroad. Extraterritorial taxation is the root cause of the problems surrounding FATCA compliance. Moving towards a residence-based taxation model would solve the problems. The cost-effectiveness of FATCA is unknown. Compliance costs far exceed revenues according to interlocutors. They also highlighted the issue that Americans living abroad lack representation in Congress, as there is no Congressional district assigned to them. They highlighted that there are real people having great difficulties caused by FATCA. They also stressed that FATCA tax rules are more punitive to US citizens living abroad than the US tax regime is to US residents. The interlocutors stated that the ultimate comprehensive solution would only come about with the US adopting a residence-based taxation system. A practical solution would be for Treasury to waive the requirement of having US tax residence for US dual citizens at birth. FATCA is also in breach of non-discrimination based on nationality. Interlocutors reiterated the cost of compliance and the cost and complexity of giving up US citizenship. Ms Bean, the interlocutor from the previous day also participated in the meeting and she highlighted that FATCA was brought about following two congressional hearings where confidential informants provided information about US citizens hiding assets overseas. Certain banks also admitted to this and paid fines. Subsequently they provided lists with names of such individuals. Banking secrecy at the time for US citizens abroad were unattainable in comparative situation in the US. She also noted that FATCA only applies above certain thresholds and FATCA spurred on increased tax transparency globally. She noted that since 2012 US financial institution also have to report on clients who are EU nationals. She also noted that a US resident have reporting requirements to the IRS. She concluded that most problems with FATCA compliance and penalties were resolved over time and third party reporting for US citizens' fiscal dues ensures one of the highest tax transparency in the world. Improvements in the bureaucracy should be further accelerated.

During the questions and answers session, the following Members of the Delegation made questions and comments:

Yana Toom started with clarifying that the European Charter of Fundamental Rights only applies when implementing EU law. She also clarified that the aim of the delegation is not to attack FATCA itself, but to find common solutions for EU residents affected by FATCA. She also stressed that the lack of data is of serious concern, as one cannot manage a program well without having data. She also raised the issue about the apparent lack of political representation of Americans overseas.

Marc Angel asked about the contradictory accounts about obtaining the TIN number. He also asked about reciprocity and about data on additional revenues achieved thanks to FATCA.

Cristina Maestre noted that EU citizens subject to FATCA have very limited access to advice on how to satisfy reporting requirements under FATCA. She also highlighted that fact that since these citizens are often denied banking services, they are denied use of their income in some instances and use of welfare benefits and pensions.

Mario Furore noted that comparing the US model of reporting to the Swiss model is not necessarily correct, as the Swiss model is not the EU model of reporting, while the petitions the European Parliament receives are from EU citizens or US nationals living and working in the EU. As for the extraterritorial taxation, and since the US and Eritrea are the only countries exercising it, it would be welcome if the US side would facilitate reporting and compliance for non-US residents. He reiterated that the interest of the Delegation is to help bring about a commonly acceptable solution.

Ulrike Müller noted that one of the countries that bought the lists of names of tax evaders was her own and as such combating tax avoidance is important to her. She raised the point that solutions need to be found, including for inheritance of EU-resident US citizens. She mused whether the ‘Green Book’ proposals can bring about some of these solutions and whether there will be support for it in Congress. She also highlighted the disproportionate amount of data being transmitted to the US due to FATCA and the issues that this transmission of data is causing.

The stakeholder representatives responded to the question about obtaining the TIN that sometimes it is the IRS itself that loses the original documents. They also highlighted that there are no longer tax attaches in US diplomatic missions abroad (since 2014), so citizens cannot turn to them for assistance, while there are several offices in embassies abroad that deal with criminal prosecutions. They reiterated that many middle income citizens are subject to FATCA. The cost to banks for reporting on Americans mean that banks rather not have American clients at all. Banks which do work with American clients usually prefer to have the high net worth individuals. The penalties mandated by FATCA are still hefty and the reporting sometimes is too complex and often they need to hire tax specialists, at significant costs. They noted that FATCA is a one-way information flow and the IGAs only state that the US side will ‘aspire’ to provide information as well. The CRS has automatic information exchange and it ensures data flow from a place where the subject does not reside to a place where the subject does reside and as such it is fundamentally different. Internal Revenue Code section 7701/50A/B provides leeway for Treasury to make regulations that would provide exceptions from FATCA for dual citizens at birth. The stakeholders also noted that citizenship is a right and one should not have to be forced to give it up, as a choice between giving up a citizenship or having to undergo a complex costly and cumbersome tax compliance process. All stakeholders agreed that the ultimate solution has to come from Congress, including with the adoption of the ‘Green Book’ proposals, but going beyond them. As elections are organised at state level in the US (including federal elections), there is no constituency for Americans abroad, but they are spread thinly among the states electoral districts and as such their issues cannot gain prominence in electoral discourse.

