R B T

Residence-Based Taxation: A Necessary and Urgent Tax Reform

Working Paper, updated March 2013, submitted to
the International Tax Reform Working Group of the Ways and Means Committee

Executive Summary

American Citizens Abroad (ACA) recommends that the International Tax Reform Working Group of the Ways and Means Committee review and adopt residence-based taxation (RBT). Americans abroad would be taxed on the same basis as non-resident aliens, primarily through a system of withholding taxes on passive U.S. source income (dividends, rents, pensions, etc.) and capital gains taxes on U.S. real estate; income earned in the United States would require filing a 1040NR. Americans abroad would remain subject to U.S. estate taxes on U.S. situs assets, including real estate and securities. The RBT proposal provides extensive and comprehensive anti-abuse measures together with a precise transition roadmap.

This win-win RBT solution will:

- increase Treasury tax receipts by an estimated $30 billion over ten years, whether RBT is drafted as a voluntary program or the default tax system;
- provide for fair, equitable and efficient taxation of Americans abroad;
- empower Americans abroad to sell U.S. goods and services overseas, boosting export performance, particularly of small and medium-sized companies;
- create better employment opportunities for Americans, both domestically and internationally;
- align U.S. law with that of virtually all other nations;
- liberate overseas citizens from a legislative straightjacket caused by the toxic combination of citizenship-based taxation, FATCA and FBAR reporting requirements.

The current Citizenship-based taxation (CBT) is an ineffective mode of raising taxes on Americans abroad. It brings little money to the Treasury (ACA estimates $3 to $6 billion annually) as most of the tax base is pre-empted by the countries of residence; under the present rules, 82% of overseas filers owe no U.S. tax and much of the tax paid relates to clear instances of double taxation. CBT is very complex and costly to administer for both the taxpayers and the IRS. CBT is grossly unfair as Americans abroad can pay taxes twice, while the U.S. provides them little or no services (education, infrastructure, healthcare, etc.). Furthermore, due to the Foreign Account Tax Compliance Act (FATCA) and the Foreign Bank Account Report (FBAR) combined with CBT, overseas residents are being denied access to banking and other financial services as well as employment and investment opportunities, to the point that increasing numbers are compelled to renounce their U.S. nationality to be able to lead a normal life. Reform is essential since tax revenue collected under the current CBT regime is absolutely insignificant in the U.S. budget while the negative consequences of CBT for U.S. economic welfare are huge.

Contents

Introduction

Tax reform is clearly on the agenda of Congress for 2013. The world has changed significantly since 1986 when the last major tax reform took place. The situation of Americans residing abroad, now subject to a set of tax rules known as citizenship-based taxation (CBT), must be part of the next U.S. tax reform, which is so urgently needed. The problems faced by the community of Americans abroad have been highlighted in the 2011 and 2012 Annual Reports to Congress by the National Taxpayer Advocate, Nina Olson[1], as well as her 2013 Objectives Report. The failure of CBT and the need for Residence-Based Taxation (RBT) are thoroughly analyzed in a recent in-depth academic paper by Bernard Schneider, published in the Virginia Tax Review; several other academic and professional studies have also called for the adoption of RBT.[2] Current policies are so onerous that increasing numbers of Americans residing abroad are being forced to close down their businesses abroad and/or renounce their U.S. citizenship due to immense pressure from spouses, employers, foreign governments, financial institutions and the undue burdens placed on overseas Americans.

Many of the inconsistencies and inefficiencies inherent in FATCA legislation and IRS policies since 2009 can be traced to the unjustified bundling of Americans abroad and rich tax evaders, domestically resident but with assets hidden abroad, into a single amalgam. In reality, these are two very different subject groups.

Americans abroad are, on the whole, patriotic, honest and hard-working, leading average lives and paying taxes where they reside. A recent study shows that more than half of Americans abroad have lived overseas more than 6 years; the principal reasons for residing overseas are to be with one's spouse/partner and professional work. 44% of Americans overseas have investments in the U.S., 37% have done business with someone in the United States, 37% donate to U.S. charities and 18% own property in the United States. 39% contribute to U.S. political parties or political action committees

(PACs) and 26% remit money back to family in the United States. Most celebrate Thanksgiving, and many Americans abroad send their young children to the United States during summer vacation either to family members or summer camps in the United States to let them experience the American way of life and have an opportunity to enhance their command of English and develop contacts in the United States. Many also encourage their children to attend college and/or graduate school in the United States.

Americans abroad are a vital force for the United States in today's global economy, yet CBT policies handicap their competitiveness, and by extension, the competitiveness of U.S export capability. The RBT proposal is consistent with the tax policy practiced on individuals by other countries throughout the world.

Reform is all the more important given that the tax revenue collected under the current CBT regime is absolutely insignificant in the U.S. budget – a tiny fraction of one per cent – while the negative consequences of CBT for the economic welfare of the United States and its citizens are huge. Furthermore, RBT should generate **more** tax revenue for the United States than the current CBT.

ACA proposes that the United States adopt RBT as the default mode of taxation for American citizens and green card holders residing abroad (collectively, "Americans abroad"). As soon as an American established a tax home abroad, he/she would apply to the IRS for a Departure Certificate. Americans abroad would be taxed on the same basis as the U.S. currently taxes non-resident aliens. The U.S. source income of Americans abroad would be taxed through withholding taxes determined by U.S. tax law and U.S. income tax treaties. This would include withholding taxes on all U.S. source unearned income (including dividends, interest, royalties, pensions, rents from U.S. properties, etc.). Income earned in the United States by Americans abroad, income from participations in U.S. partnerships and compensation for self-employment services performed in the United States would be taxed, as the case may be, either by a withholding tax at source or by reporting income on a 1040NR under the same rules that apply to non-resident aliens who have income effectively connected with the United States. Investments in U.S. real estate would remain subject to taxation by the United States.

