AMERICAN CITIZENS ABROAD
EDUCATE, ADVOCATE AND INFORM

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American Citizens Abroad (ACA) issues detailed explanation of the "Tax Fairness For Americans Abroad Act of 2018" (H.R. 7358)

On December 20, 2018, Congressman Holding introduced the "Tax Fairness for Americans Abroad Act of 2018" (H.R. 7358). The goal of the legislation is to replace the current citizenship-based taxation regime with residency-based taxation. In general, the Tax Fairness for Americans Abroad Act of 2018 ("TFAA") would enact, alongside existing section 911, an alternative for "Qualified Nonresident Citizens" (QNCs) of the US living abroad.

With limited exceptions, the foreign-source income of Qualified Nonresident Citizens would be taxed like nonresident alien individuals, that is to say not taxed by the US. However, QNCs would remain US taxpayers and fully taxable, and subject to normal filing requirements, on US-source income.

ACA's explanation of "TFAA" outlines the current bill language and the tax treatment of both foreign earned and foreign unearned income; salaries, PFICs, Social Security, capital gains, pension distributions, investment income, etc. "The explanation is an attempt to layout all the various income streams and assess how the proposed TFAA legislation will be applied to these income streams. What will be taxed by the US and what will not be taxed by the US," said Marylouise Serrato, ACA Executive Director.

"The explanation is by no means an official technical explanation, and it should not be attributed to any degree to any person other than ACA," added Charles Bruce, ACA Legal Counsel. "It's important for the community and those working on the legislation to have a complete outline of the various areas of the current tax code that might be affected by the bill and how these changes might 'play out'. The Holding bill lays down an important 'marker'. Now everyone can greatly sharpen their thoughts."

"ACA is obviously very much interested in helping develop and enact a final bill. From work on background subjects and then the drafting details, ACA is now turning to pushing for adoption of residency-based taxation," said Marylouise Serrato.

ACA was the first organization to develop an approach to residency-based taxation (RBT) and to run unofficial revenue estimates on that approach. The work was widely presented to the offices that developed TFAA, and ACA data and knowledge, we believe, was very valuable to that process. ACA looks forward to continuing to develop its thinking on the subject of tax reform for Americans abroad and working with Members of Congress, the Administration and stakeholders of all stripes.

EXPLANATION OF
"TAX FAIRNESS FOR AMERICANS ABROAD ACT OF 2018" (H.R. 7358)

Prepared by American Citizens Abroad, Inc.

January 7, 2019

This document provides an explanation of the Tax Fairness for Americans Abroad Act of 2018 (H.R. 7358), which was introduced by Representative Holding (R-NC) on December 20, 2018.[1]

This explanation was prepared by American Citizens Abroad, Inc. ("ACA") as a service to its members and other interested parties.[2]

ACA is a membership organization incorporated as a nonprofit organization under the laws of the State of Delaware. It is an exempt social welfare organization (I.R.C. § 501(c)(4)). Alongside it is American Citizens Abroad Global Foundation ("ACAGF"), which is a publicly-supported charity (I.R.C. § 501(c)(3)). ACA and ACAGF favor a balanced approach to subjects, supporting efforts that provide tangible results. Both are nonpartisan. They do not support or campaign for any candidates. Neither provides tax, legal, accounting, or investment advice or services. For additional information and to join, go to www.americansabroad.org.

TAX FAIRNESS FOR AMERICANS ABROAD ACT: TRANSITION FROM CITIZENSHIP-BASED TAXATION TO RESIDENCY-BASED TAXATION

Present Law

US Citizens. Americans are taxed on the basis of their citizenship, not residency. A US citizen, no matter where he or she resides and regardless of the type and source of income, is subject to US federal income tax, if certain income thresholds are met, and that individual must file a tax return with all the associated forms and schedules and, as called for, pay tax. One of the associated forms requires reporting of information about Specified Foreign Financial Assets, including foreign deposit and custodial accounts and certain other foreign assets.[3] Special rules provide, as part of the regular income tax return, a foreign earned income exclusion, which can include a housing cost amount .[4] Foreign tax credits can be claimed to offset US tax, but not to the extent of foreign taxes that are allocable to excluded income. This benefit, in effect, is a type of partial residence-based tax treatment for some individuals. Upon an individual's death, if the individual was a US citizen, his or her estate, if it is of a certain size, must file an estate tax return and pay estate tax with respect to its worldwide assets. Similarly, a US citizen is generally subject to gift taxation regardless where the individual resides and where the assets are situated. Other special rules deal with the tax treatment of expatriation.[5] In addition, if certain thresholds are met, a US citizen must report to the Treasury Department foreign bank account information.[6]

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[1] H.R. 7358 was introduced on December 20, 2018 and referred to the House Committee on Ways and Means. A Summary and Description were released on the same date. A copy of the bill is available on https://www.congress.gov/. ACA expects that this bill will be reintroduced early in the 116th Congress.

