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Tax Notes: Fighting FATCA Tax Fraud Through Cross-Agency Enforcement

Patrick Martin and Daniel Silva analyze fraud loopholes in the Foreign Account Tax Compliance Act (FATCA), propose a new government framework to address international tax fraud

October 25, 2023

In a recent Tax Notes' special report, Patrick Martin, Chamberlain Hrdlicka's international tax shareholder, and Daniel Silva, white-collar and internal investigations shareholder at Buchalter APC and a former assistant U.S. attorney in San Diego, propose addressing a major international tax fraud issue exploited through U.S. financial institutions. The proposal would form a new government framework to address a specific type of international tax fraud (typically promoted by enablers – lawyers, accountants, financial advisors, trust officers, etc.) through a targeted approach involving different parts of the U.S. government working to stop these financial crimes, specifically including international tax evasion.

From the fallout of the Pandora Papers to the proposed ENABLERS Act, and as the United States increasingly uses economic sanctions as a tool to combat threats to U.S. interests, the political momentum is steadily building in favor of greater enforcement. Martin and Silva believe that the Justice Department and Treasury can deploy a task force model that will leverage most effective resources to protect one of United States' most critical national assets — the U.S. financial system. Defrauding foreign governments utilizing the U.S. financial system.

In their report, Martin and Silva discuss the FATCA fraud loophole, including the findings of the 2022 FATCA Loophole Report and describe the mechanism behind the abuses of the U.S. financial system. Existing law by SCOTUS in *Pasquantino* is key. The authors also discuss relevant new laws, including the Anti-Money Laundering Act of 2020 (AMLA) and Corporate Transparency Act, which will largely go into effect on January 1, 2024 and will require the reporting of beneficial ownership information. Finally, Martin and Silva propose a formation of a task force engaged in "Stopping Tax Evasion and Eliminating Loopholes" — STEEL — largely modeled on the financial crimes task forces that the Treasury Executive Office of Asset Forfeiture and the Treasury Department initiated in the late 2000s and early 2010s. However, in contrast to these financial crimes task forces, whose policies and priorities are often established by the law enforcement agencies, STEEL would be initiated and directed by the local Offices of the United States Attorneys USAO.

To read the full article, go to

<https://www.taxnotes.com/tax-notes-international/fatca/fighting-fatca-tax-fraud-through-cross-age>