Wednesday, 20 July 2022

09:30 - 11:00

Meeting with Jane GRAVELLE, Senior Specialist in Economic Policy Donald J. ‘Don’ MARPLES, Specialist in Public Finance Congressional Research Service (CRS)

The two specialists of the Congressional Research Service (CRS) gave an insight into the institutional set-up of the CRS and the ways in which it informs policymaking in the US legislative process. They also gave a resume of their recent work in examining the application of FATCA and its effects, with particular focus on the persisting problems which affect ordinary people, such as difficulties in obtaining banking services, cumbersome reporting process, which is costly when done with specialist assistance, as well as difficulties in some instances to obtain a TIN. On the other hand, they also noted the improvements in the application of FATCA over time and noted that although FATCA did not change the underlying tax rules for Americans living abroad, it did increase awareness of those obligations and added reporting requirements for Foreign Financial Institutions that they may utilize. They highlighted that unlike the CRS, FATCA does not have full reciprocity in information sharing. The IRS receives more information on U.S. owners of foreign accounts than other countries receive on foreign owners of U.S. accounts. Legislation would be required to authorize the collection of the data needed for full reciprocity, including account balances and beneficial owners.

During the questions and answers session, the following Members of the Delegation made questions and comments:

Yana Toom highlighted that the Congressional Research Service and the European Parliament Research Service share some characteristics. She raised the issue of the disproportionate data flow mandated by FATCA and asked interlocutors on the prospects for improvements regarding the issue at hand.

Marc Angel raised the issue of ‘accidental Americans’ who are genuine long-time residents and citizens of the EU, but are captured by the obligations of reporting under FATCA and that these citizens are far from the real target population of FATCA.

The representatives of the Congressional Research Service acknowledged that there is anecdotal evidence pointing out remaining problems with the application of FATCA, while they also highlighted that there are efforts to correct some of the deficiencies, both legislative ones and administrative ones. Legislative efforts include a proposal to provide full reciprocity tabled to the Administration’s FY2023 budget, as well as a proposal to the same act of a narrow exemption from certain exit taxes for lower-income dual citizens. They cautioned though that majorities need to be built for these proposals, which most likely will be very challenging to achieve.

11:45 - 12:45

Meeting with Congressional Staffers following FATCA coordinated by Tom BARTHOLD, Chief of Staff, House and Senate Joint Committee on Taxation (JCT)

Congressional staffers explained the work of the Joint Committee on Taxation and they noted that the application of FATCA raises concerns about the difficulties Americans abroad face, including them being denied banking services. They signalled openness to finding solutions for the aforementioned, including through possibly adjusting the application of FATCA in a way that its application is limited to certain citizens. Nevertheless, they stressed the limitation any initiative faces in as far as it will need to garner a majority in Congress. The staffers highlighted the lack of awareness of the

problems caused by the application of FATCA. They highlighted that carve outs for certain groups of citizens already exist. They expressed interest in any proposals to deal with the problems.

Yana Toom asked about the complete lack of data on FATCA related issues. She reiterated the problems faced by citizens in the EU due to FATCA application and she also highlighted that since the termination of staffing some embassies with tax attaches, citizens have no assistance provided to them. She also noted the issue of lack of reciprocity in data-sharing. She stated that there does not seem to be political will on the US side to remedy the legislation. She called for a channel of communication between the US and EU side to work towards resolving problems related to FATCA.