[2] The author is Charles M. Bruce, Legal Counsel, ACA, and Chairman, American Citizens Abroad Global Foundation. Mr. Bruce is Of Counsel, Bonnard Lawson-Lausanne, Switzerland. He is solely responsible for any errors. Comments, questions and corrections should be directed to him at charles.bruce@americanabroad.org. Marylouise Serrato, Executive Director, ACA, and Glen Frost, Assistant Legal Counsel, ACA, contributed to this writing. This explanation should not be attributed to any extent to the Office of Representative Holding. © Copyright 2019, American Citizens Abroad, Inc. All Rights Reserved.

[3] Form 8938 (Statement of Specified Foreign Financial Assets).

[4] The exclusion is claimed on Form 2555 (Foreign Earned Income).

[5] See section 877 and 877A, dealing with expatriation to avoid tax and tax responsibilities of expatriation.

[6] The filing of a Foreign Bank Account Report is a Bank Secrecy Act requirement, not an Internal Revenue Code requirement.

All other countries, with almost no exceptions, only tax residents of that country, that is, an individual is not subject to the country's normal panoply of tax rules if he resides outside the country.[7]

Non-US Citizens. Non-US citizens and non-resident alien individuals are generally subject to US withholding tax, at a 30% rate or reduced rates pursuant to a treaty, only on certain US source income, including interest (other than so-called "original issue discount"), dividends, rents, salaries, wages, premiums, annuities, compensations, remunerations, emoluments, and other "fixed or determinable annual or periodical gains, profits" (FDAP income). Also, they are subject to graduated rates of tax, same as US citizens or residents, on income effectively-connected with a US trade or business. Section 871(a) & (b). Their income from US real property is generally taxed under Foreign Investment in Real Property Tax (FIRPTA) rules (§897); this is collected by withholding. Capital gains, except capital gains of nonresident aliens present in the U.S. 183 days or more during the taxable year, are generally exempt from tax under the Internal Revenue Code.

There are many details affecting these subjects, but this is the general "lay of the land".

Tax Fairness for Americans Abroad Act of 2018 (H.R. 7358)

In general, the Tax Fairness for Americans Abroad Act ("TFAA") would enact alongside existing section 911 ("Citizens or residents of the United States living abroad") an alternative for nonresident citizens of the US living abroad. New section 911A ("Alternative for Nonresident Citizens of the United States Living Abroad"). A definition of "nonresident citizen" is added to section 7701(b).

The new rules would operate only at the US federal level. They might or might not affect state income, gift or inheritance rules. Also, these tax rules would not affect US immigration and nationality rules. The rules governing the issuance and renewal of a US passport would not change.

The goal of the legislation is to replace the current citizenship-based taxation regime, which has existed since the time of the Civil War, with residency-based taxation (sometimes referred to as territoriality for individuals).[8] With limited exceptions, "qualified nonresident citizens" on foreign-source income would be taxed like nonresident alien individuals. However, they would remain US taxpayers and fully taxable, and subject to normal filing requirements, on US source income, which is not excludable under new section 911A.

Taxpayers/Affected Individuals

An individual benefiting from section 911A is called a "qualified nonresident citizen" ("QNC"). QNCs would not be taxed on their specified foreign-source income (see below) while they are resident abroad. They would remain subject to tax on their US-source income.

In order to qualify, a US citizen must meet the definition of a "nonresident citizen" under new section 7701(b), meaning, as to the taxable year in question, an individual who is a US citizen, has a tax home in a foreign country, is fully compliant with US income tax laws for the 3 previous taxable years, and either establishes to the IRS's satisfaction that he or she has been a bona fide resident of a foreign country or countries for an uninterrupted period which includes an entire taxable year ("bona fide residence test") or has been present in a foreign country or countries during at least 330 full days during such taxable year ("physical presence test"). (See existing section 911(d)(1) as to all except the compliance requirement.)