Under the default mode, as soon as an American establishes a tax home abroad, the citizen would be required apply to the IRS for a Departure Certificate, unless subject to specific exceptions granting the option to remain under CBT. For those applying for the Departure Certificate, the United States would tax income on the basis of CBT only up to the date of granting the Departure Certificate, even if the period of U.S. residence exceeds 183 days in the calendar year. The reason for not delaying the issuance of a Departure Certificate is the need for the American abroad to be able to establish relationships with foreign financial institutions in the country of residence.

RBT can also be defined as an alternative, rather than the default mode of taxation. Americans abroad meeting specified conditions, such as length of residence abroad and choice of country would be able to choose the option to be taxed under RBT. For all overseas Americans who do not opt for RBT, CBT would remain the standard mode of taxation. Those who choose RBT would be subject to the same tax rules mentioned above under the default mode. The application for the Departure Certificate would follow a similar procedure.

Under RBT, members of the U.S. diplomatic service, U.S. military overseas, and citizens residing in tax haven countries would be deemed U.S. tax residents.

Congress may determine that Americans with certain types of temporary overseas mandates, lasting less than two years, remain subject to U.S. taxation as U.S. residents.

Implementation of RBT would necessarily require a transition phase and specific conditions applicable to various segments of the overseas American community. The terms of transition that are proposed take into account the number of years individuals have resided overseas prior to the law becoming effective and their tax filing compliance status prior to enactment of the law. The proposal encourages Americans abroad currently not in compliance to correct the situation in order to be recognized under RBT as a non-resident.

Replacing CBT with RBT has essentially nothing to do with IRS's highly publicized and strenuous efforts to identify and pursue Americans tax evaders. To date the overwhelming majority of those prosecuted for having hidden assets abroad are U.S. residents who would not qualify for RBT. The two issues – the taxation of non-residents and the pursuit of U.S. resident tax evaders – are unrelated.

Understanding current law

To put the proposal for RBT in proper perspective, it is important to understand how U.S. tax law presently applies to Americans abroad.

U.S. taxpayers residing abroad, under the present rules, pay income taxes in the country of residence like any and all residents of that country. The requirement of a nexus between the taxing authority and the place of residence is a universally accepted principle of taxation. (This is readily demonstrable even in the U.S., as it is unimaginable that New York authorities would continue to levy taxes on a former resident of New York now living in California, on the grounds of previous residence in New York.)

In addition, Americans abroad are required to file and pay taxes in the United States. On their Form 1040 they can apply the foreign earned income exclusion and housing exclusion if they have income earned overseas. They can also apply foreign tax credits[3] on earned and unearned income up to the level of the U.S. tax liability. Like their domestic counterparts, overseas residents are either taxed at reduced rates on qualified dividend income or exempt from such taxation on qualified dividend income (up to specific income thresholds)[4].

The bottom line is that after applying the foreign earned income exclusion and/or foreign tax credits, as well as the tax rules for qualified dividends, most Americans abroad do not owe U.S. taxes. In fact, according to the National Taxpayer Advocate, **about 82% of all Americans abroad who filed their 1040 owed no U.S. taxes.**[5] Most Americans abroad reside in OECD countries with tax rates higher than U.S. tax rates; the foreign tax credits generated eliminate U.S. taxes on their foreign source income. Not surprisingly, then, tax revenue from Americans abroad, estimated by ACA at $6.3 billion in Exhibit 1, represents only 0.3% of total federal government revenues ($2.17 trillion) collected by the U.S. Treasury in 2011.[6] Were it not for obvious cases of double taxation, the share of U.S. taxes paid by overseas taxpayers would certainly be even lower.

Furthermore, on the basis of recent IRS data and a refined analysis developed in Exhibit No 1, it is highly possible that ACA's $6.3 billion revenue estimate may be too high and that the likely tax revenues from private American citizens abroad may be in the $3 to $4 billion range, well below the ACA estimate of $6.3 billion.[7]

Foreigners resident overseas (excluding green card holders) are subject to U.S. withholding taxes on most types of U.S. source income, including dividends, rents, royalties, but generally not including interest on bonds and bank accounts. The statutory withholding tax rate is 30%, but it is often reduced by the terms of a double tax treaty, generally to 15% on investment income, sometimes with exemptions for specific items; revenues from private pension funds are generally not subject to U.S. withholding tax. [8] For countries without a treaty with the United States, the entire 30% withholding accrues to the U.S. Treasury.

Foreigners resident overseas with income compensation from independent services performed in the United States are subject to 30 percent withholding on such compensation under section 1441 or, in the case of partnership profits, withholding at rates specified under section 1446. Such income is deemed to be effectively connected with the conduct of a U.S. trade or business (called ECI). Recipients of ECI must submit a Form 1040NR tax return. Foreigners resident overseas who have no ECI but have passive income subject to withholding are not required to submit a Form 1040NR as long as the proper amount has been withheld on the income including reductions in withholding tax under a tax treaty.

The irony of the present system is that foreigners pay up to 30% withholding taxes on income from their U.S. financial assets; they also pay taxes on their net ECI at graduated rates. On the same revenue flows, however, Americans abroad are not subject to automatic withholding and may not pay tax if they do not file or may not owe any tax due to U.S. tax exemption on dividend income below certain thresholds.

Americans abroad are taxed on the basis of citizenship. Hence, the "saving clause" in U.S. tax treaties denies tax treaty benefits to U.S. citizens and green card holders [9] The United States does, however, acknowledge the first right of taxation of the country of residence on income earned abroad by allowing a credit for the foreign taxes imposed on foreign source income. It only taxes foreign source income to the extent U.S. taxes exceed the foreign taxes on that income.