Marc Angel stressed the fact that the EP delegation aims to help ordinary citizens who face disproportionate burden for compliance. He also noted that assistance to these citizens by the US side would be very important as would be the mitigation of unintended consequences. He noted the EU's Payment Accounts Directive, which prohibits discrimination.

Cristina Maestre noted the importance to provide information to those EU residents who have obligations under FATCA, as well as to get TIN and to make the giving up of citizenship much easier and less costly. She also enquired about the modalities to build political way to resolve the FATCA issues on the US side, including whether it would be possible to integrate FATCA and CRS.

Ulrike Müller stressed European support for residence-based taxation, but at the same time underlined understanding for the US choice to tax its citizens abroad. She noted, though, that solutions need to be found by the US side not to overburden its citizens residing in the EU with a disproportionately burdensome compliance. A hotline for this reason could be a step forward. She also enquired about the chances of the 'Green Book' proposals passing in Congress.

Alexander Bernhuber asked about possible timelines for the adoption and deployment of legislative fixes, if any, or whether administrative measures would be the path to follow.

Interlocutors responded that building political will on Capitol Hill is difficult on this issue, due to the lack of a constituency for Americans abroad, but delegations as the one of PETI is the most effective way to do so. Reaching out to Representatives always is beneficial, while stressing the point that ordinary citizens are having difficulties because of FATCA. They agreed that the administrative burden can be high, including for the obtainment of TIN. The possibility of creating possible loopholes that can be exploited also makes adjusting the current system difficult. They agreed that recent cuts on consular services are an important issue that will command some subsequent reflection. Regarding reciprocity, the interlocutors noted that the US did not ratify the Protocol to the Mutual Administrative Assistance in Tax Matters and as a result data exchange is conducted mainly through the regulatory environment of bilateral agreements with individual countries. As such integrating with the CRS would be challenging. The US side candidly acknowledged that FATCA is not high on the agenda, as it affects a few citizens abroad only. As such no timeline can be offered, but they for sure will not be addressed in the coming six months. The diversity of the constituents of Americans abroad makes it very challenging to build support, but delegations such as the one of PETI are the most effective tool to build momentum and to spur on change. The 'Green Book' proposals is an important statement of policy position, but there is no regularity in Congress adopting such proposals. Simplifying tax filings could also help and there are efforts to achieve it. Interlocutors agreed

that the lack of data is an issue in the process of policy-making. They agreed that communication between the sides is desirable and should include all sides of the political divide as well.

14:15 - 14:45

Meeting with Representative Eric SWALWELL

Congressman Swalwell welcomed Members and noted that the visit is at a turbulent time in US politics, with the Ukraine war ongoing and the US side still reeling from its post-election violence. He noted that globalisation brought about a dispersion of assets of US citizens all over the world. Whereas FATCA has been passed to combat fraudulent behaviour, there is understanding on the US side that compliance with it negatively affects ordinary, law abiding US citizens. Advances in digital technology and AI should make it easier to account for assets, both legal and illegal in the future and there are efforts to remedy the deficiencies of FATCA.

Yana Toom highlighted the lack of comprehension on the EU side that there is no data on FATCA effects. She also noted FATCA's breach of the spirit of the GDPR (not the letter, as the IGAs were signed before the GDPR came into force and as such do not need to comply). Reciprocity is also an issue as the data exchanges is disproportionate for the EU. She enquired about the lack of consular assistance in tax matters.

Marc Angel informed the Congressman about the difficulties faced by 'accidental Americans' and asked if there could be any facilitation for *bona fide* non-residents. He also asked about the CRS, where the US is not part, and FATCA could be somehow brought under one regime.

Ulrike Müller stressed the need to be results oriented and asked about the political divisions on this matter and if there were chances for the adoption of the Green Book proposals on FATCA. She stressed that consular services on tax matter would be very important for those affected by FATCA.

Cristina Maestre expressed her doubts on the US side reaching a critical mass of political will to make the necessary adjustments on FATCA, bearing in mind the politically sensitive nature of taxation. Nevertheless, she inquired into what other ways would there be to assist citizens having difficulties due to FATCA. She noted the issue of disproportionately large penalties for ordinary citizens, their difficulties in obtaining banking services and even a TIN. She stressed that the way the problems are brought into the public domain is of utmost importance, so as to be clear that efforts to fix FATCA are not driven by intentions to cover for tax avoiders and tax evaders.

