



Written by [Alex Newman](#) on March 19, 2014

## Obama Bypasses Congress to Foist “Imperialist” Tax Plot on World

As part of a fiendish effort [known as FATCA](#) supposedly aimed at extracting an extra billion or so dollars from U.S. taxpayers each year, the Obama administration is bypassing Congress to impose a far-reaching new tax regime on the world, and domestically on the United States. Experts and analysts say the scheme could [destabilize the U.S. financial system and potentially even spark another economic crisis](#) due partly to executive-branch mandates on American banks; yet the IRS and the U.S. Treasury are moving full-speed ahead in spite of major concerns raised by lawmakers and others over their authority to do so. Critics are referring to the whole plot as “fiscal imperialism.”



Among other schemes, the Foreign Account Tax Compliance Act, or FATCA for short, seeks to coerce financial institutions and governments all over the world into becoming de facto extensions of the IRS. It will also turn U.S. banks and the IRS into agents of foreign tax collectors if the administration gets its way. Passed by Democrats and signed by Obama in 2010 as part of an unrelated “jobs” bill, enforcement of the vast and unimaginably complex taxation scheme has been delayed several times. It is set to go into effect this summer, but experts and policymakers are warning of a broad array of potentially devastating consequences.

The most serious concerns expressed thus far include the potential for [massive damage to the U.S. economy; destabilization of American banks; an end to financial privacy and constitutional protections; the emergence of a truly global taxation regime under international institutions such as the OECD; potentially hundreds of billions in compliance costs according to some estimates; a growing wave of U.S. citizens forced to renounce their citizenship; and much more.](#) However, because foreign governments want an incentive to cooperate with the controversial FATCA regime — and [many have laws protecting privacy and human rights that must be violated to comply](#) — the Obama administration has a big problem, too.

“We see no principled basis on which to require that financial institutions based in other countries collect and provide us with information on U.S. taxpayers, if we take the position that our own institutions should be exempt from similar requirements,” explained Treasury Acting Assistant Secretary for Tax Policy Emily McMahon in a 2012 speech. “To the contrary, we believe that it will be critical to the success of our efforts to implement FATCA that we are able to reciprocate.”

The proposed “solution,” in other words, is for the Obama administration to provide foreign governments with the same information on foreign citizens that Washington, D.C., hopes to extract from



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other jurisdictions and institutions on “U.S. persons.” Then comes the next problem: The U.S. Treasury does not have the statutory or constitutional authority to do that, according to lawmakers, legal experts, and even the administration itself.

Still, it appears that the administration is going ahead with the plot anyway, creating new [IRS “regulations”](#) and [pseudo-treaties with foreign governments](#) — none of which will be presented to the U.S. Senate for ratification, which the Constitution demands — purporting to grant the Treasury powers it claims to need. Despite its unconstitutional promises to foreign regimes, though, even the Obama administration has essentially acknowledged that it currently has no lawful power to share such information, or “reciprocate,” as the agreements put it.

“In many cases, foreign law would prevent foreign financial institutions from complying with the FATCA provisions ... by reporting to the IRS information about U.S. accounts,” the administration acknowledged in its Analytical Perspectives to the 2014 Budget asking Congress for legislation to grant the administration even more power. “Such legal impediments can be addressed through intergovernmental agreements under which the foreign government agrees to provide information required by FATCA to the IRS.”

As *The New American* has reported, in order to comply with Washington’s extraterritorial tax demands for information on citizens and green-card holders, multiple governments are being forced to [gut, abolish, or override their longstanding legal protections of privacy and human rights](#). In some countries, such as New Zealand and others, even anti-discrimination laws must be undone to permit compliance with FATCA by authorities and financial institutions in those jurisdictions.

In Canada, following Ottawa’s decision to sign an “intergovernmental agreement,” or IGA, with the Obama administration, the outrage over the threat to fundamental rights is still boiling. “Although it contains certain exemptions, the agreement negotiated by [Finance] Minister Flaherty fails to address the most significant threats that FATCA poses to Canadian privacy and human rights,” complained Elizabeth May, a Member of Parliament and leader of the Green Party of Canada. She said it also likely violated the Canadian Charter of Rights and Freedoms. Citizens are working on legal challenges, too.