For Americans abroad, U.S. tax filing is highly complicated, as foreign currencies must be converted into U.S. dollars and foreign transactions and arrangements must be interpreted according to U.S. tax law. To ensure compliance with U.S. law, overseas tax filers generally engage a tax lawyer or accountant knowledgeable in both local and U.S. tax systems. Such specialists are expensive and in many countries are almost impossible to find.[10] Though most overseas filers owe no U.S. taxes, they end up paying significant compliance fees because of the complexity of the filings and because they receive little help from the IRS, which has significantly reduced its customer service abroad.[11]

Due to CBT, Americans abroad are covered by the Financial Bank Account Reporting (FBAR) and FATCA requirements. The FBAR reporting regime was designed to deal with money launderers, drug barons and arms dealers. The FATCA legislation was primarily aimed at tax evaders resident in the United States. Yet the overwhelming majority of Americans abroad are law abiding and patriotic.

The combination of U.S. tax compliance in addition to foreign tax compliance, FBAR and FATCA Form 8938 filing requirements and the negative impact of FATCA on access to foreign financial institutions makes life for Americans residing overseas extremely difficult and creates tremendous stress.

- Americans abroad can be penalized by double taxation, despite the application of foreign tax credits, due to genuine differences between tax systems.
- Americans abroad are subject to discriminatory taxation of phantom income and capital gains related solely to fluctuation in the exchange rate between their local currency and the U.S. dollar.[12]
- Americans abroad face the burden of double tax reporting to their country of residence and to the United States.[13]
- U.S. business people employed by a U.S. corporation and self-employed entrepreneurs working overseas must contribute to U.S. Social Security and Medicare in addition to contributions to equivalent foreign social systems.[14]
- Americans abroad must report their foreign financial assets twice to the U.S. Government, once on the FBAR required under the Bank Secrecy Act and secondly on Form 8938 created under FATCA.
- Americans abroad who have not been in compliance with U.S. tax filing and want to correct the situation risk losing their life savings, even if they owe no U.S. taxes, because of the excessively high penalties in the law related to FBAR and Form 8938 non-filing and the application of punitive penalties under the IRS voluntary disclosure programs.
- Americans abroad have become pariahs in the international world of finance; foreign banks do not want them as clients because of FATCA legislation and foreign businesses do not want to deal with Americans. Bank accounts of Americans abroad are being forcibly closed, mortgages are being denied, securities have to be parked in expensive SEC registered ghettos, and Americans are excluded from joint bank accounts with foreign spouses (at least a third of Americans abroad are married to foreigners).
- Americans abroad are subject to unfair, disadvantageous fiscal treatment of retirement and savings vehicles that happen to be held outside the United States.
- American entrepreneurs are excluded from joint-ventures with foreigners because of FATCA and managers are being limited to careers below signature authority level or excluded from specific jobs because of FBAR.[15]
- Americans abroad are exposed to a high risk of identity theft as an overseas taxpayer's tax return[16] includes highly confidential, extensive personal details of assets as well as income and personal identification. With the current sharp increase in identity theft at the IRS and in financial markets worldwide, this is a major concern to Americans abroad.[17] This identity theft risk increases and other personal risks are created by the Intergovernmental Agreements (IGA) under FATCA legislation being negotiated between the U.S. Treasury and foreign governments whereby information on American financial accounts abroad would transit through foreign governments to IRS.
- Americans abroad are denied access to cost efficient investment vehicles in their country of residence that most Americans consider a given right. Investment in local Exchange Trade Funds,

Mutual Funds and other investment vehicles in the country of residence is barred by the burdensome U.S. rules governing Passive Foreign Investment Corporations (PFIC) and SEC rules denying Americans the right to invest in certain foreign securities that are not registered with the SEC, for instance, bond issues. Yet it is normal that Americans abroad should be able to make investments in the country in which they reside.

As clearly established as far back as 1981 by the Government Accountability Office[18] and 1979 by the Presidents Export Council[19], CBT negatively impacts not only Americans working and living abroad, but also the United States domestic economy and the competitiveness of U.S. businesses in the international marketplace.

CBT is an anomaly and is fundamentally bad tax law. Legal scholars and tax specialists have argued against it for both theoretical and practical reasons.[20] Several academic papers have made the point quite explicitly: it is difficult to enforce and leads to unfair double taxation. It is contrary to the fundamental principle that taxation is justified by services provided; overseas residents receive few, if any, services from the U.S. government. The Joint Committee on Taxation questioned citizenship-based taxation in the report dated September 2011, "U.S. Taxation of Cross-Border Income".[21]

CBT is also a human rights issue, as it unduly punishes U.S. citizens working and living worldwide. With the exception of Eritrea, a tiny African country with a GDP less than a sixth that of Vermont, the United States is the only country to apply citizenship-based taxation.[22] Ironically, the United States condemned Eritrea in December 2011 at the United Nations for its citizenship-based taxation (the so-called diaspora tax).[23]

Moving to RBT would be an immense relief for Americans abroad because it would mean lower expenses and lesser risks - financial or otherwise – and their savings would not be onerously taxed compared to Americans living in the United States. Equally important, shifting to RBT provides an incentive for and a fair way to allow non-compliant Americans abroad to enter into compliance, presuming that the IRS develops an appropriate compliance program.[24]

Residence-based taxation

Under RBT, Americans abroad would be taxed under the same rules currently applied to non-resident aliens.

