



ABA Professional Development

ABA/ABA Money Laundering Enforcement Conference


November 13-15, 2011
Washington, DC




Defending Liberty Pursuing Justice



CRIMINAL JUSTICE




American Bar Association
ABA Professional Development




Foreign Account Tax Compliance Act ("FATCA")


- **Audience Awareness:**
 - Begun to mobilize?
 - Training Delivered, Memos Issued, Stakeholders Identified (Operations, Tax, Accounting, Technology, Compliance)
 - Have You Done an Impact Assessment?
 - Project Plan Adopted? Governance Model in Place?
 - Clear Executive Sponsorship and Ownership?
 - Have You Communicated to Clients? to Management?
 - Read the IRS Notices? 2011-34 and 2010-60
 - Likelihood of Compliance by Due Date(s):
 - Very Likely; Close; 50/50; Difficult; No.
- **Entity Type:**
 - Bank? Asset Management Firm? Insurance Company? Broker-Dealer? Other?



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Foreign Account Tax Compliance Act ("FATCA")

Today's Agenda

- **Why Was FATCA Enacted?**
 - **Current Political Environment:**
 - **Recent G-20 Agreement to Fight Cross-Border Tax Evasion—"Tax Evasion Crackdown will raise £62bn for G20 nations, says OECD"—The Guardian 11/3/11**
 - **Promote Tax Fairness, Raise Revenues,**
 - **Limit Secrecy, Improve Transparency**
 - **U.S. Congress and the IRS (momentum):**
 - http://www.financialtaskforce.org/wp-content/uploads/2009/10/20091027-News-Release-Baucus_Rangel.pdf?9d7bd4



UNITED STATES CONGRESS



NEWS RELEASE

For Immediate Release
October 27, 2009

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BAUCUS, RANGEL, KERRY, NEAL IMPROVE PLAN TO TACKLE OFFSHORE TAX ABUSE THROUGH INCREASED TRANSPARENCY, ENHANCED REPORTING AND STRONGER PENALTIES

Senate-House Proposal Detects, Deters, Discourages Overseas Tax Evasion

Washington, D.C. — Senate Finance Committee Chairman Max Baucus (D-Mont.), House Ways and Means Committee Chairman Charles Rangel (D-NY), senior Senate Finance Committee member John Kerry (D-MA) and Ways and Means Select Revenue Subcommittee Chairman Richard Neal (D-MA) today unveiled a comprehensive proposal to clamp down on tax evasion and improve taxpayer compliance by giving the IRS new administrative tools to detect, deter and discourage offshore tax abuses. Based on proposals included in President Obama's 2010 Budget, on legislation proposed by Senator Carl Levin and Representative Lloyd Doggett, and a draft released by Senator Max Baucus, 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.

Senator Baucus and Congressman Rangel consulted extensively with the Department of the Treasury, the Internal Revenue Service (IRS), the Joint Committee on Taxation (JCT) and industry stakeholders to ensure the proposal accurately represents industry practices and will be able to meet current IRS compliance and enforcement needs.

"Last March, I circulated a preliminary draft of offshore compliance legislation to obtain stakeholder input to make the proposal even stronger, more durable and more likely to become law. The proposal offered today is the culmination of that effort and represents the best ideas from both the House and the Senate on how to strengthen IRS resources to root out tax cheats once and for all," said Baucus. "These tax evaders cost our country tens of billions of dollars every year in unpaid taxes, and honest, law-abiding taxpayers pay the price. Not only is this practice fundamentally unfair, this is money that could be used in any number of other important areas, such as reducing our fiscal deficits."

"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," said Ways and Means Committee Chairman Rangel. "I am confident that most banks will do the right thing and help to make bank secrecy practices a thing of the past."



Foreign Account Tax Compliance Act (“FATCA”)

Today’s Agenda continued...

- **Why Was FATCA Enacted?**

- **Current Political Environment (some quotes from Congress):**

“...a comprehensive proposal to clamp down on tax evasion and improve taxpayer compliance by giving the IRS new tools to detect, deter and discourage offshore tax abuses.”

“...[FATCA] 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 [FATCA] would prevent U.S. individuals from evading \$8.5 billion in U.S. tax over the next ten years.”

“These tax evaders cost our country tens of billions of dollars every year in unpaid taxes, and honest, law-abiding taxpayers pay the price. Not only is this practice fundamentally unfair, this is money that could be used in any number of other important areas, such as reducing our fiscal deficit.”

