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BEFORE

U.S. HOUSE SUBCOMMITTEE ON GOVERNMENT OPERATIONS

ON

REVIEWING THE UNINTENDED CONSEQUENCES OF THE FOREIGN ACCOUNT TAX COMPLIANCE ACT

April 26, 2017

Thank you, Chairman Meadows, Ranking Member Connolly, and Members of the House Subcommittee on Government Operations for this invitation to testify about the Foreign Account Tax Compliance Act, also known as FATCA.

I was asked to testify today because, for more than a decade, I served as staff director and chief counsel for Senator Carl Levin on the U.S. Senate Permanent Subcommittee on Investigations. During that time, Senator Levin and his Republican partners conducted a number of bipartisan investigations that exposed how U.S. taxpayers were using offshore bank accounts to hide assets and evade U.S. taxes.

Using offshore bank accounts to evade taxes is a longstanding problem. In a 2001 hearing, a U.S. citizen named John Mathewson testified before our Subcommittee about a bank he ran in the Cayman Islands called Guardian Bank & Trust.[1] According to Mr. Mathewson, Guardian Bank held offshore bank accounts with about $150 million in assets for about 2,000 clients, 95% of whom were U.S. clients.

Mr. Mathewson testified at the hearing that, in his opinion, virtually all of the bank's U.S. clients were engaged in tax evasion, which was why they had opened offshore accounts. He also told us that, after opening the bank, he'd returned to the United States for a vacation and was arrested for cheating on his own taxes. To avoid imprisonment, he turned over his entire client list and their bank records to the U.S. government. He then spent several years testifying against his former clients in various court proceedings seeking their payment of back taxes.

At our hearing, he explained how Guardian Bank typically handled its U.S. clients. He said that, in most cases, the bank established a Cayman shell company for the client, opened an account in the name of that shell company, and then took care never to link the company's name

[1] "Role of U.S. Correspondent Banking in International Money Laundering," U.S. Senate Permanent Subcommittee on Investigations, S. Hrg. 107-84 (3/1/2001).

to the client's name outside the walls of the bank. Mr. Mathewson said that his U.S. clients also typically paid him to issue a credit card in the name of their shell company, so they could use that credit card in the United States to withdraw funds from their Cayman accounts. He said he instructed them to sign their names illegibly on the back of credit card and on any charge slips, again to avoid linking their names directly to their shell companies. He said the credit cards made it easy for his clients to access their offshore funds. He noted that he had not dreamed up the credit card system, but had simply copied common practice among Cayman banks with offshore clients. He testified that his bank was just one of many Cayman banks providing similar services.

A second example involves a whistleblower named Heinrich Kieber who, in 2007, walked into our Subcommittee offices and handed us records for about 150 U.S. clients with secret accounts at a financial institution in Liechtenstein called LGT Bank. He'd been hired by the bank to convert it into a paperless office and, as a result, had been given full access to its records. He told us that, when reviewing them, he'd been appalled at how the bank was helping wealthy and corrupt individuals hide assets and evade taxes. He made a copy of the bank records and took them to various tax authorities around the world, some of which paid him millions of dollars to gain access to the information. Mr. Kieber told us he'd given one set of the records to the IRS in hopes of earning a whistleblower reward; he gave us a second set free of charge with no strings attached.

When we examined the records, we identified U.S. taxpayers who'd opened LGT accounts without disclosing them to the IRS and failed to pay taxes on the resulting income. One was a Florida construction contractor who, over a period of twenty years, formed four Liechtenstein foundations, opened accounts in their names at Liechtenstein banks, and compiled undeclared assets exceeding $49 million.

Another was a New Yorker who opened LGT accounts in the name of two Liechtenstein foundations and stashed at least $4.5 million in the accounts. He even pretended to sell his New York home to one of the foundations, after which he paid "rent" to that foundation as a way to move still more of his money offshore.

Still another LGT account held $68 million in the name of a Liechtenstein foundation controlled by a wealthy family from Australia. That account caught our eye, because one of the family members was a California resident who had agreed to use a U.S. shell company to trigger transfer of the foundation funds to new accounts in Switzerland.

A third tax haven bank offering U.S. clients secret offshore accounts was disclosed by a whistleblower named Bradley Birkenfeld who also walked through the Subcommittee doors in 2007. Mr. Birkenfeld was a U.S. citizen, born and raised in Boston, who became a private banker in the wealth management field and worked at several non-U.S. banks, including UBS, the largest bank in Switzerland. After he lost his job at UBS, Mr. Birkenfeld decided to inform U.S. authorities about some of the bank's troubling practices, reaching out to the Department of Justice, the IRS, and our Subcommittee.