- Americans abroad with a Departure Certificate under RBT (referred to hereafter as non-resident Americans) would not be subject to U.S. income tax on their foreign source income.[25]
- Non-resident Americans with U.S. source investment income, Social Security income[26], pension income, rents and royalties would be subject to U.S. withholding tax.
- Non-resident Americans who have ECI connected to U.S. trade or business would be required to file the 1040NR.
- Non-resident Americans would no longer be subject to the FBAR and FATCA regimes. [27]

- Non-resident Americans would not contribute to U.S. Social Security.
- Non-resident Americans must limit their presence in the United States to maintain their non-resident status. The substantial presence test of Section 7701(b) of the tax code currently applicable to non-resident aliens will also apply to Americans abroad with a Departure Certificate. The substantial presence test allows for a maximum of 182 days in the U.S., for any one year, and for a maximum average of 121 days a year over a three year period.[28]
- The estate of a deceased non-resident American would be subject to U.S. estate tax law applicable to all non-residents, if the individual had been abroad for at least two years at the time of death.[29] If overseas residence is less than two years prior to death, U.S. estate taxes apply.

An American establishing residence abroad subsequent to RBT becoming effective must:

- file an application for the Departure Certificate with the IRS;
- provide proof of foreign residence ;
- provide proof of residence in a foreign tax home;
- pay any U.S. income taxes due up to the date of establishment of overseas residence;
- pay a Departure Tax, if applicable.

The IRS will send the American abroad meeting the above conditions a Departure Certificate identifying the U.S. citizen or former green card holder as a non-resident American, no longer subject to U.S. income taxation applicable to U.S. residents. An American with a Departure Certificate would thus be treated by foreign financial institutions as a "Non-US Person" and consequently not be subject to the FATCA reporting requirements and SEC regulations.

- Clear rules must specify the period within which the IRS must deliver the Departure Certificate.
- No renewal or further notification would be required, as long as the non-resident American remains in the same country; if the individual moves to another country, he or she would be required to inform the IRS of the new address overseas.
- Filing a U.S. resident tax return when a U.S. citizen moves back to the U.S. automatically makes the Departure Certificate expire.[30]
- Filing for RBT should be able to be done retroactively; just because someone does not meet a specific deadline, should not force transition years to automatically be treated as full tax years.
- Children resident abroad with U.S. passports apply for a Departure Certificate when they reach the age of 18 and are still resident abroad. Up to the age of 18, they are covered by their parents' Departure Certificate(s).

American diplomatic personnel, government employees stationed overseas as well as members of the U.S. armed forces stationed abroad would be deemed U.S. residents and would be subject to U.S. taxation on their worldwide income.

Congress may determine that Americans with specific kinds of temporary overseas mandates of less than two years be deemed U.S. tax residents and subject to taxation on their worldwide income under the current Section 901 foreign tax credit rules and Section 911 foreign earned income exclusion rules.

Americans residing in countries deemed by the IRS to be tax havens would continue to be treated as U.S. tax residents. The law would grant the IRS the authority to designate certain countries as tax havens. The list of countries so designated should include **only** countries where the tax laws have been designed to attract rich foreigners with fiscal privileges. Low tax countries, such as countries in the Persian Gulf, where excise taxes on oil or minerals substitute for income taxes, are not *prima facie* tax havens, nor are countries where very high indirect taxes such as the VAT or high social security taxes or payroll taxes lead to low income tax rates. Absence of a U.S. tax treaty with a foreign country should not be, a priori, a criteria for labelling a country a tax haven.[31] Classification of countries as tax havens should be the rare exception.

Americans abroad who return to the United States to reside would again be automatically subject to the ordinary tax rules for U.S. residents; their Departure Certificate would automatically expire. However, the market value of all assets, except U.S. real estate, U.S. based pension funds and possibly U.S. based family company shares, held on the date of taking up U.S. residence would become the cost basis for future capital gains determination. Foreign pension funds owned at the time of taking up U.S. residence would be automatically considered “tax qualified” by the IRS and would not be subject to PFIC rules. U.S. real estate and U.S. based pension funds would retain their original cost basis.

RBT will simplify not only the U.S. tax code but also IRS administration in implementing the law. It will lead to automatic compliance through the withholding taxes on U.S. source income.

Departure Tax

The Departure Tax is a mark-to-market tax, based on the unrealized capital gains on the value of assets on the date of Departure. The tax is due, however, only if certain thresholds of assets or income tax paid in recent years are met. It is a capital gains tax on unrealized capital gains on all investments, with the exception, for reasons stated below, of U.S. real estate, primary residence abroad and U.S.-based and foreign-based retirement plans or pension funds.

The Departure date for Americans who are already resident abroad when RBT becomes effective will be the date that they file for the Departure Certificate.

The Departure Tax should not impair the mobility of average income American citizens in the world. The Departure Tax should not be applicable to Americans born with dual nationality and who return to the country of their other nationality[32], nor to Americans who were born of foreign parents in the United States and left as child with their parents, nor to Americans whose parents are both American but who have lived essentially all their lives overseas.

To transition fairly to RBT, Americans who have established residence abroad two years or more prior to the RBT law becoming effective and who have been compliant in their U.S. tax filing prior to the new RBT law would not be subject to the Departure Tax.[33]

The Departure Tax should be viewed as an anti-abuse measure aimed at wealthy individuals who might consider leaving the U.S. for tax reasons.

The Departure Tax is applicable if <u>both</u> of the following two thresholds are met:

1. total assets exceed $5 million, excluding U.S. real estate, foreign residence and U.S-based and foreign-based pension funds and retirement savings accounts, **or** average income tax over the last five years exceeds $190,000, indexed to inflation, and
2. unrealized capital gains on foreign assets exceed $650,000, indexed to inflation.