Congressman Swalwell took note of the reflection on the disproportionality of the data transmitted from the EU as part of FATCA reporting. He stated that in his legislative efforts in Congress he aims to achieve an exemption from FATCA for US citizens that are genuinely resident abroad. This would be preferable to giving up citizenship and would be an appropriate compromise. The reporting on such residents would not be an obligation on financial institutions either. He noted that there is a privacy debate ongoing on possibly legislation that would be similar to the GDPR and when this would come to a vote, amendments to it could present an opportunity to resolve FATCA issues on data. Nevertheless he stressed that it is increasingly difficult to unravel already in force legislation. In this particular case, going against FATCA could be very damaging for US politicians as it can be used to portray them as trying

to cover for tax avoiders and tax evaders. As such, building majorities on such an issue will be challenging. He was very receptive to the idea of consular staff to assist with tax matters. He stressed it that having an EP delegation over on this issue is a very effective way to put FATCA issues on the agenda. He called on EU diplomats to also exert their influence on Members of Congress.

15:00 - 15:30

Meeting with Representative Richard NEAL, Chairman of the House Ways and Means Committee, Chairman of the Joint House and Senate Committee on Taxation (JCT)

Chairman Neal welcomed Members and gave an insight into the political situation in the US following the post-election violence at Capitol and the ensuing enquiries and judicial processes. He also shared his view on the more general issues, such as the Russian aggression on Ukraine as well as on the domestic political divides in the US on various issues and his view on the upcoming midterm elections to US Congress. Chairman Neal also explained the role of the Joint House and Senate Committee on taxation and the role of the Ways and Means Committee. He enquired about the issues of FATCA that motivated the EP delegation to visit.

Yana Toom reiterated the issues that ordinary citizens with negligible US ties who are resident in the EU face in the US, such as being denied access to banking services, encountering difficulties and costs in trying to comply with FATCA, as well as administrative difficulties in getting a TIN, the lack of assistance at consulates and issues with proportionality.

Marc Angel ensured the Chairman that the interest of the EP delegation was not to cover for tax avoidance and tax evasion, but rather to prevent hardship of ordinary citizens. He asked if there was enough political will to have some fixes to FATCA adopted.

Chairman Neal committed to looking into the issues at hand with good faith and to support any administrative efforts to alleviate the problems caused by FATCA. Noting the extremely thin majorities in Congress, he stressed the challenges faced by any kind of legislative action in the current political climate.

16:00 - 16.30

Meeting with Representative Lloyd DOGGETT, Chairman of the Subcommittee on Health, Committee on Ways and Means, Member of the House and Senate Joint Committee on Taxation (JCT)

Representative Doggett informed Members that he was not aware of the problems of ‘accidental Americans’ until recently and that he has been very actively fighting tax evasion. He also informed members that he has sent a letter to Secretary Yellen of the US Treasury and drafted a Bill aimed at rectifying FATCA. At the moment of the visit, there was no response to the letter.

Yana Toom asked about the legislative procedure and on the chances of it concluding successfully and achieving the fixes necessary for FATCA. She also enquired on how to manage communication on this issue. She also raised the issue of reciprocity in data provision.

Marc Angel noted that Congressman Doggett’s letter to Secretary Yellen contains a very good definition of ‘accidental Americans’, while it also highlights the difficulties in getting a TIN.

He noted that Congressman Doggett's reputation as a fighter against tax evasion gives him credibility.

Congressman Doggett responded that at the end of 2022 there will be legislation on tax provisions that needs to be submitted to extend certain provisions. This would present an opportunity, but success for this would in no way be guaranteed. This is when the Doggett Bill would be introduced. Passing the Bill would not solve the matter itself, but would rather mandate rulemaking on the side of the IRS. This, in turn could take time. On communication, Mr Doggett noted that showing examples of ordinary people having problems due to FATCA would be the way forward, including in the press. On reciprocity, he informed Members that there are efforts to have comparable levels of data exchanged between the EU and US.