His story was explosive. He told us that UBS regularly sent dozens of Swiss private bankers to the United States each year to recruit new clients and service existing ones with Swiss accounts never declared to the IRS. In other words, he wasn't describing a case of U.S. taxpayers traveling to Switzerland to open accounts; it was a case of UBS sending Swiss bankers onto U.S. soil to convince U.S. clients to hide their money abroad.

According to Mr. Birkenfeld, UBS paid all the necessary travel and event costs to enable its Swiss bankers to mingle with affluent U.S. guests at events like art shows, yachting races, and tennis tournaments, so that they could quietly hand out their business cards. A UBS document stated that, in 2004, the bank maintained 52,000 undeclared Swiss accounts for U.S. clients with an estimated $18 billion in assets.

In 2008, Senator Levin and Senator Norm Coleman held a hearing and issued a bipartisan report exposing how LGT and UBS had been helping U.S. clients cheat on their taxes.[2] During the hearing, a UBS representative surprised everyone present by openly admitting to the wrongdoing, apologizing for it, and announcing that UBS would no longer open accounts for U.S. clients without reporting them to the IRS. UBS later pled guilty to participating in a criminal conspiracy to help its U.S. clients evade U.S. taxes and paid a $780 million fine.

One last example involves the second largest bank in Switzerland, Credit Suisse. In 2014, Senator Levin and Senator John McCain held a hearing and issued a joint report showing that, just like UBS, Credit Suisse had sent private bankers onto U.S. soil to recruit and service wealthy U.S. clients.[3] The evidence indicated that, at its peak, Credit Suisse had over 22,000 U.S. clients with undeclared Swiss accounts containing more than $10 billion.

One Credit Suisse client interviewed by the Subcommittee told us about how, when he met his Swiss banker at a luxury U.S. hotel for breakfast, the banker gave him a Sports Illustrated magazine with his Swiss bank statement slipped in between the pages. Another client described how, when he visited the bank's main offices in Zurich, he was ushered into a remotely controlled elevator with no floor buttons, and escorted into a bare room with white walls, all dramatizing the bank's focus on secrecy. The client said he'd opened his account after being told that the bank did not require completion of the form used to report accounts to the IRS. He was also offered a credit card to draw money from his Swiss account while in the United States.

Credit Suisse later pled guilty to helping U.S. clients cheat on their taxes and paid a criminal fine totaling $2.6 billion. At the same time, the Swiss government would not permit the bank to disclose to the United States the full list of 22,000 Americans with undeclared accounts.

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[2] "Tax Haven Banks and U.S. Tax Compliance," U.S. Senate Permanent Subcommittee on Investigations, S. Hrg. 110-614 (7/17/2008). See also "Tax Haven Banks and U.S. Tax Compliance: Obtaining the Names of U.S. Clients with Swiss Accounts," U.S. Senate Permanent Subcommittee on Investigations, S. Hrg. 111-30 (3/4/2009).

[3] "Offshore Tax Evasion: The Effort to Collect Unpaid Taxes on Billions in Hidden Offshore Accounts," U.S. Senate Permanent Subcommittee on Investigations, S. Hrg. 113-397 (2/29/2014).

The hearings held by the Permanent Subcommittee on Investigations provided detailed evidence of a foreign banking industry that was ready, willing, and adept at facilitating U.S. tax evasion. Additional evidence of the size of the offshore problem is the IRS' Offshore Voluntary Disclosure Program. Begun in 2009, the program offers reduced penalties to taxpayers who admit to the existence of an undeclared foreign account and agree to pay back taxes and interest owed on their undeclared assets. As of 2016, the program had been used by more than 100,000 Americans to come into compliance with the law and pay back taxes exceeding $10 billion. That's 100,000 Americans and $10 billion – huge figures, but ones that likely reflect only a small percentage of the tax cheating going on. It is against that backdrop that FATCA was enacted into law and should be evaluated today.

FATCA Today

FATCA was authored and championed by Congressman Charlie Rangel and Senator Max Baucus. It became law as part of a broader bill known as the HIRE Act. A bipartisan majority of 68 Senators voted to enact the HIRE Act into law.

That was in March 2010, seven years ago. Since then, Treasury has issued implementing regulations, and banks around the world have invested in the infrastructure needed to comply with the law. Exchanges of account information under FATCA began in earnest in 2015.

It is important to note that FATCA does not impose a tax on anyone, here or abroad. If FATCA were repealed, no one anywhere in the world would get a tax break. Americans living abroad would owe the same amount of tax then as they do now. If some Americans living abroad think they shouldn't pay U.S. taxes, should pay less, or shouldn't have to pay an exit tax to give up their citizenship, their beef is with the tax code, not FATCA.

