

**Elise J. Bean**  
**Representative of Sen. Carl Levin**  
**Staff Director and Chief Counsel, Senate Permanent Subcommittee on**  
**Investigations**

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Interest Paid to Nonresident Aliens*

ELISE J. BEAN: Thank you very much. I'm Elise Bean, the staff director and chief counsel for the Permanent Subcommittee on Investigations in the U.S. Senate. I'm here on behalf of Senator Carl Levin, who's the chairman of the subcommittee, and who strongly supports the proposed reg.

He supports it not just to curb bank secrecy, which fuels tax evasion, terrorism, money laundering, financial fraud and other crimes, but because he wants to strengthen the tools that are available to the IRS to go after U.S. tax evasion.

Tax evasion in the United States today routinely crosses international boundaries. PSI, for the last decade, has documented how that happens. In 2003, we looked at how accounting firms, including KPMG, helped U.S. citizens use various tax shelters to avoid paying taxes, including OPUS, which went across international boundaries. In 2006, we looked at the Wyllys...Sam and Charles Wily...who used a network of 58 offshore corporations and trusts to hide their money offshore.

We also looked at the POINT strategy, which was a strategy in the Isle of Man where they set up some phony shell companies that then generated phony losses so that people could shelter their income.

In 2008, we looked at stock dividends and how offshore hedge funds were using derivatives and stock loans and offshore transactions to avoid paying taxes on U.S. stock dividends.

In 2008 and 2009, we looked at some tax haven banks, and how they were helping people...United States citizens... avoid their taxes. In particular, we looked at UBS, which its documents showed that 52,000 Americans had accounts in Switzerland that had not been declared to the U.S. That just isn't fair.

What the subcommittee has calculated is that we're losing \$100 billion each year to offshore tax abuses. That's why the IRS has elevated international tax matters as one of their priorities. In addition, Congress last year passed the Foreign Account Tax Compliance Act — FATCA — to help force foreign banks to identify accounts that are held by U.S. taxpayers.

But FATCA is still years away from being implemented, and its effectiveness is unknown. The fact is that, for years, upcoming... to combat offshore tax evasion, the United States and the IRS is going to have to get cooperation from foreign tax authorities. To get that cooperation, we need to give the cooperation as well.

There's an international consensus that bank secrecy should not be used to protect tax evasion. The United States has been a leader in that international effort because it's part of their effort to get U.S. taxpayers...to get information about them so that we can stop them from cheating on their taxes. If we're going to tell the rest of the world you shouldn't use bank secrecy to protect tax evasion, we need to be consistent at home. And so we have to be able to provide information to other countries to get their cooperation.

We've heard today some very sincere concerns that if we put the proposed reg into place, that there are going to be problems. There will be capital outflow problems. There will be misuse of the information. And I'd like to address those, because those are matters of concern to Senator Levin as well. And I want to explain why he thinks that those concerns are misplaced.

First of all, on capital outflows: As mentioned earlier, there is \$10 trillion invested in the United States right now by foreign investors. Federal Reserve data shows that \$4 trillion of those deposits are in bank accounts here. But most of that money, nearly \$3 trillion, are in accounts held by foreign governments, official institutions, international organizations and foreign banks. That money is completely unaffected by the proposed reg and won't be going anywhere.

The remaining trillion dollars...a lot of that is from businesses and legal entities doing business in the United States. That money is also unaffected by the proposed reg.

The United States is a safe haven for individuals. That's why they put their money here. And most of those individuals heard from the ABA. They believe they're law-abiding. The Florida commissioner said he believes they're law-abiding. These are long-term deposits. These are people who are not engaged in tax evasion.

If that's true, why would they suddenly pull their money? We have specific examples showing that that's not what happens. When we have this agreement with Canada, where we have the automatic data exchange that this is modeled after, Canadians did not pull their money from the United States. They have plenty of money here in U.S. bank accounts.

When the EU instituted its savings directive, which is very similar to this program, people predicted terrible outflows of money, and everybody would pull their money from the European banks. Didn't happen.

In the United States itself, we have plenty of tax evasion. Plenty of tax evasion. And yet everybody gets a 1099 filed on their bank account. Our tax evaders don't stop using banks. They need banks. They need it for checking accounts. They need it for all of the reasons. They want to have their money invested. They want their money protected and safe. None of that is going to change.

