

# **International students studying in America and the ramifications of the Foreign Accounts Tax Compliance Act (FATCA) on the higher education sector**

Comments to the U.S. House Committee on Ways and Means

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Dear Committee Members

January 15, 2017

I am writing to the Committee from Australia about one particular issue involving an unintended consequence of the Act, which apparently has not been considered in any cost/benefit analysis to date. My concern is that there exists the possibility of a significant adverse effect on the major income stream for the American higher education/university sector, in relation to attracting international students to continue their education in American educational institutions.

## **Overview**

As of the Fall of 2015, total international student enrolment in both public and private educational institutions in the U.S. was 1,043,839 with the highest numbers from China and India, Saudi Arabia and South Korea, followed by Canada, Japan Taiwan and Vietnam. Previous years show an increasing number of students from these countries (and others) attending American educational institutions.<sup>1</sup>

According to a 2015 report by the U.S. Department of Commerce, the increasing numbers of international students attending U.S. educational institutions has had a significant impact on the American economy, adding more than \$30.5 billion to the economy. The report found that 72 percent of all international students are funded from sources outside of the U.S., coming from personal and family sources as well as assistance from their home country governments or universities.<sup>2</sup>

Besides being an important funding source for higher education institutions, many students, after graduation would like to gain employment in America, a fact not lost on the previous Obama Administration which wanted science/tech international students to be able to put their skills to use in America, not overseas. Obama stated at the time: "In a global marketplace we need all the talent we can attract... We don't want the next Intel or the next Google to be created in China or India. We want those companies and jobs to take root here".<sup>3</sup> How the incoming Trump Administration views this remains to be seen. In an article written in Forbes (June 2015) by Evangeline Chan, an immigration attorney, she points out that restrictions on the number of H-1B visas available for graduate foreign students with a bachelor's degree or higher is forcing this pool of skilled people to have to leave the U.S. As of 2015 only 85,000 H-1B visas were available while there were 233,000 applications.

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<sup>1</sup> Project Atlas, <http://www.iie.org/Services/Project-Atlas/United-States/International-Students-In-US#.WHW9RZL4mUc>

<sup>2</sup> Institute of International Education, <http://www.iie.org/Research-and-Publications/Open-Doors/Data/Economic-Impact-of-International-Students>

<sup>3</sup> Fox News, Obama Administration Lets More Foreign Students Stay in U.S. for Jobs, Raising Competition Concerns, <http://www.foxnews.com/politics/2011/05/17/dhs-allows-foreign-students-extended-stay.html>

According to Chan, “Our communities have become more global but our immigration system has not kept up”<sup>4</sup>.

These are highly skilled US higher educated potential migrants who are willing to live and work in America, most likely eventually getting a green card or citizenship. What is unknown however, is how many of these potential migrants would like to leave open the possibility of, sometime in the future, being able to return to their home countries to live and work. After all, they would be highly sought after by U.S. corporations, with branches in these countries, who recognise the advantages of hiring people with extensive local knowledge.

### **International students in Australia**

Despite Australia’s relatively small population of around 24 million, it is the third most popular destination for international students (approximately 300,000 in 2014). By 2015 this was a \$15 billion industry and is Australia’s third largest ‘export’ following iron ore and coal. Skilled students are encouraged to stay in Australia after graduation and are considered as an important source of migration, which can address skill shortages and contribute to Australia’s long-term economic prosperity.<sup>5</sup> As of February 2016 the international education sector in Australia had risen to a \$20 billion export industry with data showing that international students were making a significant contribution to the economy.<sup>6</sup> This is further confirmed by a 2015 extensive analysis on the value of international education to Australia by Deloitte Access Economics. They found that it was the professional, scientific and technical services which benefited the most from the international education sector. Deloitte estimated that Australia’s current stock of international students would contribute 130,000 skilled migrants to the Australian workforce after graduation. Other benefits included:

- Economic benefits stemming from increased entrepreneurship, knowledge exchange and international collaboration;
- Economic benefits derived from trade and investment links and soft diplomacy both in Australia and in source countries; and
- Social benefits flowing from improved cultural literacy, stronger cultural linkages and enhanced cultural capital in both Australia and in source countries.<sup>7</sup>

One of the issues raised by the Deloitte report was the volatility in international enrolments due to an increasing number of countries now competing for international students.<sup>8</sup> It is important to point out here that the income generated

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<sup>4</sup> Chan E, Our Immigration Policies Are Telling Foreign Students To ‘Get Out’ After They Graduate, Forbes / Opinion, <http://www.forbes.com/sites/realspin/2015/06/08/graduating-congratulations-now-get-out/#4305b47312d0>

<sup>5</sup> Group of Eight Australia, International students in higher education and their role in the Australian economy. <https://go8.edu.au/publication/international-students-higher-education-and-their-role-australian-economy>

<sup>6</sup> Dodd T., Education revenue soars to become Australia’s \$20 billion export, <http://www.afr.com/news/policy/education/education-revenue-soars-to-become-australias-20-billion-export-20160203-gmke3k>

<sup>7</sup> Australian Government document prepared by Deloitte Access Economics, The value of international education to Australia, <https://internationaleducation.gov.au/research/research-papers/Documents/ValueInternationalEd.pdf>

<sup>8</sup> *ibid.*

from foreign students has become an essential part of maintaining the financial viability of the higher education sector in both the U.S. and Australia.

