Stricter FATCA enforcement, increased IRS resources are key to addressing offshore tax evasion, Whitehouse says

Senate Budget Committee Chairman Sheldon Whitehouse, D-R.I., identified lax enforcement of the Foreign Account Tax Compliance Act (FATCA)—a 2010 law that generally requires foreign financial institutions to report to the Internal Revenue Service information about accounts held by US persons—as a key contributor to offshore tax evasion.

Whitehouse: Enforcement lapses linked to IRS budget cuts

In his opening statement at an April 11 Budget Committee hearing on offshore tax evasion by large corporations and wealthy individuals, Whitehouse, who also sits on the taxwriting Senate Finance Committee, commented that lax enforcement of FATCA stems in part from decades of cuts to the IRS's operating budget under Republican-controlled Congresses.

"[FATCA] made foreign banks report offshore accounts held by Americans to the IRS," Whitehouse said. "But Republicans hamstrung the IRS, and in 2018 the Treasury Inspector General for Tax Administration found that 'the IRS had taken virtually no compliance actions to meaningfully enforce FATCA.'"

"Most Americans had their incomes reported to the IRS by their employer; the super-rich with offshore accounts were on the honor system," Whitehouse continued. "Guess how that worked out."

Whitehouse went on to argue that FATCA enforcement—and other efforts to close the "tax gap," which is the difference between taxes owed and taxes paid and collected on a timely basis—would be bolstered by congressional efforts to preserve and expand the additional resources given to the IRS as part of the Democrat-drafted Inflation Reduction Act of 2022 (P.L. 117-169). That law provided roughly $80 billion in mandatory funding to the IRS over the next decade—with more than half dedicated to tax enforcement—to complement the agency's annual discretionary appropriations. But more than $20 billion of that mandatory allocation has since been rescinded as part of bipartisan spending deals including, most recently, the Further Consolidated Appropriations Act, 2024, which was signed into law last month. (For prior coverage, see *Tax News & Views*, Vol. 25, No. 13, March 22, 2024.)
URL: https://www.congress.gov/117/plaws/publ169/PLAW-117publ169.pdf
URL: https://dhub.deloitte.com/Newsletters/Tax/2024/TNV/240322_2.html

"[W]e must preserve and extend the enforcement funding enacted by the Inflation Reduction Act," Whitehouse argued. "We're already seeing the enforcement results: since last fall, the IRS has recovered nearly $500 million from millionaires who didn't even bother to file tax returns."

Grassley argues for 'targeted' approaches, touts his whistleblower law

The Budget Committee's ranking Republican, Sen. Charles Grassley of Iowa, who, like Whitehouse, also sits on the Finance Committee, agreed that the annual tax gap—which approached $700 billion in 2021 alone,

according to recent IRS estimates—needs to be narrowed, calling it the “great white whale of deficit reduction.”
URL: https://www.irs.gov/newsroom/irs-updates-tax-gap-projections-for-2020-2021-projected-annual-gap-rises-to-688-billion

But Grassley also argued that Congress should show restraint in the laws that it devises to combat tax evasion.

“Whether it’s increased financial reporting or stepped-up enforcement efforts, anti-evasion measures must be balanced against taxpayer rights and the costs such measures impose on innocent taxpayers,” Grassley said.

He specifically called out the FATCA law, suggesting that its costs have outweighed its benefits.

“. . . [T]he IRS hasn’t been able to quantify any revenue raised under the law,” Grassley argued. “That’s despite spending $574 million on implementation and enforcement campaigns.”

“Due to the law, many Americans living overseas have seen their bank accounts closed or have been unable to open an account,” he continued. “For many foreign financial institutions, the business of Americans living abroad simply isn’t worth the additional burdens and cost of complying with the law.”

Grassley went on to suggest that the IRS’s Whistleblower Office, which was established in 2006 pursuant to legislation he championed, is a better and less invasive way of rooting out tax evasion and fraud.

“Whether it’s offshore banking schemes, a tangled web of shell companies, or illicit transactions by shady multinational companies, a single whistleblower can bring the whole house of cards crashing down,” he said. “And at less cost and with fewer burdens on taxpayers.”

Witnesses discuss transfer pricing and the ‘check-the-box’ election

The topics of aggressive transfer pricing and the possible repeal of Treasury’s so-called “check-the-box” election—which, generally speaking, allows certain eligible foreign entities to elect to be “disregarded” for US tax purposes—also came up for discussion by a pair of witnesses called to testify by the panel’s Democrats.

Stephen Curtis, a longtime transfer pricing practitioner and founder of Cross Border Analytics, Inc., argued that hundreds of billions of dollars in US tax revenue is going uncollected due to the IRS’s insufficient enforcement of the “arms-length” standard—the hallmark of transfer price accounting which requires intercompany transactions to be valued as if they were conducted with a third party.

“[A] US multinational company with most of its people and fixed assets in the US seeking to reduce its taxes will often move its more fungible assets . . . offshore . . . ,” Curtis noted in his written testimony.
URL: https://www.budget.senate.gov/imo/media/doc/mr_stephen_lcurtistestimonysenatebudgetcommittee.pdf

“These fungible assets, risks, and rights are often both very valuable and very difficult to value, presenting large profit shifting opportunities for taxpayers and complex and difficult enforcement issues for the IRS,” he wrote.

For her part, Zorka Milin, policy director for the Financial Accountability and Corporate Transparency Coalition, argued in favor of enhanced transfer pricing enforcement, including by requiring country-by-country reporting of assets, employees, and income to the IRS, as well as requiring public disclosure of that information. (Currently, parent entities of certain large US multinational enterprises are required to file country-by-country reports with the IRS, but those forms are not made available to investors and other stakeholders).

“Investor scrutiny would help to deter some of the most aggressive and illegal transfer pricing practices,” Milin said in her written testimony.
URL: https://www.budget.senate.gov/imo/media/doc/mszorkamilintestimonysenatebudgetcommittee.pdf

Milin also argued that the Treasury rules around check-the-box elections should be repealed, a policy that has been proposed by a number of Democrats including Budget Committee Chairman Whitehouse and House Ways and Means Committee member Lloyd Doggett, D-Texas, in their Stop Tax Haven Abuse Act (S. 725) which was last introduced in March of 2021.
URL: https://www.congress.gov/117/bills/s725/BILLS-117s725is.pdf

“By pulling off the magic trick of so-called ‘hybrid’ entities, corporations can tell foreign countries that profits of certain offshore subsidiaries are earned in a tax haven, while at the same time telling the United States that these tax-haven subsidiaries don’t exist,” Milan said.

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