FATCA's sole aim is to increase the transparency of foreign accounts of U.S. taxpayers, so they can't be used for tax evasion. New research suggests FATCA is working. According to the preliminary results of a 2017 study by four university professors and an IRS research analyst, FATCA and earlier IRS offshore account initiatives have already "increased the number of individuals reporting foreign accounts to the IRS by at least 19 percent, and they increased total wealth disclosed by at least $75 billion."[4]

How has FATCA helped? Essentially, FATCA leveled the playing field between U.S. taxpayers who open accounts here at home and those who open accounts abroad – subjecting both sets of accounts to equivalent disclosure obligations.

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[4] See "Taxing Hidden Wealth: The Consequences of U.S. Enforcement Initiatives on Evasive Foreign Accounts," Niels Johannesen, University of Copenhagen, Patrick Langetieg, Internal Revenue Service, Daniel Reck, University of California at Berkeley, Max Risch, University of Michigan, and Joel Slemrod, University of Michigan (Working Draft as of 4/24/2017), at 1, http://www.law.nyu.edu/sites/default/files/upload_documents/Slemrod%20Week%2013.pdf.

FATCA has also leveled the playing field between U.S. banks and foreign banks. For decades, U.S. banks have been required to disclose information about accounts opened by U.S. clients, sending 1099 forms to the IRS and their accountholders. Until FATCA, many foreign banks did not have the same disclosure obligation. Even foreign banks that signed agreements promising to disclose their U.S. client accounts often didn't follow through, because there was no meaningful penalty if they didn't.

The result was that U.S. banks watched some of their best clients move funds offshore to foreign banks that didn't disclose accounts to the IRS. U.S. banks lost out to foreign banks selling secrecy. It was as simple as that.

Then FATCA changed the rules. It clamped down on the foreign bank secrecy that put U.S. banks at a competitive disadvantage. It did so by creating a meaningful penalty to ensure that foreign banks disclose their U.S. client accounts to U.S. authorities, just like U.S. banks do. The key provision states that any foreign bank that fails to disclose their U.S. client accounts to the IRS is subject to a 30% tax on any income earned by that bank in the United States. That 30% tax, which is collected before the foreign bank's U.S. income leaves our borders, is a powerful enforcement mechanism.

Because of it, many foreign banks, like U.S. banks, have now agreed to disclose their U.S. client accounts to the IRS by filing a form once per year. Over 274,000 financial institutions of all types, including tens of thousands of foreign banks, have now registered under FATCA.

Not only that, but countries around the world followed the U.S. lead. Under the leadership of the OECD, more than 100 countries have signed international agreements enabling them to exchange information about foreign accounts. The first disclosures under the OECD system will take place this year, affecting financial accounts around the world.

Nevertheless, some foreign banks are still angry about FATCA's compliance costs, and support eliminating the law. Repealing FATCA would, in fact, lower their costs, but it would also give those foreign banks a permanent cost advantage over U.S. banks whose disclosure obligations will continue. It is unclear, by the way, just how much of a cost savings foreign banks would actually enjoy since, even without FATCA, they would still have disclosure obligations under the OECD system. It is also unclear whether saving foreign banks money is a compelling reason to support repealing a transparency law like FATCA that makes it harder for foreign banks to facilitate U.S. tax evasion.

Some Americans living abroad also dislike FATCA. They complain that FATCA caused some foreign banks to refuse to provide banking services to Americans. It is true that, early on, some foreign banks did close accounts held by U.S. clients or refused to open new ones, because they didn't want to have to comply with FATCA. But today, tens of thousands of foreign banks have crossed that bridge, are complying with FATCA, and can open accounts for U.S. clients. Banks like UBS and Credit Suisse have made commitments to transparency, are already disclosing U.S. client accounts to the IRS, and don't plan on going back. And don't forget U.S. banks that welcome U.S. clients, like Citibank which operates in 160 countries. Online banking offers still another option. The reality today is that Americans living abroad can get banking services in virtually any country.

Another claim by some Americans living abroad is that FATCA is causing U.S. citizens to give up their U.S. citizenship, rather than report their financial accounts to the IRS, even though their fellow U.S. residents have operated under the same disclosure requirements for years. The data shows, however, that only a relatively tiny number of U.S. citizens give up their citizenship. In 2015, for example, about 4,300 people gave up their U.S. citizenship, while that same year, we welcomed nearly 730,000 new citizens ready and willing to pay U.S. tax.[5] And when compared to the 9 million Americans living abroad,[6] even if we made the outlandish assumption that, in 2015, every single person gave up their citizenship because of FATCA, FATCA would still be responsible for only 0.05% of Americans living abroad who gave up their citizenship. That is not even one tenth of one percent.