### **The FATCA risk factor for the U.S. higher education sector**

In this increasingly globalized world, where a number of countries are competing for a bigger slice of the 'international student' cake, and in which Australia is competing with the U.S. for Asian students, FATCA will inevitably affect both countries but in opposite ways.

As the Committee is well aware of the controversy surrounding the provisions of the Foreign Accounts Tax Compliance Act I need not go into it here, other than briefly examining how it can ensnare unwary former international students into becoming a "US person for tax purposes" if they later decide to return to their home country.

- Most foreign students in the U.S. have an F-1 student visa. After graduation, he or she can remain in the U.S. for a period of 12 months for training, internships or employment related to their field of study. This is called Optional Practice Training (OPT).
- If the former student has obtained a degree in a STEM (Science, Technology, Engineering or Mathematics) field, then they would be permitted to remain for an additional period of 17 months.
- Then the former student has 60 days to depart from the U.S. If they then depart back to their home country they would **not** be subject to the FATCA provisions and would not be considered a "U.S. person for tax purposes.
- However, if they instead, qualify and apply for a H-1B temporary work visa (limited availability, as explained earlier) in preparation for a "green card" which then allows them to live and work in the U.S., or they later take up U.S. citizenship, they will have a significant tax problem if in the future they decide to leave the US to live and work elsewhere.
- **This possibility is not being explained to prospective foreign students who apply to study in America.**

Under FATCA, "U.S. persons" for tax purposes includes dual nationality citizens, Green Card holders (regardless of country of residence) and U.S. residents, or Deemed Residents, regardless of citizenship. In addition, a U.S. person is anyone born or naturalised in the U.S., foreign born people with a parent whom is a U.S. citizen, anyone who visits the U.S for an extended amount of time (180 days). Note that a Green card holder is still considered a U.S. person if they fail to surrender it when leaving the U.S. This is still the case if an un-surrendered Green Card has expired. For tax purposes it never expires unless surrendered.

### **A Possible Scenario under the FATCA Intergovernmental Agreement (IGA):**

After graduation from a U.S. university an Indian born (or Chinese, or Canadian, etc.) student gains a H-1B visa and gains employment in a American tech company. He goes on to get a Green Card and soon after, full U.S. citizenship. Some years later, as an American citizen (U.S. person), he decides to return to his nation of birth to take up employment with an Indian company working in his field of expertise. However, he soon finds that as a "U.S. person" the company will not hire him in any position of authority for to do so could expose the company's finances to investigation by the American IRS. He then finds that he

cannot open a bank account because the bank is refusing to take on “U.S. Persons” as clients because of the onerous requirements placed on reporting financial details to the IRS. He marries an Indian woman who is not pleased to learn that, as a spouse of a “U.S. person” the IRS wants to see all her financial details as well. They then have a child, and much to their horror, they find that their child (and any subsequent children) is considered to be a “U.S. person” by the American IRS because the child has a parent who is a US citizen.<sup>9</sup> He decides to renounce his US citizenship to be free of this quagmire but finds that it is very difficult process costing many thousands of dollars to do so. He then is given a tax demand from the IRS for “Exit Taxes” based on the value of all his assets – in American dollars<sup>10</sup>. He finally frees himself of the quagmire after several years of worry and at significant expense. He then is informed that, even though he has renounced U.S. citizenship the IRS still considers his child a US citizen who will have to start filing complicated U.S. tax returns when turning 18 if the young adult wants to continue to live outside the U.S. As with what the father found, his child will find that living outside of America as an adult U.S. citizen is a significant liability. The only solution to this for the young adult is to either move to the U.S. and live out his life there, or go through the complicated process of renouncing after the age of 18, as his father had done. Trying to solve all this for his family reminded the father of that lyric from The Eagles song, “Hotel California”, which he remembered from his university days: *You can check out any time you like / But you can never leave...*

The all-important question for the American international student education sector is this:

If prospective foreign students were given the full facts on the possible future impacts of the FATCA IGA, if they stay in the US after finishing their education to take up employment, would they consider it worth the risk of being ensnared by FATCA, when much safer alternatives exist, such as studying and working in Australia? If so, what is bad for America may turn out to be very good for Australia.

In my opinion FATCA constitutes a significant financial risk to the American foreign student higher education sector and this should be taken into account in your deliberations over FATCA and the wisdom of maintaining citizenship-based taxation.

Thank you for your consideration.

Sincerely,

Don Maisch PhD

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<sup>9</sup> U.S. Citizenship and Immigration Services, Citizenship Through Parents, <https://www.uscis.gov/us-citizenship/citizenship-through-parents>

<sup>10</sup> Exit tax and further taxation of citizens who renounce, <http://web.archive.org/web/20121023090722/http://renunciationguide.com/Exit-Tax-on-Renunciants.html#MarkToMarketTax>