

Congress of the United States
Washington, DC 20515

April 3, 2017

The Honorable Steven Mnuchin
United States Treasury Secretary
U.S. Department of the Treasury
1500 Pennsylvania Avenue, N.W.
Washington, D.C. 20220

The Honorable Mick Mulvaney
Director
The White House Office of Management and Budget
715 17th Street, NW
Washington, D.C.

Dear Secretary Mnuchin:
Dear Director Mulvaney:

This is in reference to the Foreign Account Tax Compliance Act, or FATCA [26 U.S. Code § 1471-1474; 26 USC § 6038D], a massive, wasteful regulatory mandate that has failed in its ostensible purpose of recovering tax revenues hidden offshore.

During the last Congress we introduced bills to repeal FATCA (S. 663 and H.R. 5935), which Director Mulvaney cosponsored. We plan to reintroduce the same legislation in the 115th Congress, and efforts are underway to include it in any tax reform legislation.

In addition to these legislative efforts, we wish to bring to your attention steps that can be taken by the Trump Administration with respect to FATCA. These steps mainly concern so-called “intergovernmental agreements” (IGAs)¹ used by the Obama administration to implement FATCA. This was done largely because FATCA, on top of its other defects, failed to take into account other countries’ privacy laws that would preclude their financial institutions’ reporting private personal data to the Internal Revenue Service. The IGAs oblige other countries – under threat of substantial financial sanctions – to enact domestic legislation abrogating their privacy laws and mandating delivery of the data demanded. In addition, many of the IGAs commit the U.S. to “equivalent”² levels of data exchange from domestic American financial institutions, a costly endeavor for which Congress rightly has refused statutory authority.

While the IGAs read like and have the effect of treaties, they are not treaties. The foreign “partner”³ jurisdiction is required to ratify them according to its “necessary internal procedures for entry into force,”⁴ but no legislative action is taken by the U.S. In particular, the IGAs are not

¹ “Foreign Account Tax Compliance Act (FATCA),” U.S. Department of the Treasury list of IGAs.

² Found in “Model 1” agreements, here in the IGA with the United Kingdom, Article 6, section 1, “Reciprocity.”

³ Article I “Definitions,” Subsection (1)(e), here in the IGA with the United Kingdom: “The term ‘Partner Jurisdiction’ means a jurisdiction that has in effect an agreement with the United States to facilitate the implementation of FATCA. The IRS shall publish a list identifying all Partner Jurisdictions.”

⁴ Article 10 “Term of Agreement,” Section (1), here in IGA with the Republic of Trinidad and Tobago.

submitted to the Senate as treaties for advice and consent to their ratification. It should be noted that neither FATCA nor any other statute authorizes the IGAs. Repeated Congressional inquiries to former Secretaries Timothy Geithner and Jack Lew as to the IGAs' legality has only elicited a rote list of section citations, none of them conferring the necessary authority.

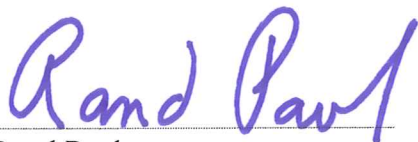
In short, the IGAs are a characteristic example of the previous administration's inclination for abusing its Executive power. For that reason, these same abuses are amenable to Executive action to mitigate the ongoing damage caused by FATCA, pending its repeal.

Accordingly, we ask you to consider taking the following steps within the authority of the Secretary of the Treasury and the Director of the Office of Management and Budget:

- Issue a Statement of Administration Policy to the effect that the Trump administration is committed to the repeal of FATCA, welcomes inclusion of repeal provisions in any tax reform bill, and is reviewing administrative steps to limit FATCA's damaging effects, pending its repeal.
- Instruct the Treasury Department's Office of International Affairs and other elements of the Department that may be involved to cease all efforts to negotiate, sign, and implement IGAs. Continued signings of new IGAs – most recently with Ukraine in February 2017 – send a false signal that the new administration is committed to this destructive law as matter of policy.
- Announce that the IGAs are under legal review of their authority and that if they are found to be legally infirm – as we believe they will be – they may be declared invalid *ab initio* with immediate effect or terminated upon expiry of the one-year's notice specified.
- Under the broad authority FATCA grants the Treasury Secretary, deem all impacted foreign institutions compliant on a temporary basis pending outcome of the legal review of the IGAs. The IRS should also be instructed to suspend enforcement of provisions impacting individual taxpayers; and, on an urgent basis to help decrease the spiking rate in U.S. citizenship renunciations, suspend imposition of penalties for FATCA filing errors by individuals.

Thank you both for your consideration and we look forward to working with your offices in the 115th Congress.

Sincerely,



Rand Paul
United States Senate



Mark Meadows
U.S. House of Representatives