[7] Exceptions are Eritrea, perhaps North Korea, and perhaps South Africa, all to various degrees.
[8] "This bill would take the first step toward ending citizenship-based taxation by essentially taxing only those individuals that are resident in the United States or have income that is connected to the United States." Summary, "Tax Fairness for Americans Abroad Act of 2018, Office of Rep. George Holding (December 20, 2018.) "The proposal outlined below would effectively end the current citizenship-based taxation system and instead transition to a system that provides territoriality for individuals – often referred to as residence-based taxation. By taking this first step toward ending the onerous burdens of citizenship-based taxation, Americans will become more competitive in the international job market and free to pursue opportunities around the world." Description, "Tax Fairness for Americans Abroad", Office of Rep. George Holding (December 20, 2018).

The individual must not have made an election under existing section 911 for the taxable year and must make an election for such year under new section 911A.

No "aging rule" requiring a minimum number of years of residency outside the US applies.

New section 911A refers only to citizens, not resident aliens. See section 7701(b)(1) for definition of "resident alien".

US citizenship is defined by nationality laws. It includes, with very narrow exceptions, all individuals born in the US regardless of nationality of parents; naturalized citizens; and certain individuals born overseas to a US parent. (See below for rules for taxing QNCs' foreign earned income and foreign unearned income.)

There is no provision for "stacking" excluded income on top of non-excluded US source income when determining the applicable tax rate.

There is no provision specifically addressing availability of the standard deduction for QNCs.

Resident aliens are not eligible for exclusion of foreign income from gross income under new section 911A.

Interaction with Certain Rules

Subpart F. Under current law, subpart F taxes on a current basis or sometimes defers tax on income of a controlled foreign corporation. The Tax Cuts and Jobs Act ("TCJA"), enacted December 22, 2017, adopted a modified form of territorial taxation allowing a deduction for dividends received by a corporate US shareholder from a specified 10%-owned foreign corporation under a new participation exemption system. US taxpayers residing abroad do not benefit. New section 911A would not amend subpart F. (See below for rules for taxing foreign unearned income of QNCs.) Subpart F income is not a form of foreign earned income, nor is it income from the sale of personal property. Presumably, it is a type of foreign unearned income excludable under new section 911A.

Transition Tax. The "transition tax" provisions enacted by TCJA would not be amended by TFAA. However, as these provisions cause certain pre-effective date foreign earnings be treated as subpart F income of a so-called "deferred foreign income corporation" in the last taxable year that begins before January 1, 2018, such income would apparently be excludable as foreign unearned income.

GILTI. The global intangible low-tax income ("GILTI") provisions enacted by TCJA would not be amended by TFAA. While GILTI is not subpart F income, which is the same as in the case of income resulting from the transition tax provisions, presumably GILTI is a type of foreign unearned income excludable under new section 911A.

PFIC. Special rules apply under current law to Passive Foreign Investment Companies ("PFICs") and result in the taxation of PFIC shareholders.[9] US persons (including individuals who are citizens or residents of the US) are subject to an interest charge on the value of the so-called "deferral privilege" and ordinary income treatment when the shareholder either disposes of its PFIC stock or receives any "excess distributions" thereon. Both "excess distributions" and gain upon disposal of PFIC stock are taxable as "excess distributions", *i.e.*, as ordinary income. Section 1291. Each PFIC shareholder must file an annual tax report.

Since both distributions on and income from dispositions of PFIC stock are foreign unearned income under new section 911A, they can qualify for exclusion. PFIC stock, however, would appear to be

[9] Sections 1291-1298. These rules can apply where a PFIC is owned directly by the taxpayer or the PFIC is owned indirectly, for example, through a pension trust or some other type of deferred compensation arrangement.

personal property subject to the special exception removing from the definition of "foreign unearned income" income from the sale of such property to the extent such income is attributable to periods during which the individual was not a QNC.