But let's suppose for a moment that some people say, well, some people from some countries will be so frightened they're going to pull their money from the United States

and put it somewhere else. Well, they're not going to put it in the EU because there's plenty of automatic information exchange there.

Let's suppose they put it in the Cayman Islands, or some other country. If they want to keep it in U.S. dollars, which many do because they want the safety of the U.S. dollar... they want to make U.S. dollar investments...it's going to end up in a correspondent account right back in United States banks.

When the Cayman Islands says they have \$8 trillion of investment there, that money is not actually sitting in the Cayman Islands. No, they have accounts at U.S. banks. All that money is in U.S. banks. I know it's kind of complicated, but if you really want to think about this in a sophisticated way, if people are going to keep their money in U.S. dollars, even if it's in a foreign bank, that foreign bank puts it right back in a U.S. account because to have U.S. dollars, it has to be in a U.S. account. So we're not going to see that capital outflow.

I'd also like to talk about the concern about the misuse of tax information. Again, we've heard very sincere concerns about that. Well, that is not a new problem. Whenever the IRS shares information with another country, they have to face that problem. They have decades of experience with that problem because right now the IRS, on a case-by-case basis, answers requests from information from all kinds of governments.

We have never heard of a case, ever, where a dissident or a human rights person has had their tax information turned over to a government that is oppressing them. It's simply never happened. Why? Because we have very careful procedures and policies to prevent that from happening. You can only exchange information when there's a tax information agreement in writing. You can only give the information to a tax authority.

The United States has all the authority it needs to refuse to provide the information if they feel that it will be misused. The United States has followed that policy in the past. There is no reason to believe that they would turn over decades of experience and start using these tax agreements in ways that don't make sense.

One proof of that is in the FACT coalition. There are a lot of human rights organizations that are very concerned about human rights. They support this proposed reg. So they don't think it's going to be a human rights issue.

I'd also like to deal with one issue that hasn't come up a lot, and that is something that... one way in which the rule needs to be strengthened. Right now, it only applies to NRA individuals. We think it also needs to be made clear about what happens if one of those NRA individuals reopens up an account in the name of a shell entity, shell corporation, shell trust. Usually a shell corporation is the problem.

The IRS has a reg right now that says, if a bank opens up an account in the name of a shell entity, it doesn't have to look beyond that and can treat it as a foreign depositor. We think it is absolutely critical that you make clear...if a bank knows that a foreign

individual is behind that shell entity, that they have to be covered by this rule.

One of our investigations shows why that's so important. Sam and Charles Wylly set up this offshore network ... 58 corporations and trusts. They opened multiple U.S. bank accounts in the names of these shell entities. For example, they had a company called Devotion. They had another one called Elegance. Well, when a bank gets an account like that, they are required right now, under anti-money-laundering rules, to look behind the account.

They all knew there were Wyllys behind the account. They knew they were U.S. citizens, not criminals. They were legitimate people. Legitimate money. Although it was all involved in tax evasion, in Senator Levin and in my opinion. But anyway, they knew the Wyllys were behind those accounts. And yet, under IRS regs, they were allowed to treat those accounts as owned by a foreign corporation.

If we don't address that problem and make it clear that if a bank knows... because it has to know because of their anti-money-laundering obligations. If they know a foreign individual is behind the account, then they should treat that as an NRA individual account and have to report it under the law. Otherwise, we create a new incentive for everybody to just reopen their accounts in shell companies.

That's exactly one of the problems that has happened in the EU Savings Directive, where they didn't address this problem. And so they are missing a lot of the money there and a lot of the reporting there because everybody just opens up the accounts in the names of shell companies.

One last issue I want to address is the burden issue. The fact is that banks now are required to file 1099s for all of their U.S. accountholders and 1042-S forms for all of their Canadian accountholders. All the systems are in place. They don't have to reinvent the wheel. All they have to do is apply those systems to all of their accountholders.

And if they say it's burdensome. Well, this is a cost of doing business. This is ...bank secrecy is not supposed to be used to further tax evasion or all the other crimes that can happen with bank accounts whose owners are hidden.

So I want to thank you very much for proposing this reg. I think it will make a tremendous difference in terms of U.S. tax evasion and tackling the whole problem of offshore tax abuse. Thank you very much.