None of that, however, seems to matter to the administration and its legions of so-called “FATCANatics,” as critics refer to the zealous officials determined to impose the scheme at all costs. Now, amid non-stop mega-scandals and investigations swirling around the IRS, the administration is asking for Congress to hand it even more power — and perhaps to legalize elements of what it is already doing on its own.

“Requiring U.S. financial institutions to report similar information to the IRS with respect to nonresident accounts would facilitate such intergovernmental cooperation by enabling the IRS to reciprocate,” the administration’s request continues, similar to the language used in Obama’s more recent proposed 2015 budget. “The proposal would provide the Secretary of the Treasury with authority to prescribe regulations that would require reporting of information with respect to” foreigners living abroad, foreign companies, and U.S. firms owned partly by foreigners. Among the data sought: account balances, payment details, and more.

So far, Congress has not acted on the administration’s request to grant that power. In fact, lawmakers on both sides of the aisle are already growing weary, and wary, of FATCA — and it does not officially go into effect until July. The Republican National Committee this year [adopted a strongly worded resolution calling for repeal of the draconian addition to the U.S. tax regime](#). Even top Democrats have



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openly asked that FATCA-related regulations issued by the administration, considered crucial to implementing the scheme, be permanently withdrawn.

Rather than wait for Congress, however, the administration has simply promulgated far-reaching IRS “regulations” purporting to force U.S. financial institutions to report account holders while negotiating the unconstitutional pseudo-treaties with foreign governments. The first reports on non-resident U.S. accounts were due last week under the widely criticized IRS “regulation,” and the Obama administration has already signed “intergovernmental agreements” with some two dozen foreign governments. Another was [being negotiated with Vladimir Putin’s regime in Russia](#).

Of course, there is no mention of “inter-governmental agreements” (IGAs) or allowing so-called “reciprocity” in the actual statute that contains FATCA. There is also no authority to order domestic banks to collect and share information on all foreign account holders on behalf of foreign governments. *The New American* offered the Treasury Department multiple opportunities to explain what purported authority — statutory, constitutional, or regulatory — it believes it has to compel U.S. financial institutions to collect and share the information. *TNA* also asked about the supposed authority for IGAs.

No real answer was ever provided. Essentially, though, the Treasury pointed to existing tax treaties ratified by the Senate that the U.S. government has signed with other governments as its justification. However, those treaties generally deal with specific, individual requests made by authorities in other jurisdictions; not the wholesale NSA-style vacuuming up and transfer of all private financial data without so much as probable cause, a warrant, or even suspicion of wrongdoing, as envisioned in the IGAs and other FATCA-related schemes. None of the blanket domestic authority is contained in those treaties, either.

Lawmakers have been trying unsuccessfully to get answers about it all. “I further note that the IGAs that are being entered into are not authorized, or even mentioned, in FACTA,” explained Rep. Bill Posey (R-Fla.) in a 2013 letter to Treasury boss Jack Lew. “Despite the absence of any specific legislative authorization, these IGAs are not being submitted to the Senate as treaties or treaty amendments for its advice and consent.”

Separately, the congressman pointed out, other than in its Analytical Perspectives document, the administration had not even asked Congress for authority to implement the controversial agreements with foreign governments. “If such authority exists, please provide a citation to the specific relevant statute,” Posey said, adding that FATCA should be either repealed or drastically amended while calling for a moratorium on the scheme and the negotiation of IGAs.

According to a spokesperson for the congressman, the Treasury has not replied to the letter nor offered any hint about where its purported authority to proceed might come from. “We dispute whether the Treasury has the authority to implement these regulations and agreements; and they aren’t treaties because the Senate does not ratify them,” Posey spokesman George Cecala told *The New American*.

“We think that these agreements are treaties and need to be submitted to the Senate for ratification,” he continued. “We do not believe FATCA gives them the authority to do this — FATCA does not state that. America’s elected representatives need to make these major changes. This is shifting decision making to unelected bureaucracies, and such important decisions should be made by the people’s elected representatives.”

