**FATCA Historical (R)Evolution: Legislative History Reveals That FATCA Had Little To Do With Collecting Tax Revenue From U.S. Persons Evading Tax Through Offshore Bank Accounts (Part I)**

*Prior to the enactment of FATCA, Congress and the Executive were in possession of concrete-evidence revealing FATCA would fail to collect any meaningful amount of tax-revenue from U.S. persons evading tax through offshore financial center holdings. Congress should have halted enactment of HIRE – if in fact, FATCAs purpose was to collect tax-revenue from offshore tax evasion by U.S. persons.*

The United States Congress used estimates from the Joint Committee on Taxation (JCT) as the foundation for supporting the Foreign Account Tax Compliance Act (FATCA), contained in the Hiring Incentives to Restore Employment Act (HIRE).

HIRE was a tax expenditure designed to encourage U.S. small business to hire new employees. HIRE included two tax expenditures of note: a payroll tax exemption to employers and a one-thousand dollar tax credit for employers hiring employees between February of 2010 and January of 2011.[[1]](#footnote-1) FATCA was included in HIRE because the *tax revenue* collected from FATCA was supposed to offset the tax expenditures authorized by HIRE.[[2]](#footnote-2) The *tax revenue* FATCA was said to be targeting was from U.S. persons with foreign bank accounts who were evading tax.

In July of 2008, and around the time of the UBS scandal and the Global Financial Crisis the U.S. Senate Permanent Subcommittee on Investigations held a hearing and issued a report entitled “Tax Haven Banks and U.S. Tax Compliance”.[[3]](#footnote-3) The underlying justification for FATCA as a substantial revenue raiser rested on a single statement found in a footnote in the 2008 hearing report: “[e]ach year, the United States loses an estimated $100B in tax revenue due to offshore tax abuses.”[[4]](#footnote-4) In a 2009 follow-up report, the Ways and Means’ Subcommittee on Select Revenue Measures held a hearing entitled: Banking Secrecy Practices and Wealthy Americans. During this hearing, the Senate increased the U.S. tax revenue loss-estimate by 50 percent stating: “Contributing to the annual tax gap are offshore tax schemes responsible for *lost tax revenues totaling an estimated $150B each year*.”[[5]](#footnote-5) The estimates entered into the record during these hearings measured the offshore tax gap, or the amount of *tax revenue[[6]](#footnote-6)* that would be collected if offshore tax evasion by U.S. persons holding foreign bank accounts was ended. One month, before HIRE was signed into law by President Obama, new evidence revealed the offshore tax gap was nowhere near as large as previously thought.

On February 23, 2010, the JCT released a report estimating that FATCA would instead, only collect $8.7B over ten-years or $870M per year; a huge difference from last-year’s estimate of $150B per year.[[7]](#footnote-7) Assuming this latest estimate was accurate, the 2008 and 2009 estimates were drastically overinflated – to the tune of over $149B annually! At that point, a reasonable person puts on the breaks and asks questions. At the very least Congress should have engaged in some due diligence to determine whythere was such a huge discrepancy. After all, there was plenty of time remaining on the legislative clock,[[8]](#footnote-8) and the report invalidated the policy justification for FATCA. Instead, Congress and President Obama steamrolled FATCA into law in less-than a month after the JCT estimate – almost like, they wanted to hurry to get it in, before someone caught wind that the FATCA had nothing to do with closing the fictitious $150B offshore tax gap, because there was very little tax revenue outstanding.

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1. The Hiring Incentives to Restore Employment (HIRE) Act of 2010 ([Pub.L. 111–147](http://legislink.org/us/pl-111-147), 124 [Stat.](https://en.wikipedia.org/wiki/United_States_Statutes_at_Large) [71](http://legislink.org/us/stat-124-71), enacted March 18, 2010, [H.R. 2847](https://www.congress.gov/bill/111th-congress/house-bill/2847)). [↑](#footnote-ref-1)
2. HIRE was originally a $150B dollar incentive package, but the package was reduced to $15B before enactment. It would be interesting to take a look at the timing of the reduction in the HIRE economic incentive package (from $150B to $15B), and compare it with the JCT’s February 23rd estimate, to determine if the reduction in the spending package was a result of learning FATCA would not collect any meaningful amount of tax revenue from offshore accounts, because there was none to collect. [↑](#footnote-ref-2)
3. *Tax Haven Banks and U.S. Taxpayer Compliance,* Senate Permanent Subcomm. on Investigations, Comm. on Homeland Security and Governmental Affairs, 110th Cong. (2008). [↑](#footnote-ref-3)
4. Ibid. [↑](#footnote-ref-4)
5. *Banking Secrecy Practices and Wealthy Americans*, House Ways and Means Subcomm. on Select Revenue Measures, 111th Cong. (2009). Emphasis added. [↑](#footnote-ref-5)
6. In the U.S., we have a 1099 system, where banks are forced to report interest and dividends. Unless there is some income from the account, it follows that there can be no income tax due from that account. The way to determine whether there is income from an account is to require the accountholder’s financial institution to report *on the income* from the account. [↑](#footnote-ref-6)
7. The 2010 JCT report estimate of $8.7B in offshore tax evasion tax-revenue to be collected over ten-years or $870M per year (median average). It should be noted that the report breaks down the estimate by year. Therefore the median average is not the best number to use in every case. Individual calculations based on empirical data from a particular year proving the current validity of the report will incorporate the amounts listed on the report for each relevant year in question to preserve the integrity of the proposition for which the calculation was intended to support. [↑](#footnote-ref-7)
8. The House Ways & Means Committee held the Hearing on Banking Secrecy Practices and Wealthy American Taxpayers on March 31st, 2009. The House passed the original version of HIRE on June 18th, 2009. The JCTs estimate was released on February 23rd, 2010. HIRE passed the Senate the following day on February 24th, 2010 (with amendment). The House followed by adding an amendment on March 4th, 2010 (with amendment) which was approved by the Senate on March 17th, 2010. March 18th, 2010, President Obama signed HIRE into law, and thereby FATCA into law as well. Therefore, there was a full month from the time the JCT report was issued, and the day President Obama signed HIRE (containing FATCA) into law. [↑](#footnote-ref-8)