



The Hon. Douglas H Shulman
Commissioner
CC:PA:LPD:PR (NOT-121556-10)
Room 5203
Internal Revenue Service
PO Box 7604, Ben Franklin Station
Washington DC 20044
USA

March 10, 2011

Dear Mr. Shulman,

The American Chamber of Commerce in the Netherlands ("AmCham") is a non-profit, non-governmental, non-political, voluntary organization of companies and individuals who invest in and trade between the U.S. and the Netherlands. AmCham seeks to further the development of commerce between the U.S. and the Netherlands by encouraging and facilitating the transaction of business between both countries and promoting the interests of its members in matters of trade and investment.

AmCham welcomes the opportunity to comment on the implementation of the Foreign Account Tax Compliance Act ("FATCA" or "the Act") and the new Chapter 4 (Sections 1471 – 1474) to Subtitle A of the Internal Revenue Code ("the Code"), which impose new information reporting and withholding requirements for foreign financial institutions ("FFI"s).

In Internal Revenue Bulletin 2010-37, Notice 2010-60, the Internal Revenue Service ("IRS") requested commentary on issues to be addressed in future guidance issued by the IRS and Treasury.

The public response to Notice 2010-60 has been significant, with submissions from persons representing a wide variety of FFIs, including pension funds, insurance companies, hedge funds, bond traders, and trust vehicles.

A common theme throughout the commentary is a call for the IRS and Treasury to strike a balance between achieving the legislation's policy objective to detect, deter and discourage offshore tax evasion while considering the administrative burden of implementing FATCA.

FATCA provides regulatory authority to reduce or eliminate the administrative implications of complying with the Act by any of the following methods:

1. By excluding a foreign entity from the definition of a financial institution, rendering the entity subject to the documentation and reporting requirements applicable to a non-financial foreign entity;
2. By treating the FFI as "deemed compliant" with respect to the Act if the institution does not maintain U.S. accounts or the Secretary otherwise determines that application of the

American Chamber of Commerce in the Netherlands

WTC D-Tower, 6th floor Schiphol Boulevard 171 1118 BG Schiphol The Netherlands
t +31 (0)20 795 18 40 f +31 (0)20 795 18 50 e office@amcham.nl i www.amcham.nl
Chamber of Commerce nr: 40409396 Bank Account nr: ABN AMRO 43.00.72.473
VAT nr: NL 002870289B01 IBAN: NL 32 ABNA 04300.724.73 BIC: ABNANL2A

FATCA regime is not necessary to carry out FATCA's purposes regarding the institution;
or

3. By identifying the beneficial owner of a payment as a member of a class of persons posing a low risk of tax evasion, thereby revoking under section 1471(f) the application of withholding under section 1471(a) on the payment.

If the IRS and Treasury identify institutions or beneficial owners to exclude from full compliance with the reporting and other requirements of the Act, some strides will be made toward reducing FATCA's overall administrative demand without compromising the law's purpose.

AmCham suggests the following factors that, if present, justify an exemption from, or at least a reduced application of, FATCA with respect to a potential FFI:

1. Where a tax treaty between the U.S. and the relevant other country establishes specific provisions for certain entities or investments that would sufficiently satisfy the conditions for low-risk of tax evasion (e.g., a Dutch exempt pension trust as defined in Article 35 of the Netherlands – U.S. tax treaty).
2. Where it is compulsory under a foreign jurisdiction's tax law to report profits resulting from an investment in the instruments offered by an FFI with the foreign jurisdiction's tax authorities and where there is an appropriate exchange of information between the U.S. and the foreign authorities.
3. Where the products offered by an FFI bear no investment element or where there is no logical reason why a U.S. person would invest with the FFI as a means to evade U.S. tax (e.g. a foreign insurance company that only sells pure risk policies - i.e. policies that pay out only on death or disability).
4. Where participation in an FFI (e.g. a foreign retirement plan) mandates registering with the tax authorities of a foreign host jurisdiction, provided that the conditions and enforcement of such registration is deemed by the IRS to be compliant with achieving the Act's aims.
5. Where it can be sufficiently established that U.S. investors in an investment vehicle or an instrument represent a miniscule percentage of the total investors and therefore the costs to comply with FATCA are disproportionate to the expected benefit.

Additionally, from a general perspective, the Treasury and IRS should consider whether FFIs established in countries that have comprehensive tax treaties with the U.S., including an exchange of information clause, such as the Netherlands, should have streamlined FATCA requirements to reduce administrative burden both on the part of the FFI as well as the IRS.

Critics of the Act suggest that, in response to the costs associated with FATCA compliance, some foreign financial institutions will be forced to restrict investment in U.S. instruments or exit the U.S. market completely. By providing relief to FFIs that clearly pose little or no threat of facilitating offshore tax evasion, the IRS and Treasury will prevent many institutions from facing this decision.

Many Dutch AmCham members are significant investors in the U.S. Well over \$250 billion of investment has flowed from the Netherlands to the U.S., making the Netherlands the fourth largest foreign investor in the U.S. The Netherlands has robust banking, finance and insurance industries and FATCA's implications are causing a considerable stir in these spheres. AmCham supports efforts against tax evasion. However, as an organization that represents the interests of companies and individuals that invest in, and trade between, the U.S. and the Netherlands, priority must be placed on issuing guidance that will not impair the free movement of capital between the two countries. AmCham believes in the importance of two-way trade and investment between the

Netherlands and the U.S. as an essential basis for creating mutual economic welfare, and with this aim we offer our commentary.

We welcome the opportunity to work with you and hope that these comments will be of assistance in implementing FATCA in a manner that is cognizant of the Act's policy objectives and the needs and concerns of the financial industry.

Yours sincerely,

A handwritten signature in blue ink that reads "R. Oberman". The signature is written in a cursive style with a large, prominent initial "R".

Raoul Oberman
President
American Chamber of Commerce in the Netherlands