It is all part of a broader trend, too. “The administration has established a track record of bypassing Congress and issuing regulations when they want to,” Cecala said, citing endless executive re-writes of



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ObamaCare and [other examples of the president either defying or ignoring lawmakers](#). “The fact that they are now asking Congress for this authority suggests they don’t have it, and we don’t think they do.”

As to the wisdom of the dragnet-style approach to gathering and sharing sensitive information on everyone, Cecala explained that the U.S. government already has tools to locate criminals. “If the Treasury Department suspects criminal activity, they can send an enforcement order,” he said. “What they are asking for is blanket authority to collect all data, centralize it, and then share it with other governments.”

Sen. Rand Paul (R-Ky.), who introduced legislation aimed at reining in the scheme, has also spoken out about the administration’s abuses. “FATCA’s harmful impacts cover the spectrum,” he said, blasting “hundreds of billions” in compliance costs to the U.S. economy alone. “It is a violation of Americans’ constitutional protections, oversteps the limits of Executive power, disregards the mutual respect of sovereignty among nations and drains money from the federal treasury under the guise of replenishing it, and discourages overseas investment in the United States.”

Lawmakers on both sides of the aisle have also lashed out against the IRS “regulation” mandating the reporting of foreign-owned accounts, saying, among other major concerns, that it “flagrantly violates the intent of Congress.” In a letter to Obama asking him to “permanently withdraw” the scheme, signed by every member of the Florida delegation to the U.S. House of Representatives including Democratic National Committee Chair Debbie Wasserman-Schultz, the lawmakers said: “We feel the IRS is abusing its regulatory authority and doing so in a manner that is contrary to congressional intent.”

Tax law experts have also questioned the administration’s purported authority to proceed as it has — and warned of serious implications. Allison Christians, the H. Heward Stikeman Chair in Tax Law with McGill University’s Faculty of Law, noted in a 2013 paper that the FATCA statute “made no mention of any internationally-agreed alternative to its enforcement, and Congress has made no authorization since then for the president to override FATCA’s statutory provisions by international agreement.”

However, because of “difficulties” in foisting FATCA on the world, the Treasury began creating IGAs, which purport to promise domestic action that may not be possible. Professor Christians concluded that the “legal pedigree” of the agreements “is tenuous as a constitutional matter” and they “violate the rule of law by ignoring established procedural requirements for binding the U.S. internationally.” The consequences could be serious on multiple fronts.

“This undermines the legal system in the U.S. domestically as well as hurting U.S. credibility in the international community,” the tax-law expert said. “Instead of jeopardizing the important and complex project of global tax compliance with such a legally dubious procedure, the obvious and straightforward approach to making FATCA work internationally is to follow the normal treaty-making procedure, time-tested through 100 years of U.S. tax treaty-making history.”

Right now, the issue of IRS mandates forcing U.S. banks to report accounts is in federal appeals court, where industry associations from Florida and Texas are suing to stop the radical decree that has been lambasted by top Republicans and Democrats in Congress. Questions about the legality of the IGA pseudo-treaties and the ability of the Treasury to deliver on its “commitments” to foreign governments, meanwhile, are growing louder every day as awareness spreads.

The fate of requests to Congress from the administration for even broader authority to gather and share more sensitive information remains uncertain. “As [Deputy Assistant Secretary for International Tax



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Policy] Robert Stack of Treasury confirmed to me in person, regulations to impose domestic reciprocal reporting cannot be promulgated without new statutory authority,” former U.S. diplomat and Senate staffer James Jatras, an attorney who runs [RepealFATCA.com](#), told *The New American*. “Chances of getting that through the House are virtually nil — even more so if the Senate flips.”

The domestic information gathering and international sharing component of FATCA — [referred to by some analysts as DATCA](#) — represents the “Achilles heel” of the whole ploy, Jatras said. “FATCA and the [OECD scheme](#) could end up like the League of Nations: a dead letter because the United States, which got the ball rolling, opted out,” he added. Multiple analysts have also suggested recently that the demise of DATCA could kill the [Socialist-backed OECD plan, admittedly modeled on FATCA, for a global tax regime](#).

For much more on FATCA and related schemes, see the articles linked below.

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