Pass-through Deduction. Enacted as part of TCJA was a 20% deduction for certain income of so-called pass-through entities. This benefit does not apply in the case of income not effectively connected with a US trade or business. The rules relating to this deduction would not be changed by TFAA. (See below for rules for taxing foreign unearned income.) While foreign income not effectively connected with a US trade or business does not qualify for the pass-through deduction, such income might be excludable under the general rules applicable to foreign earned income and foreign unearned income.

Tax Treatment of Expatriation

Rules relating to individuals who expatriate remain the same as under current law. New section 911A does not make changes in sections 877 and 877A (rules applicable to citizens who expatriate). If a renunciant is a QNC and a "covered expatriate", US source mark-to-market gain would not be excludable, while such income, which is foreign source income, might be excludable as foreign unearned income, subject to special rule for income from sale of personal property. Nor does new section 911A make changes in section 2801 (imposition of tax on the recipient of a "covered gift or bequest" from an individual who has renounced US citizenship). If a recipient is a QNC, a covered gift or bequest arguably might be excludable as foreign unearned income.

Taxation of Qualified Nonresident Citizens.

QNCs are not subject to federal income tax on foreign-source earned income or foreign-source unearned income. Special rules apply to income from sale of personal property. See below.

As to US-source income (earned income, unearned income or any other type of income), QNCs remain fully taxable. Since not excludable under new section 911A, what would be characterized in the hands of a nonresident alien individual as US-source fixed, determinable, annual, periodical (FDAP) income, is taxed the same as it is in the hands of a non-qualified nonresident citizen (NQNC), *i.e.*, a normal US citizen, wherever resident, in or outside the US. Withholding taxes and, therefore, reduced treaty rates apparently do not apply. Effectively connected income (ECI), proceeds from the disposition of US real property and US partnership income likewise are taxable as with a NQNC. Note: A little non-excludable US source income will cause the taxpayer to have to meet all the filing requirements of a regular US taxpayer, as there is no *de minimis* rule.

For purposes of new section 911A, the terms used therein have the same meaning as such terms in existing section 911.

Foreign earned income. Foreign earned income has the same meaning as in section 911(b) but without regard to the annual exclusion amount ($104,100 for 2018). Amounts received will be considered received in the taxable year when the services are performed, not the period during which the individual meets the "bona fide foreign residence test" or the "physical presence test". New section 911A(b)(3)(B). Special treatment of community property income does not apply. See section 911 (b)(2)(C). The requirement of a "tax home in a foreign country" continues to apply as with current law. See section 911(d)(1).

Foreign unearned income. Foreign unearned income is any and all income other than foreign earned income which is sourced outside the US. Exceptionally, with respect only to income from the sale of personal property, only such income attributable to periods during which the individual was a QNC will be excludable. Apparently, personal property is tangible or intangible personal property. Apparently,

existing sourcing rules, like those in section 865, will apply to determine whether this income is foreign. The term "attributable" is not defined in new section 911A.[10]

Net Investment Income Tax. There is no change in the net investment income rules (sometimes referred to as the 3.8% investment tax). Foreign source net investment income is a form of foreign unearned income and to the extent it is gross income from interest, dividends, annuities, royalties, and rents, other than such income which is derived in the ordinary course of certain trades or businesses, should qualify for the section 911A exclusion. Some investment income is net gain attributable to the disposition of property, other than property held again in certain trades or businesses, and this gain might be subject to the special rule applicable to income from the sale of personal property to the extent such income is attributable to periods during which the individual was not a QNC.

Real Property Income. Gain from the sale of foreign real property is not considered foreign earned income. Nor is it personal property income as to which the special rule for income from the sale of personal property should apply. Thus, it should be excludable by a QNC.

Social Security Income. Social Security benefits are included in gross income in any year the sum of half the taxpayer's Social Security plus all other income, including tax-exempt interest, exceeds $25,000, if single, head of household, qualifying widow(er), married filing separately ($32,000 if married filing jointly). They are reported on a Form SSA-1099 issued by the Social Security Administration. Taxes are withheld only if requested by the recipient.[11]

Early Withdrawals from Retirement Arrangements. Generally, early withdrawals (before age 59½) from an IRA or retirement plan are taxed with a 10% early withdrawal tax. Required minimum distributions from IRAs, but not Roth IRAs, beginning at age 70½, are taxed as ordinary income. Early withdrawals are not specifically addressed in new section 911A. To the extent these items are US-source income, presumably they are not excludable.