These thresholds are modelled on Section 877A which applies to individuals renouncing U.S. citizenship or green card status. [34] However, the Departure Procedure will be a separate section of the law and the thresholds are more favourable for those applying for a Departure Certificate. It is important to encourage individuals to maintain their citizenship with RBT rather than to renounce their citizenship. Certain punitive provisions of the law applicable to individuals who renounce U.S. citizenship under Section 877A will **not apply in any way whatsoever** to Americans and green card holders who leave the United States with a Departure Certificate under RBT. [35] They retain their full rights of citizenship.

With the new Departure Procedure in place, Section 877A may most likely no longer be necessary and can possibly be repealed. Handling citizenship renunciation is the purview of the State Department, not the IRS. In fact, with the Departure Procedure in place, the number of renunciations of U.S. citizenship is likely to decline sharply.[36]

As an anti-abuse measure in the Departure Procedure, an exception to the mark-to-market procedure will provide for securities meeting specific criteria to remain subject to the ordinary rules of capital gains taxation for a period of two years starting with the date on the Departure Certificate. This exception will apply to all securities linked to prior employment in the United States, including stocks, stock options, phantom shares, incentive shares, founders shares issued in new ventures, etc. Mark-to-market will take place, as provided in the normal rules, on the second anniversary of the Departure Certificate, except for the securities which have been disposed of during said two-year period and have been taxed under the ordinary capital gains tax rules.

U.S. real estate and U.S. pension funds and retirement savings accounts are excluded from assets subject to mark-to-market tax rules upon departure because U.S. source income continues to be subject to U.S. taxation. U.S. real estate property remains subject to local real estate taxes, withholding tax on rent and capital gains tax whenever the property is sold, in accordance with general international tax practice and U.S. federal and state tax policy. Since Americans resident abroad will be taxed like non-resident aliens, they are subject, under FIRPTA (Foreign Investment in Real Property Tax Act), to 10 percent withholding on the gross proceeds (which may be reduced under applicable procedures) at the time of the sale to ensure compliance with any capital gains tax.[37]

U.S. pension funds are also excluded from the assets subject to the Departure Tax because the income flow will be subject to U.S. tax when they convert to a revenue stream upon retirement. Furthermore, they cannot be realized at the time of Departure.

There is also good reason to temporarily exempt shares in closely held family businesses from the Departure Tax until the time those shares are sold. If such a business sends a manager/family member overseas for several years to grow a business and they are bona fide overseas residents under RBT, the Departure Tax would put handcuffs on expanding U.S. family businesses worldwide by forcing a tax on hard to value and illiquid shares. The manager/family members sent overseas could choose between paying the Departure Tax immediately or reporting such holdings when they leave the U.S. and the shares would remain subject to US capital gains tax when sold.

Foreign pension funds and retirement savings accounts as well as a foreign residence are excluded from assets subject to the Departure Tax because they cannot be realized at the time of Departure. Furthermore, for Americans who have resided overseas many years, foreign pensions and retirement savings accounts and investment in a home represent a life-time savings; when they moved overseas, their assets were significantly less. Excessive taxation of savings of citizens who have resided most of their adult life abroad would be unfair. Americans who have resided overseas more than two years and who are compliant with their U.S. tax filing obligations are fully exempted from any Departure Tax.

Estate taxes for deceased non-resident Americans under RBT

Americans who have a Departure Certificate and who die overseas will be subject to the rules presently applicable to deceased non-resident aliens owning U.S. assets under Code Section 2012 (b)(1), provided that overseas residence was established more than two years prior to death. These rules provide for all U.S. situs assets, including real estate, securities, trusts, partnerships, etc., that exceed $60,000 to be subject to U.S. estate taxes. Estate taxes paid in the country of residence of the deceased on account of U.S. assets would continue to be creditable against U.S estate taxes.

The estate and gift tax exclusion for non-resident aliens was set at $60,000 by the Miscellaneous Revenue Act of 1988. The exclusion is absurdly low when compared to the $5 million exclusion for estates of U.S. persons reconfirmed by Congress in December 2012.[38] The $60,000 limit should be substantially increased to reflect the current estate exclusion of U.S. residents, particularly since Code Section 2012 (b)(1) will apply to both foreigners and U.S. citizens residing abroad with a Departure Certificate.

Anti-abuse measures

The ACA proposal includes seven measures designed to prevent abuses of RBT, in general, and more specifically to prevent high net worth individuals from taking up residence abroad for the sole purpose of reducing their U.S. taxes:

1. The Departure Procedure would require proof that, at the time of applying for the IRS Departure Certificate, the American citizen is considered a resident of a foreign country and is subject to taxation in that country, on the same basis as non-U.S. citizens who are residents of that country.

2. The Departure Procedure would require proof that all income taxes due up to the date of Departure have been paid and that the Departure Tax, if applicable, is paid. The American citizen would file a final tax form with the IRS, namely Form 1040 up to the date of establishment of overseas residence, using the same dual-status taxation procedures that apply to foreign taxpayers.
3. Americans who have resided abroad less than two years prior to the RBT law becoming effective and who have assets or U.S. income tax liability exceeding the thresholds mentioned above would be subject to a Departure Tax, even if they had been compliant in their U.S. tax filing. The date of departure for Americans already resident abroad when the law is passed is the date that they file for the Departure Certificate.
4. The sale of securities linked to prior employment in the United States would be subject to ordinary U.S. capital gains taxation for a period of two years following the date of departure; mark-to-market would take place on the second anniversary of the departure for securities which have not been disposed of during the two-year period.
5. Estates of individuals who lived overseas and established foreign residence less than two years before death would continue to be subject to the U.S. estate tax. Estates of individuals who resided more than two years overseas prior to death would be taxed the way non-resident aliens are taxed, on the condition that the exemption is increased far above the current $60,000 level to reflect the exclusion allowed for U.S. residents.
6. The Treasury would designate certain countries tax havens; Americans residing in those countries would be treated as U.S. residents and remain subject to U.S. income taxes. As stated above, an American with a Departure Certificate who moves from one country to another must report the change of residence to the IRS. If this move is to a country deemed to be a tax haven, the Departure Certificate is no longer valid and the individual is taxed henceforth as a U.S. resident.
7. Congress may determine that Americans with specific short-term overseas employment contracts of less than two years remain subject to U.S. taxes as though they were U.S. residents.[39]

Positive consequences of RBT for the United States

As proposed by ACA, RBT would have numerous and significant positive consequences for the United States.