10:00 - 11:00

Meeting at U.S. Department of Treasury with José MURILLO, Deputy Assistant Secretary for International Tax Affairs in the Office of Tax Policy

Mr Murillo stated that the Office of Tax Policy is well aware of the remaining problems EU residents with US ties face in FATCA compliance and also about the high perceived risk of some financial institutions in the US that are deemed to be FATCA compliant. He noted that the Office of Tax Policy has had ongoing discussions on these issues with various stakeholders and it was evaluating whether targeted guidance could be developed that would balance between improving FATCA compliance internationally and combating tax avoidance, while ensuring that access to banking services can be maintained. He noted the ongoing dialogue with the European Commission and outlined to Members the 'Green Book' proposals that would address the main remaining problems affecting EU residents with ties to the US when complying with FATCA, while noting that such proposals would have to be adopted by Congress.

Yana Toom asked whether it was not uncertain that the 'Green Book' proposals would be adopted, bearing in mind the political divide in Congress and the lack of a comfortable majority and whether administrative measures would not be a quicker way to address some of the issues.

Marc Angel reiterated that the aim of the PETI delegation was not to represent the interest of high net worth individuals, but rather to highlight the plight of average citizens, who in some cases are denied banking services due to banks not willing to take the risk of having non-compliant clients who would result in significant fines on the bank itself.

Ulrike Müller asked whether there was clear data on the number of people subject to FATCA in the EU and on revenue generated by FATCA for the US Treasury.

Mr Murillo responded by acknowledging the difficulties of having the 'Green Book' proposals on addressing compliance with FATCA adopted in Congress and reassured Members that Treasury is in ongoing talks with the IRS on examining for administrative solutions to some of the matters. He also acknowledged the usefulness of guidance on FATCA compliance. He further noted that specific data on FATCA, whether it is about extra revenue or number of citizens subject to, is difficult to ascertain, while also noting that FATCA does contribute to the achievement of high tax compliance levels. He also reassured Members that the interest of the US side is not to enact disproportionately punitive measures for involuntary mistakes or for missing TIN of citizens, but rather to improve compliance in general.

15:00 - 16:00

Meeting with Doug O'DONNELL, Deputy Commissioner of Services and Enforcement, Internal Revenue Service (IRS)

Mr O'Donnell noted that the IRS was aware of the multitude of problems that the application of FATCA can cause for EU residents who have links to the US. He also admitted that at the inception of the application of FATCA, the problems were significantly more severe and that their negative unintended consequences were severely underestimated. There were detailed discussions with EU partner countries on application of FATCA. The IRS also worked with the State Department and the Treasury to find solutions to streamline and simplify the reporting under FATCA.

Yana Toom highlighted the issue that in the application of FATCA and the connected reporting obligations in effect produce a situation where banks in the EU can be liable for mistakes of their clients and as such there is a disincentive for banks to serve clients with US ties. She noted that there are several petitions by citizens who have been denied such banking services. She also brought up the fact that FATCA would not be GDPR compliant if it were subject to it and the data exchange it mandates is disproportionate. She enquired about reciprocity in this aspect. She asked about the administrative adjustments to be made. She also raised the issue of tax attachés in US embassies and consulates. She highlighted that the EU cannot be the one providing compliance information on FATCA, this needs to come from the US.

Ulrike Müller asked if there is data on how many citizens relinquished their US citizenship due to FATCA, or on how many US citizens live abroad, more specifically in the EU. She also asked about administrative facilitation that could be done on the US side. She enquired about the 'IRS relief programme'. She also enquired if there was scope to simplify getting a TIN. She enquired about which proposals could have a chance of being deployed in the near term. She highlighted that the know-how on compliance requirements can be deficient at the local branch level of FFIs. She expressed her support for the 'Green Book' proposals and for the reestablishment of tax attaches in US embassies/consulates. She asked if any FFI was subject to the 30% withholding tax.

Kosma Zlotowski highlighted the lack of political representation of US citizens who are EU residents, while also acknowledging that depending on the EU Member State the number of such citizens also varies greatly. As such they find it difficult to get through top US authorities because of this lack of political voice. He asked whether proposal such as raising thresholds or other administrative measures could be a way forward to alleviate the problems of such citizens.