Pension Distributions. Pension distributions for services performed in the U.S. are generally treated as U.S. source income and subject to tax This applies whether the distribution is made under a qualified or nonqualified stock bonus, pension, profit-sharing, or annuity plan (whether or not funded). This type of income is not specifically addressed in new section 911A. To the extent these items are US-source income, presumably they are not excludable.

Capital Gains and Other Investment Income. For QNCs, US source investment income (capital gains from the sale of US securities and US interest income) is taxed, *i.e.*, it is not excludable. Presumably sourcing rules similar to those applicable to nonresident alien individuals under current law will apply. Unlike with nonresident aliens, except those present in the US 183 days or more (section 871(a)(2)), this income is not exempt (excludable).

Non-US citizens, including resident aliens ("green card" holders) and non-resident alien individuals, remain taxable as they are under current law. Thus, generally, they remain subject to US withholding tax on FDAP income, perhaps reduced by treaty, and zero tax on US capital gains, other than FIRPTA income.

Resident aliens are not eligible for exclusion of foreign income from gross income under new section 911A.

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[10] The term "attributable" in the sense of attribution to a period of time, as opposed to a person – individual, corporation, etc. – or transaction or event or thing, is somewhat unique. However, the term appears in existing section 911(b)(1)(a) ("The term 'foreign earned income' with respect to any individual means the amount received by such individual from sources within a foreign country or countries which constitute earned income attributable to services performed by such individual during the period described in subparagraph (A) or (B) of subsection (d)(1), whichever is applicable.). If applied to foreign unearned income obviously it could not be tied to when services were performed; and the timing of receipt of income from the sale of personal property is more tractable.

[11] The workings of the Windfall Elimination Act, which can disadvantage Americans abroad, are not changed.

No provision in new section 911A speaks to the availability of the standard deduction for QNCs.

Alternative for Nonresident Citizens of the United States Living Abroad (New Section 911A)/Qualification

In order to qualify for taxation as a nonresident citizen under new section 911A (*i.e.*, for residency-based taxation), an individual would have to satisfy the test for "qualified nonresident citizen" under new section 911A(b)(2). In general, a "qualified nonresident citizen" is an individual whose tax home is in a foreign country and who is (a) a US citizen and establishes that he has been a *bona fide* resident of a foreign country or countries for an uninterrupted period which includes an entire taxable year or (b) a citizen or resident of the US and who, during any period of 12 consecutive months, is present in a foreign country or countries during at least 330 full days in such period. An individual can qualify even though he or she is retired, is not "working", and receives no "earned income" but only earns, for example, interest, dividends and gains from a securities portfolio. He or she might be present in the foreign country but not comply with local rules, including immigration and employment rules.

Election to Opt Out. Individuals, in effect, can opt out of "Alternative for Nonresident Citizens of the United States Living Abroad" (new section 911A), by not making the required election. They would continue to be taxed under existing rules and could choose to utilize existing section 911. Section 911 (including both the foreign earned income exclusion and the housing cost amount) would not be repealed by TFAA.

Federal Employees. No federal employee will be treated as a "nonresident citizen".

Treaty Rules. Rules in bilateral income tax treaties that apply to residents of the other country are not addressed in TFAA. A "savings clause" in many treaties permits the US to tax, as it does under existing rules, its citizens regardless of their residency in a treaty jurisdiction. Presumably, QNCs would be taxable the same as NQNCs and would not be able to claim reduced treaty rates or exclusions.

Tax Havens. New section 911A contains no special rules applicable to "tax haven" countries. Therefore, US citizens resident in a zero or low tax rate jurisdiction can qualify for RBT treatment.

Restricted Countries. Residency in a "restricted country", for example, a country as to which the US imposes certain types of sanctions, does not count toward satisfying new section 911A's bona fide residency test.

Income from a "restricted country" is excluded from the new section 911A benefit.

Individuals Avoiding Resident Status in Other Country. If an individual who has earned income from a foreign country has submitted a statement to that country claiming he or she is not a resident and if such individual is not treated as taxable by that country, the individual will not be treated as a bona fide resident of such country for purposes of new section 911A. (Similar to existing section 911(d)(5).)

Denial of Double Benefits. A rule similar to that in existing section 911(d)(6) denying double benefits will apply to deny foreign tax credits or other tax benefits properly allocable to or chargeable against amounts excluded under new section 911A.