RBT would produce an estimated $33 billion in additional revenue for the U.S. Treasury over ten years, compared to the current system, as explained fully in a later section of this paper and in Exhibit 1 as the United States would:

- collect revenue on U.S. source income of non-resident Americans that currently goes uncollected;
- collect the Departure Tax where applicable;
- collect back-taxes from taxpayers overseas entering into U.S. tax compliance;
- collect tax, as under the current system, from non-resident Americans active in business in the United States.

RBT would, in general, not increase the total amount of income taxes paid by Americans residing abroad[40];

- higher income tax rates in OECD countries, where the vast majority of Americans abroad reside, will not change;
- U.S. withholding tax on U.S. source income and U.S. taxes on business conducted in the United States should be creditable against the tax liability of the country of residence if there is a bi-lateral tax treaty or if the country of residence allows foreign tax credits;
- U.S. taxes on U.S. earned income and business activities in the United States should be comparable to taxes paid under the current rules and should be creditable against the tax liability of the country of residence if there is a bi-lateral tax treaty or if the country of residence allows foreign tax credits;

RBT would eliminate, or at least greatly reduce, the very heavy filing and compliance costs paid by overseas filers;

RBT would eliminate penalizing instances of double-taxation which occur under current CBT law due to:

- inherent difference between foreign and U.S. tax systems;
- the requirement to use the U.S. dollar as the functional currency for U.S. tax filing;
- the requirement for employees of U.S. corporations and self-employed entrepreneurs abroad to make social security contributions to both the United States and resident country social security systems in countries lacking a Social Security Totalization agreement with the United States.[41]

RBT would enhance the competitiveness of Americans abroad by:

- liberating American entrepreneurs abroad from double corporate tax filing and from restrictions on entering into partnerships with foreigners;
- opening up access to foreign financial institutions as FATCA will no longer apply to non-resident Americans with a "Departure Certificate";
- eliminating unfair, prejudicial taxation of Americans based on their overseas residence;
- eliminating all FBAR filing requirements for Americans abroad, including the provision requiring filing information on the FBAR on foreign accounts over which the American has only signatory authority. This filing requirement makes some foreign businesses unwilling to give U.S. persons signatory authority on company accounts. FBAR filing requirements also encourage foreign spouses to deny access to joint bank & other financial accounts;

RBT would rationalize and reduce the administrative and enforcement burden of the IRS.

RBT would align U.S. tax policy on individuals with tax rules generally applicable in the rest of the world.

In addition, RBT would generate substantial economic benefits for the United States:

- American businesspeople sent abroad will no longer be more expensive to employ than foreigners. U.S. companies will be encouraged to deploy more Americans abroad. This creates jobs for Americans, both at home and abroad, and increases long-term U.S. competitiveness through greater knowledge of foreign markets.

- New domestic jobs from increased export will favorably impact U.S. tax revenue. Every $1 billion of American manufactured goods exported is estimated to generate 7,000 to 10,000 domestic jobs and $150 million in federal tax revenue.[42] Just $100 billion of additional exports, a 5% increase of exports, will generate $15 billion every year in new federal tax revenue, more than twice the current tax revenue from Americans abroad.[43]
- Small and medium-sized U.S. companies, which represent an enormous potential for increasing U.S. exports and consequently domestic jobs,[44] will face fewer hurdles when setting up foreign sales operations managed by knowledgeable U.S. staff. American overseas managers share the strategic objectives of the company and established communication channels and have full backing of top management, an important element for success.

Implementing RBT

Implementation of RBT requires changes in the U.S. income tax code and estate and gift tax laws. Exhibit 2 provides a list of measures required to define who is subject to U.S. income tax, the Departure Procedure, modifications required in FATCA regulations and IGA agreements, changes required to bilateral taxation treaties, cancellation of the requirement for certain Americans abroad to contribute to Social Security and Medicare, alignment of taxation of green card holders with their status under immigration laws and non-applicability of SEC investment restrictions on Americans resident overseas. The list is non-exhaustive. Other parts of the U.S. Internal Revenue Code may also require modification.

Though implementing RBT requires numerous changes in the U.S. tax code, the process is essentially simple since the withholding tax rules are already defined, as they already apply to non-resident aliens, and the withholding tax collection system is already in place and can easily distinguish income flows by residence and nationality.

Simultaneously with the adoption of RBT, Congress must instruct the IRS to significantly simplify the rules, forms and procedures for Americans resident overseas to enter into compliance since compliance with U.S. tax filing is a condition for obtaining a Departure Certificate and transition to RBT.

The September 1, 2012 “Streamlined” OVDI iteration intended to encourage tax compliance of Americans abroad represents a step in the right direction, but unfortunately this program carries far too many restrictions and an exceedingly low eligibility threshold (with a maximum of only $1,500 per year in unpaid taxes). Moreover, the inappropriate term “high risk” and the threat of criminal charges are extraordinarily intimidating. Knowledgeable Americans abroad, aware of the mishaps and unimaginably harsh treatment meted out under prior voluntary disclosure programs, generally view the new IRS program as a trap, rather than a solution.