Alexander Bernhuber asked there was any data on the number of citizens filing tax returns from abroad and he stressed the need to address the difficulties faced by ordinary citizens in complying with FATCA.

Mario Furore asked whether the IRS had any interest in re-establishing tax attaches in US embassies/consulates and the reasons for their abolishment.

Deputy Commissioner O'Donnell answered that there is no data on the number of people who gave up their US citizenship due to FATCA and there is no data on the number of US citizens living abroad either. On reciprocity, the Deputy Commissioner signalled openness to work with the EU, but noted that the IGAs are the domain of the Treasury. He noted that it is difficult to comprehend the challenges of low-income individuals with US ties, as there are thresholds in

FATCA that are meant exactly to exclude such individuals from reporting. He did acknowledge that if banks deny such individuals banking services that is an unfortunate occurrence. He noted the individual threshold for reporting, which stands at USD50000 equivalent and 200k and 400k respectively for couples living abroad. He stated that the IRS is working on collecting information on the number of individuals subject to FATCA that cause issues for financial institutions. It is not in the interest of the IRS to affect the business of foreign financial institutions dealing with citizens with US ties, when these citizens have difficulties in getting a TIN. Accidental Americans and dual citizens had an IRS programme to facilitate compliance, which entailed giving up their citizenship. This did not enjoy widespread uptake. The 'relief programme' of the IRS entails the individual reporting and providing information on a simplified basis and to relinquish their citizenship. He also welcomed the legislative proposals aimed at solving the issues of FATCA, but noted that having them passed in Congress presents political challenges, but reassured Members that the IRS is well aware of the issues caused by FATCA application to ordinary citizens. Mr O'Donnell answered that the IRS does have the data of how many citizens have filed information to be FATCA compliant, but the challenge was that they did not know how many citizens should have done so and that therein lay the challenge. For this FATCA is a valuable tool. The reporting requirement thresholds under FATCA are: for FFIs: USD50000 for individual US resident account holders. If the account holder is living abroad, the threshold is USD200000 and USD 400000 for couples respectively. The IRs and Treasury Department are also in talks and examining evolutions related to FATCA. The IRS communicated to FFIs that they are not driven by intentions to be punitive to FFIs that are on the FATCA compliant FFI list, as these FFI are not subject to the 30% withholding tax on US assets in case of non-compliance. That is reserved for FFIs that are not on the list. He stressed that it is not in the interest on the IRS to eject FFs from that list due to mistakes in reporting due to TINs etc. He mused that probably if compliant FFIs were reassured that they will not be ejected from the list for honest reporting mistakes by client, it would improve the situation with the provision of banking services. He noted that no FFI was subject to the 30% withholding tax, while small and regional banks are usually exempted from some FATCA reporting obligations or have simplified reporting requirements. He stressed that the IRS is looking for solutions to challenges presented by FATCA. He also committed to further look into administrative measures that can be done to alleviate the problems. On consular tax services, he noted that their abolishment was due to a lack of resources and due to the imbalance in the possibilities of providing services. The plan was to have increased assistance over the phone and online. He committed to exploring improvements in these services, but stressed that reopening tax assistance offices as part of consular services is not an option for the US side any more. There is a phone line, which is not toll-free and has enormous challenges in serving people and as such the IRS is working hard to improve this.

The European Parliament delegation to Washington DC, was reassured by US counterparts in the US Congress that efforts are underway to correct the injustices caused by the Foreign Account Tax Compliance Act (FATCA) to US citizens, dual EU-US citizens living and working in the EU, as well as to the so-called 'accidental Americans', who were born in the USA or abroad to American parents but have no other links to the country. However, the US counterparts also stressed the complex political context present in the US, which makes progress on the topic difficult. The Delegation met with stakeholders, experts on the matter, academia, US legislators and Government officials in a series of meetings all in order to address the plight of EU resident US citizens, dual citizens and 'accidental Americans'. Representatives of those affected stressed the severity of the problems involved, whether it is the financial penalties, or being rejected by EU financial institutions (which are also subject to such penalties in case of non-compliance), the significant bureaucracy, the lack of consular assistance and the

lack of political representation. Some of them advocate the renunciation of US citizenship as the only viable solution, but even this is an expensive and cumbersome process.