No "Aging Test". With respect to foreign earned income for purposes of new section 911A (its excludability), an individual can take up residency in a foreign jurisdiction and exclude such income earned at any time during the taxable year, regardless whether the income was attributable to services performed during his or her period of bona fide residency or physical presence. See existing section 911(d)(1)(A) & (B).

Resumption of US Residency. QNCs lose favored status if they resume residency in the US. Specific rules relating to "start date" and "ending date" are not provided, other than provisions relating to "taxable year". See new section 911A(b)(3). There is no specific rule that they must notify the IRS or

financial institutions. Arguably, fair market value of foreign assets presumably becomes the basis for any future US tax liability with regard to those assets.

Special Rule for Certain Foreign Unearned Income. Excluded from gross income is any foreign unearned income from the sale of personal property to the extent such income is attributable to periods during which the individual was a QNC. "While individuals will not be taxed on gain from the sale of foreign personal property attributable to their time as a qualified nonresident citizen, they will still be taxed on any gain attributable to their time as a resident of the U.S. In other words, if an individual holds a foreign asset prior to their election of qualified nonresident citizen status and then sells said asset while they are a qualified nonresident citizen, the individual will only owe U.S. tax on the portion of gain attributable to the period prior to their change in status." "Description of H.R. 7358 – Tax Fairness for Americans Abroad Act of 2018", Office of Representative Holding (provided to ACA on December 20, 2018). Apparently, the individual need not be a QNC in the taxable year of receipt.

Estate and Gift Taxation

Normal Rules. For federal gift and estate tax purposes, US citizens and residents are subject to gift and estate tax with respect to their worldwide assets. Estates with combined gross assets and prior taxable gifts of $10,000,000 or less are not required to file an estate tax return. This amount is adjusted for inflation. This figure becomes $11.2 million in 2018. Couples might be able to double this to $22.4 million. Citizenship is defined by nationality laws. "Resident" is defined by estate tax rules in regulations (Reg. §20.0-1(b) (essentially domicile, following common law principles)).

Non-residents' estates must file an estate tax return if the fair market value at death of the decedent's U.S.-situated assets exceeds $60,000. Substantial lifetime gifts of U.S. property by decedent can reduce this figure. Estate and gift tax apply to U.S. property including, only as to gift tax, shares in U.S. corporations. Assets in U.S. bank accounts generally are exempt.

Under TFAA, current rules are not changed. US citizens, whether a NQNC or QNC, are subject to same rules as US citizens residing, or more properly domiciled, in the US, *i.e.*, they are taxable on their worldwide assets.

Special Rule - "Covered Expatriates". Under current law, there are special rules taxing bequests and gifts to US persons from a so-called "covered expatriate" (in general, certain US citizens who relinquish citizenship and certain long-term US residents who cease to be a lawful permanent resident). These are, in general, taxed to the recipient at the highest estate tax or gift tax rate then applicable. New section 911A contains no provision amending the existing rules. If recipient is a QFNC, a covered gift or bequest might be excludable as foreign unearned income.

Other Subjects

FATCA. The "Hiring Incentives to Restore Employment Act" ("HIRE Act"), enacted in March 2010, included the "Foreign Account Tax Compliance Act" or "FATCA". These provisions, among other things, created new Chapter 4 withholding tax rules. They also created the requirement for taxpayers to file a Statement of Foreign Financial Assets (Form 8938), overlapping, to a significant degree, the Foreign Bank Account Reporting requirements.

FATCA would not be repealed by the FFAA. FATCA's rules continue to apply in the case of US accounts, meaning accounts owned by a specified US person (in general, any US person (7701(a)(3)) or US owned foreign entity). See §1.1471-5(a)(2), Treas. Regs. Accounts owned by QNCs continue to be US accounts subject to FATCA.

Same Country Exemption. A "same country" exemption ("SCE") for certain accounts of individuals residing in a foreign jurisdiction, where the account is with a foreign financial institution in the same country where the individual resides, is not adopted by TFAA.[12]

Filing Requirements

In General. Taxable citizens and residents must file a Form 1040 and other forms, including, where applicable, a Form 2555 (Foreign Earned Income), Form 1116 (Foreign Tax Credit), Form 8938 (Statement of Foreign Financial Assets), and Form 8621 (Information Return by a Shareholder of a Passive Foreign Investment Company or Qualified Electing Fund).