Therefore, Congress must instruct the IRS to provide a streamlined compliance program for all Americans residing overseas at the time the RBT law becomes effective, with no restrictions on eligibility. Additionally, the program should not be under the administrative purview of the IRS Criminal Division.

An equitable and acceptable compliance program for Americans abroad:

- would require just three years of back tax reporting;
- would eliminate the requirement to file the FBAR which is superfluous since it is not a tax form; Form 8938 (submitted as an attachment of Form 1040) provides a much more comprehensive report on overseas assets;
- must eliminate **all** non-filing penalties for FBAR and Form 8938;
- must eliminate any threat or risk of criminal prosecution;
- must be open to all non-residents, with no ceiling threshold for the amount of taxes due;
- must be limited to payment of only back taxes, interest and late filing penalties related to unpaid taxes associated with the three years of back-filing.

Such a program would allow Americans abroad to come forward with confidence that they will be treated fairly and with the requisite predictability heretofore lacking. A sound, simple IRS compliance program that functions in good faith is absolutely necessary to transition from CBT to RBT. The IRS may even develop a simplified 1040 report for Americans abroad coming into compliance under this transition to RBT. The National Taxpayer Advocate calls for a similar program in the 2012 Annual Report to Congress.[45]

With such a program, Congress and the IRS would recognize the dysfunctional nature of CBT and with it, their share of responsibility for the current level of non-compliance of Americans abroad. The IRS has insufficient means to enforce tax collection abroad and has significantly reduced its customer service overseas.[46] Many long-term overseas residents are unaware of their tax filing obligation. IRS efforts to inform the overseas community of the law have been sparse and ineffectual. Some Americans abroad may be aware of the tax filing requirement, but hesitate to engage an extremely costly tax professional to prepare the complex U.S. tax forms when they know that no U.S. tax is due. Some, born abroad to a U.S. parent, are citizens of the country where born, have never held a U.S. passport and have never lived in the U.S. Others, born to foreign parents in the United States, returned to their parents' home country when they were infants. Still others are convinced they are no longer U.S. citizens because they had their U.S. citizenship rescinded under prior legislation, later deemed unconstitutional by the Supreme Court, thus retroactively restoring U.S. citizenship to all such persons without their knowledge or consent.[47] Finally, others do not earn income reaching the threshold required for filing the 1040. The consequence is widespread confusion among Americans abroad and a tax system which can only be described as dysfunctional.

If RBT is adopted by Congress, it would be front-line news that would spread rapidly among the overseas community; regardless of whether the RBT program is defined as default or as voluntary, Americans and green card holders overseas not in compliance would in large part adhere to the transition compliance filing in order to obtain a Departure Certificate which would substantially improve their life abroad.

How much tax revenue will RBT bring in?

RBT should prove to be a significant revenue generator for the United States, producing $8.6 billion annually compared to $6.3 billion of revenue estimated to be collected under the current CBT system, i.e. $2.3 billion or 36% more annual tax revenue on an on-going basis. This additional revenue amounts to $23 billion over ten years.

Moreover, the tax reform proposal projects $7 billion of additional revenue for the initial year, or initial phase, after enactment of RBT legislation. This one-time result relates to taxes collected through the transition phase, during which the several million Americans already resident overseas will file with the IRS to be recognized as non-resident Americans for tax purposes. This "transition revenue" includes:

- Individual back taxes paid by Americans residing abroad and coming into compliance with the IRS on taxes due on the date of filing for the Departure Certificate;
- Departure Tax on mark-to-market unrealized capital gains paid by wealthy individuals already resident overseas more than two years, but who were not in compliance when the law became effective.
- Departure Tax on the mark-to-market unrealized capital gains paid by all wealthy Americans resident abroad less than two years prior to RBT becoming effective law.
- No Departure Tax from Americans already resident abroad for more than two years and who have been in tax compliance.

Therefore, according to ACA estimates, the increase in U.S. Treasury revenue is $30 billion over ten years, $23 billion from annual revenue increases and $7 billion related to the transition to RBT by Americans already residing abroad. Reduced IRS administrative expenses leads to an estimated savings of $3 billion over ten years, yielding a ten year total Treasury gain of $33 billion.

These estimates are based on conservative assumptions from data available, but it should be emphasized that they are just estimates; in fact, RBT may possibly generate even more additional tax revenue as the estimate of taxes currently collected from Americans abroad under CBT may be on the high side for reasons detailed in note "e" of Exhibit 1. Furthermore, the RBT projections focus on private citizens and green card holders; in addition to revenue from this group, the United States will continue to obtain tax revenue from U.S. diplomatic staff and military personnel overseas.

The RBT proposal must be scored by the JCT to confirm the advantages of RBT. At the very least, JCT should provide an estimate of the taxes actually paid by Americans abroad under the current CBT model.

The ACA estimates are presented in detail in **Exhibit 1 and accompanying notes.**

Conclusion

Adopting RBT is not a matter of paying, or not paying, U.S. taxes. RBT means paying U.S. taxes under a different model which is fairer and more efficient than the current CBT paradigm.

The United States has everything to gain and nothing to lose by adopting RBT. RBT would be economically advantageous to the United States:

- The transition period from CBT to RBT would produce significant revenue; thereafter, on-going tax revenues under RBT would be higher than under the current law.
- RBT broadens the tax base of the American overseas community and ensures compliance through automatic tax collection at source.
- RBT simplifies application of the U.S. tax code, increases tax collection efficiency and reduces IRS administrative and enforcement costs.
- RBT allows Americans abroad to be competitive overseas and to have unencumbered access to foreign financial institutions and investments.
- RBT aligns United States tax practices with norms and standards in effect internationally.

