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Congress of the United States
House of Representatives
Washington, DC 20515-4708

October 10, 2012

The Honorable Douglas H. Shulman
Commissioner
Internal Revenue Service
1111 Constitution Avenue, NW
Washington, DC 20224

Dear Commissioner Shulman:

With the establishment of the Foreign Account Tax Compliance Act (FATCA) into law in 2010, your office now has even greater authority and even more expansive tools than ever before to ensure that US persons domestically and abroad are paying their requisite federal tax.

Whether or not we agree on the approach that FATCA prescribes - which now allows the IRS to enforce the disclosure of personal private information about US persons from foreign companies with no other connection to the USA under threat of penalties against those foreign companies - it is now clear that the implementation process of FATCA involves the IRS acting with an implied license to determine a new direction for global tax policy. This goes so far as the creation of recently announced treaty-like agreements between the IRS and the taxation authorities of a number of different countries. I believe Congress should be aware of this change, and its implications, as we look toward comprehensive tax reform in the next Congress.

As a member of the House Ways and Means Committee, I have watched closely the evolution of FATCA over the past months. I have talked with constituents, had discussions with international companies who are looking to comply with the new law, and had conversations with many who wonder both how successful these new policies will be in achieving their intended consequences and what the scale and nature of the inevitable unintended consequences may be.

I, along with many others, have concerns on FATCA's current and possible future impacts: in particular, that it might provide little or no additional net revenue for the US Government while both imposing potentially massive compliance costs and providing significant disincentives for foreign persons and institutions to do business with US persons and the US Government.

This is particularly true when looking at the new “Intergovernmental Agreements” (IGAs) being established between the IRS and its counterparts in other countries. Congress now must understand how the implications of these IGAs combined with FATCA could impact the following issues:

- **US debt instruments** – the potential negative impact on the ability of the US Government to sell Treasury bonds and other US Debt instruments, with foreign persons less likely to purchase US Debt instruments for fear of inappropriate (but difficult and expensive to challenge) withholding being imposed, or other potential negative tax consequences.
- **US persons living abroad** – the degree to which US persons, US companies and their foreign affiliates are increasingly unable to access normal financial services while living or working abroad, the disparate effect this may have on them in comparison with their compatriots at home, and the potential impact on US corporations’ ability to build export-led business caused by the potential difficulty in finding US persons prepared to accept the significant additional tax and personal financial burdens that a foreign posting to generate export sales may increasingly involve.
- **Foreign Investment in US-based companies and investment funds** – the degree to which foreign investors may choose simply to avoid US investment products constructed and sold by US firms, or which invest in US securities or in US-traded instruments, contracts or securities for fear of a potential tax withholding event caused by someone in the investment chain failing to comply with FATCA terms, or simply by disclosure requirements that occur in absence of any US tax liability.
- **Cost-benefit analysis** – how the IRS is looking at its implementation of FATCA and providing analysis on its impacts on US persons, US companies, and others. For example, whether the FATCA withholding protections afforded foreign financial institutions under the IGA’s might place U.S. financial institutions, including broker-dealers, at a competitive disadvantage with foreign customers. Of particular interest is the cost incurred by those companies from potential lost business due to the issues outlined above, and the cost incurred by those companies or people as they adjust their affairs to replace commercial or other financial relationships that are no longer viable because of FATCA. Also of interest is how the cost – benefit calculus relative to these new FATCA powers compares to an approach involving significantly greater rigor in making tax preparers and tax payers more aware of the current disclosure obligations that already exist, combined with greater enforcement in cases where it is clear that the taxpayer concerned was attempting to avoid the payment of tax owed.

As we look toward issues the Ways and Means Committee will be addressing in 2013, I would appreciate your prompt reply on these issues. In particular, I would be interested in any information you could provide to help me, and other members of the Committee, understand the degree to which you have analyzed these concerns.

Sincerely,

A handwritten signature in blue ink that reads "D. Reichert". The signature is fluid and cursive, with a large initial "D" and a stylized "Reichert".

Dave Reichert
Member of Congress

CC: The Honorable Timothy Geithner, Secretary, United States Department of the Treasury