QNCs, under new section 911A, would be required to elect annually, with respect to the taxable year, to be taxed under new the new rules. They would need not to make an election under existing section 911 as to that year. They would have to satisfy the requirements to qualify as a QNC. See above.

If no income tax return is required because, for example, the individual did not have the minimum amount of gross income (for 2018, $24,000 for married filing jointly, both under 65), the individual would still need to make the required election and annual certification that he or she remains in compliance with the eligibility requirements.

Any non-excludable US source income would cause the individual taxpayer to have to satisfy all the filing requirements of a regular US taxpayer, as there is no *de minimis* rule.

Section 6038D. Section 6038D, underlying Form 8938 ("Statement of Specified Foreign Financial Assets"), is not affected. An individual holds/has an interest in a specified foreign financial asset if any income, gains, losses, deductions, credits, gross proceeds, or distributions from holding or disposing of the asset are or would be required to be reported, included, or otherwise reflected on his or her income tax rate turn. This pertains regardless whether there was any income, etc. in the current year. The taxpayer files Form 8938 even if none of the assets affect tax liability for the year. Exception: If no income tax return is required, then there is no need to file Form 8938, regardless of value of assets. The filing of an election to claim new section 911A treatment arguably comprises the filing of a return.

Special rule with respect to foreign tax credits. See special rule with respect to foreign tax credits and similar benefits, above.

Special rule relating to first taxable year. Presumably special rules, similar to those applicable to existing section 911, addressing situation for first taxable year where taxpayer has not yet met either the bona fide residency test or the physical presence test by the return due date, will apply.

IRS User Fee

Under current law, there is a State Department fee of $2,350 charged for renunciation of US citizenship. Under the TFAA, there would be no similar charge for availing oneself of the Alternative for Nonresident Citizens of the United States Living Abroad (new section 911A).

Effective Date; Transition Rules

[12] A Same Country Exemption was proposed by ACA and supported by several other groups, including the Federation of American Women's Clubs Overseas, Inc. (FAWCO) and the Association of Americans Resident Overseas (AARO), as well as by Members of Congress (including the Congressional Americans Abroad Caucus), the National Taxpayer Advocate, the Republican Party, and Democrats Abroad. For a detailed explanation of SCE, see written testimony of American Citizens Abroad, Inc. before Subcommittee on Government Operations at Hearing on Reviewing the Unintended Consequences of the Foreign Account Tax Compliance Act (April 26, 2017). https://www.americansabroad.org/media/files/files/ee3ba639/WRITTEN_TESTIMONY_OF_AMERICAN_CITIZENS_ABROAD_170426_FINAL.pdf. SCE is designed to help Americans abroad who are "locked out" from foreign financial services.

New section 911A applies with respect to taxable years beginning after the date of enactment of TFAA. For example, if enacted on August 1, 2019, it would apply to 2020 and taxable years thereafter.

No special rules, such as a transition tax, apply.

Anti-Abuse Rules

No special anti-abuse rules apply.

FBAR Filing Requirement

Existing rules requiring the filing of Foreign Bank Account Reports (FBARs) would not be changed. These rules were first enacted in 1970 as part of the Bank Secrecy Act and are ordinarily treated as separate from the tax rules in the Internal Revenue Code. FBAR reporting is defended as a means of combating terrorism, illegal drug trafficking and other money-laundering schemes, as well as the use of foreign financial accounts to evade taxation.

Regulations

Under generally applicable rules, the Secretary of the Treasury shall prescribe such regulations as may be necessary or appropriate to carry out the purposes of new sections 911A and 7701(b)(C).

Offshore Disclosure Rules

TFAA will likely cause a significant number of Americans abroad to be compelled, or influenced, to “catch up” with their reporting of taxable income and filing of required returns and forms. No changes in the existing rules and procedures governing compliance, such as the process for voluntary domestic and offshore disclosures,[13] are proposed as part of TFAA.

Revenue Costs

No revenue estimates were available as of the date of introduction.

[13] Memorandum for Division Commissioner's, Chief, Criminal Investigation, "Updated Voluntary Disclosure Practice" (November 20, 2018) (https://www.irs.gov/pub/spder/lbi-09-1118-014.pdf).