“The 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...the compliance provisions in this bill will help crackdown on the bad actors who try to hide funds offshore instead of playing by the rules.”



Foreign Account Tax Compliance Act (“FATCA”)


Today’s Agenda continued...

- **Why Was FATCA Enacted?** continued...

- **Current Enforcement Environment:**

- **UBS (\$780MM penalty and Deferred Prosecution Agreement)**
- **“Credit Suisse to Name Names” (WSJ 11/9/2011)**
- **Prosecutions of Taxpayers and Bankers**
- **Voluntary Disclosure Program**
 - **End of Traditional Banking Secrecy?**





Wednesday, November 9, 2011

GLOBAL FINANCE

JOURNAL

Credit Suisse To Name Names

By DEBORAH BALL AND LEOKA SOKIDES

ZÜRICH—The Internal Revenue Service has won another round in its battle over Swiss bank secrecy.

Credit Suisse Group AG said Tuesday it would hand over the names of bank clients suspected of evading U.S. taxes, in response to a request from the IRS. It is the second big Swiss bank to do so in two years.

Credit Suisse, Switzerland's second largest bank by assets, declined to comment on the number of names it would submit, or when it would do so. But in a Nov. 2 letter to affected account holders, Credit Suisse acknowledged that the IRS had requested names and other information about U.S. taxpayers who held accounts indirectly through corporations from 2002 through 2010, and that the Swiss government had ordered it to furnish the data immediately.

"This signifies a continuing erosion of Swiss bank secrecy," said Scott Michel, an attorney with Caplin & Drysdale in Washington who has represented U.S. taxpayers with Swiss accounts. A spokesman for the IRS declined to comment.

For decades, Switzerland, the world's largest offshore financial center with \$2.1 trillion in assets, was a haven for foreigners who deposited the assets there to escape taxes at home.

But in 2009, UBS AG, Switzerland's largest bank, agreed to turn over the names of more than 4,000 U.S. account holders and pay a \$780 million fine to settle charges it helped Americans dodge taxes. UBS acknowledged wrongdoing in the accord.

The Swiss government has been negotiating a sweeping settlement that would cover a group of Swiss banks that have helped Americans evade taxes. Based on information released by the U.S. Justice Department and other sources, experts say at least 13 banks are part of this group, including Julius Baer Group AG and Wegelin & Co.


Julius Baer declined to comment. Wegelin couldn't be reached for comment.

Swiss authorities would like to have an agreement with the U.S. by the time the Swiss Parliament reconvenes on Dec. 5, according to a person familiar with the situation.


Bryan Skarlatos, an attorney with Kestelnetz & Fink in New York who counsels U.S. taxpayers with secret accounts, expects other Swiss banks to follow Credit Suisse in turning over information on U.S. taxpayers.

"If Credit Suisse was required to turn over account information that includes names, there's no reason why other banks couldn't be pressured to do the same," Mr. Skarlatos says.


The Credit Suisse decision stems from an investigation into allegations the firm's bankers helped Americans evade taxes. The U.S. indicted two current and three former Credit Suisse bankers. They have denied wrongdoing. In July, the U.S. notified Credit Suisse it was a target of a criminal investigation. Credit Suisse said it would furnish account information to Switzerland, which will examine it and give clients the opportunity to appeal. After that, the Swiss will give the information to the IRS, which could take months, according to a Swiss government official. Taxpayers who challenge the release of the information are supposed to report their challenge to the U.S. Justice Department.




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Today's Agenda continued...


- Statute and IRS Notices
 - How Does it Work? What's Required? Definitions of Key Terms
 - <http://www.irs.gov/pub/irs-drop/n-10-60.pdf>
 - <http://www.irs.gov/pub/irs-drop/n-11-34.pdf>
 - Industry "Pressure Points"
 - No Regulations Issued Yet
 - What Are the Operational Challenges?
 - Technology (investment and requirements), FFI Agreements, Lack of Central Customer Database, Imputed Knowledge?



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Today's Agenda continued...

- **Industry Views**
 - **Primarily a Tax Project with AML Overlap vs. AML with Tax Overlap**
 - **Different Approaches**
 - **Governance and Ownership: Who "owns" KYC? Who calculates Passthru Payments? (Treasury? Accounting? Operations? Tax? Don't Know?)**
- **Project Plan (Getting Organized and Moving Forward)**
 - **Timeline and Requirements**
 - **Compliance Dates, Certifications and Reporting, CDD Reviews, Systems Issues, New Policies and Procedures (dual citizenship, 10%+ shareholder)**



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Questions & Answers

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