The bottom line is that, while FATCA did cause some initial disruptions, it has since become widely accepted and even imitated around the world. Tens of thousands of banks have made the investments needed to comply with it. A lawsuit seeking to invalidate the law was dismissed in court, because its plaintiffs were unable to establish that FATCA had caused any one of them a specific rather than theoretical injury.[7]

FATCA's rough beginning is behind us. Instead, FATCA has already begun discouraging offshore tax evasion, causing more U.S. taxpayers to disclose their offshore accounts, report their offshore income, and pay the taxes they owe.

With U.S. tax reform at the top of the Congressional agenda, a multitude of policy options are clamoring for attention. Of all those policy options, repealing a law that stops dishonest taxpayers from hiding money abroad shouldn't make the list. Especially since every dollar lost to tax evasion is another dollar that must be made up for by honest taxpayers or by cuts to critical public programs. Repealing FATCA would hurt honest taxpayers, incentivize wealthy Americans to move funds offshore, disadvantage U.S. banks, and help foreign banks aid and abet U.S. tax evasion.

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[5] IRS Quarterly Publication of Individuals, Who Have Chosen To Expatriate, as Required by Section 6039G (2/9/2017), https://www.federalregister.gov/documents/2017/02/09/2017-02699/quarterly-publication-of-individuals-who-have-chosen-to-expatriate-as-required-by-section-6039g; Naturalization Fact Sheet, U.S. Citizenship and Immigration Services, https://www.uscis.gov/news/fact-sheets/naturalization-fact-sheet.

[6] U.S. Department of State, https://travel.state.gov/content/dam/travel/CA_By_the_Numbers.pdf.

[7] See *Crawford v. United States Department of the Treasury*, Case No. 3:15-CV-00250 (USDC S.D. Ohio), Entry and Order Denying Plaintiffs' Motion for Leave to File an Amended Verified Complain (DOC. 32); Granting Defendants' Motion to Dismiss (DOC. 26) Plaintiffs' Complaint (DOC. 1); and Terminating Case (4/25/2016), http://www.taxcontroversy360.com/files/2016/04/Case.pdf.

Committee on Oversight and Government Reform
Witness Disclosure Requirement — "Truth in Testimony"

Pursuant to House Rule XI, clause 2(g)(5) and Committee Rule 16(a), non-governmental witnesses are required to provide the Committee with the information requested below in advance of testifying before the Committee. You may attach additional sheets if you need more space.

Name: Elise Bean

1. Please list any entity you are testifying on behalf of and briefly describe your relationship with these entities.

Name of Entity	Your relationship with the entity
None	

2. Please list any federal grants or contracts (including subgrants or subcontracts) you or the entity or entities listed above have received since January 1, 2015, that are related to the subject of the hearing.

Recipient of the grant or contact (you or entity above)	Grant or Contract Name	Agency	Program	Source	Amount
None					

2. Please list any payments or contracts (including subcontracts) you or the entity or entities listed above have received since January 1, 2015 from a foreign government, that are related to the subject of the hearing.

Recipient of the grant or contact (you or entity above)	Grant or Contract Name	Agency	Program	Source	Amount
None					

I certify that the information above and attached is true and correct to the best of my knowledge.

Signature ______________________ Date: 4/24/2017

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Elise J. Bean

From 1985 to 2014, Elise Bean worked for U.S. Senator Carl Levin (D-Mich.), including 15 years at the U.S. Senate Permanent Subcommittee on Investigations (PSI). Appointed his PSI staff director and chief counsel in 2003, Ms. Bean handled investigations, hearings, and legislation on such matters as money laundering, corporate misconduct, corruption, and tax abuse. In 2014, after Senator Levin retired and the Levin Center at Wayne Law was established in his honor, Ms. Bean joined the Center to work on strengthening legislative capabilities at the federal, state, local, and international levels to conduct investigations and oversight.

In 2016 and 2015, Ms. Bean was included in the Global Tax 50, a list compiled by the International Tax Review of the year's top 50 individuals and organizations influencing tax policy and practice. In 2013 and 2011, the Washingtonian magazine named her one of Washington's 100 most powerful women. In 2010, the National Law Journal selected her as one of Washington's most influential women lawyers.

Ms. Bean graduated Phi Beta Kappa from Wesleyan University and received a law degree from the University of Michigan. She clerked for the Chief Judge of the U.S. Claims Court, and worked for two years at the U.S. Department of Justice before working for Congress.