Throughout the meetings, the PETI delegation stressed that it does not advocate in any way to enable tax avoidance and tax evasion of US citizens or to enable money laundering and asset dissimulation done through EU financial institutions but the aim is to voice the concerns of regular, low-and medium-income citizens who face many obstacles in accessing banking services in foreign countries, and to highlight the immediate need to address this.

Members were shown a draft legislative bill aimed at correcting the unintended effects of FATCA and a letter to Treasury Secretary Yellen highlighting the need to correct FATCA. The US Congressmen all commended the Delegation as in their view it is very much needed to raise awareness in the Capitol about this issue and delegations such as PETI's are the best way to achieve this.

FATCA currently captures in its regulatory net the vast majority of regular, bona-fide European residents with US or dual citizenship and 'accidental Americans' and burdens them with a byzantine bureaucracy in order to achieve compliance . This causes that the financial institutions, fearing the withholding tax on their US assets at the slightest case of non-compliance, reject to provide services to these citizens, including basic payment accounts, which is a right enshrined in EU law.

In addition, to clear deficiencies in being a punitive tool causing collateral damage, there is no data on the efficiency of FATCA in improvement of tax collection and thus in its effectiveness in tackling tax evasion or curbing tax avoidance, there is no data even on the number of non-resident Americans. Estimates of this latter range from six to nine millions.

There is a clear need to enact the administrative changes needed in the application of FATCA, and to improve the information exchange mandated by FATCA, as there is no reciprocity with the EU. It is also notable that the objective of FATCA, namely the reporting requirement of non-residents, is a result of the citizen-based taxation model (as opposed to residence-based) which is only applied in the USA and Eritrea. As a person becomes US citizen including by virtue of the birth on the US soil, it creates a group of persons with only limited ties to the US, for whom it is extremely difficult to get Tax Identification Number required to comply with FATCA. This is one of the reasons they are being rejected by foreign banks.

Legislators on both sides of the Atlantic have to continue working hard to ensure that the unintended effects and collateral damage of FATCA is eliminated.

Recommendations

The European Parliament, in general, and this Committee on Petitions, in particular, has the utmost respect for the delimitation of the competences of the Union, which, under the principle of conferral, means that the Union should act only within the limits of the competences conferred upon it by the Member States in the Treaties to attain the objectives set out therein.

On the basis of this fact-finding visit, the following recommendations are made to the competent authorities:

1. To ensure that there is proper, free and comprehensive information provision on FATCA compliance both to citizens and financial institutions in the EU;
2. To allow EU citizens subject to FATCA reporting to use simplified reporting or to be entirely exempted from it for those who have *bone fide* long term residence in the EU.
3. To provide assistance to EU citizens and financial institutions on tax compliance, including through reintroducing tax attachés in US embassies and consulates re-

- established and improving the availability of hotlines and online resources ;
4. Calls on Member States to mandate the Commission, on the basis of Art. 216 TFEU, to negotiate with the US a common agreement on FATCA that would replace the bilateral intergovernmental agreements currently in place, in order to ensure full reciprocity and compliance with EU law, in particular the GDPR;
 5. To engage with the US side to provide an easy path to renouncing US citizenship for those willing to do so;
 6. To ensure that US citizens who have never worked in the US and have not had residence as adults in the US to be exempted from FATCA reporting entirely;
 7. To ensure the enforcement of the Payment Accounts Directive (2014/92/EU) under which all residents in the EU have the right to a payment account with basic features;
 8. To coordinate EU action in achieving simplified FATCA compliance requirements for EU citizens and financial institutions;
 9. To ask the US side to issue regular guidance on FATCA compliance for citizens and financial institutions;
 10. To establish an EU-US working group on FATCA compliance;
 11. To ensure that the relevant EU provisions regarding safeguards of data are respected in cases in which they apply.

In relation to petitions Nos. 1088/2016, 1470/2020, 0323/2021, 0394/2021 the Committee on Petitions makes the following recommendation:

Petitions listed above should remain open; pending developments, decisions will be made at a later stage about how to further proceed with these petitions.