Terry Ralph M

From: Yates Willard W [Willard.W.Yates@IRSCOUNSEL.TREAS.GOV]
Sent: Tuesday, April 19, 2011 11:48 AM
To: Terry Ralph M
Cc: Yates Willard W
Subject: Meeting with ACA

Categories: NUUU

On April 11, 2011, a meeting was held to provide representatives of the American Citizens (ACA) Abroad organization an opportunity to express their concerns regarding FBAR reporting under USC Title 31 and the Foreign Asset Tax Compliance Act (FATCA). Participants in the meeting were as follows:

Treasury/IRS CC	ACA
Michael Plowgian (OTP)	Marylouise Serrato (ACA Executive Director)
Jesse Eggert (OTP)	Eric Way (US Tax Liaison – Overseas Amercans Week)
Craig Gilbert (CC:INTL)	John Fredenberger (Association of Americans Resident Overseas)
Joseph Henderson (CC:INTL:Br1)	Jackie Bugnion (Director – ACA)
Willard Yates (CC:INTL:Br1)	

American Citizens Abroad (ACA) is a non-profit, non-partisan all-volunteer organization that represents the interests of Americans living and working outside the U.S. to the Executive Branch of the U.S. Government, the U.S. Congress, and the U.S. Federal Judiciary to ensure that Americans overseas are treated with equality and fairness. ACA keeps Americans overseas informed and supports their role as informal representatives of the United States.

Foreign Financial Asset Reporting required by Titles 26 (FATCA) and Title 31 (FBAR)

ACA's primary concerns focused on taxpayer burden that they assert is caused by FBAR reporting and will be caused by the new financial asset reporting under FATCA. They discussed the burden of these filing requirements on Americans living offshore, which had already been reported by them in public comment letters submitted to FinCEN (re FBAR reporting) and the IRS (re FATCA). For example, they repeated their concerns that the new Form 8938 will take much more than the one hour and 5 minutes indicated to properly complete and file. They noted that the values of foreign financial assets are often not easily obtained, that some financial assets, such as foreign pensions and life insurance policies, cannot be valued at all, and that by the very nature of FATCA, foreign financial assets are defined in foreign currencies and, therefore, should be valued as such for purposes of Form 8938 reporting. ACA also noted that the U.S. tax code generally imposes taxes on income, not assets, and that the information required to be reported on Form 8938 is not necessary for the proper functions of the Internal Revenue Service.

FATCA Chapter 4 (section 1471-1474)

Chapter 4 of FATCA expands the information reporting requirements imposed on foreign financial institutions. The Chapter 4 provisions of FATCA impose a 30 percent withholding tax on U.S. source payments of fixed, determinable, annual, periodical income. Otherwise available treaty benefits are denied with respect to “withholdable payments” made to a foreign financial institution (an “FFI”), unless the FFI enters into an agreement with the IRS to comply with various information reporting and withholding requirements with respect to “U.S. accounts.” ACA asserted that these new requirements will have a chilling effect on foreign investment in the United States. ACA also asserted that many foreign banks will no longer provide account services to U.S. persons and, in some cases, have closed existing bank accounts of U.S. persons.

IRS response

ACA’s concerns were duly noted. Messrs. Yates, Henderson and Gilbert advised ACA that in drafting regulations under section 6038D re foreign financial asset reporting, they were taking into account the many public comments re filing burden that have been received in response to a draft copy of Form 8938, Statement of Specified Foreign Financial Assets, made available to the public. They also noted that also they had worked on the FBAR working group that drafted the regulations recently issued by FinCEN and the FBAR concerns raised by ACA were better addressed to FinCEN or other IRS Chief Counsel functions.

Foreign Currency Conversion Issues

ACA also raised foreign currency conversion issues to Messrs. Plowgian and Eggert. The IRS personnel were not involved this discussion.

The meeting ended after approximately one and a half hours.