CBT has been ingrained in the U.S. tradition and mentality since the Civil War, but it is no longer justified and has become obsolete. It is, in fact, counter-productive for the United States in today's global economy. In parallel with fundamental tax reform for corporations and individuals now underway in the United States, it is essential to modernize tax policies concerning Americans abroad. Contrary to myths held by many that Americans abroad are the privileged wealthy, the community of Americans overseas is comparable to the community of hard-working average Americans resident in the United States.

RBT will significantly improve the U.S. image in the world and will invigorate the partnership between U.S. businesses and Americans abroad, who are the nation's unofficial ambassadors, representing U.S. economic, political and cultural interests, and the United States. Facilitating mobility for Americans to work and live throughout the world is of great importance at this time of global competition. RBT also provides fair tax conditions to continue to encourage immigration of foreigners in to the United States, a recognized source of enrichment for the country.

ACA requests Congress to hold hearings on the taxation of Americans residing overseas and the impact of RBT. ACA aims to have the RBT proposal sponsored by members of Congress and scored by the Joint Committee on Taxation which has access to IRS data and economists specialized in estimating the fiscal impact of legislation.

March 2013

* * *

RBT - Residence-based Taxation: a Necessary and Urgent Tax Reform, can be found at www.americansabroad.org, the website of American Citizens Abroad.

ACA is reorganizing as a U.S. tax-exempt organization operating under section 501(c)(4) of the Internal Revenue Code. American Citizens Abroad Foundation will operate alongside it as a publicly-supported charity under Section 501(c)(3).

Please address comments to: **Marylouise Serrato** at info@americansabroad.org 202 322 8441

Exhibit 1: Revenue Effects

The revenue estimates and projections, based on an analysis of publicly available IRS data, are presented in detail in **the table attached to this Exhibit 1 and in the accompanying notes.**

ACA estimates that 4 million Americans and green card holders residing overseas will be compliant if RBT is adopted. One million are currently compliant and 3 million are expected to become compliant.[48]

Annual revenue under RBT

- U.S. withholding taxes will apply to source income, including income from services performed in the United States. The withholding tax would be carried out within the framework of existing U.S. tax law applicable to non-resident aliens and tax treaties signed by the United States. U.S. source income includes investment income (dividends, interest and royalties), income from other assets (e.g. rent from U.S. real estate), and other income (Social Security and pensions). ACA estimates average withholding of $1,200 per person and per year, for a total of $4.8 billion in tax revenue annually.
- U.S. government employees overseas, including military personnel, would remain subject to U.S. taxation as though they were U.S. residents; they are not included in the ACA projections for RBT.
- Congress may consider that Americans abroad with specific temporary overseas mandates be taxed as though they were U.S. residents.
- U.S. partnerships would be subject to U.S. taxation following the same procedures established for non-resident aliens involved in U.S. partnerships (Form 8805). $1.5 billion of tax revenue is projected from U.S. partnership income, based on an estimate of 50,000 Americans abroad paying an average of $30,000 taxes.
- Sales of U.S. real estate remain subject to U.S. capital gains tax via the withholding rules on sales under FIRPTA. A 10% withholding tax of the sale value is imposed at the time of sale of U.S real estate to ensure that any capital gains tax due will be collected. Projected annual sales: 50,000 with an average capital gains tax of $20,000, amounting to $1 billion in tax revenue.

In total, annual recurring revenues under RBT amount to $8.6 billion, compared to $6.3 billion under the current CBT system - 36% higher.

Transition revenues

The revenue model presented here assumes, for simplification purposes, that all Americans abroad will file with the IRS to be recognized as non-resident Americans for U.S. tax purposes during the first year follow adoption of RBT. In practice, the transition period may take place over more than one year. In no way does this change the fiscal advantage for the United States, but only spreads it out over time.

- Back taxes paid by 3 million Americans abroad; an average of $1,000 would bring in $3 billion.
- Departure Tax will be paid on mark-to-market unrealized capital gains by taxpayers meeting the conditions stated above. ACA estimates that 20,000 Americans abroad who are either not in compliance when the law is passed or who have resided overseas less than two years prior to

enactment of RBT law, will be subject to the Departure Tax on unrealized capital gains. The average Departure Tax is estimated at $200,000, resulting in $4.0 billion in tax revenue.[49]

- Total estimated revenue for the transition period is $7 billion.

In addition to the above,

- the United States Treasury would no longer pay tax credits to Americans abroad, such as the child tax and other credits that are claimed under the current system; the IRS would realize significant savings in administrative and enforcement costs on hundreds of thousands of tax returns, FBAR and 8938 forms from Americans living overseas, all of which are highly complex due to thousands of pages of tax code and regulations, different foreign legal and tax systems and multiple currencies. IRS savings estimated at $300 million annually, or $3 billion over ten years, are included in the model presented.

The model does **not** include two other factors which will impact the final calculation of the significant benefit of RBT for the United States, but which are extremely difficult to project.

- **Future population movements:** The movement of Americans leaving and returning to the United States may be very well close to equilibrium. The United States remains definitely an immigrant country as more than one million green cards are issued every year. RBT creates a fair law which will help to continue to attract immigrants to the United States. The number of immigrants into the United States far exceeds the number of Americans moving abroad.
- **Derivative economic benefits:** human resources officers of U.S. companies regularly testify that U.S. corporations are sending fewer and fewer Americans overseas today because of the U.S. tax code. RBT will encourage U.S. companies, particularly small and medium-sized companies, to deploy American staff abroad to start-up sales offices overseas. Additional domestic tax revenue will result from the dynamics of increased U.S. competitiveness, new overseas networks, higher exports and consequently new jobs created in the United States and lower government expenses for unemployment compensation. These additional benefits to the United States are substantial and potentially run into tens, if not hundreds, of billions of dollars, but are not included in the model presented because they are difficult to quantify.

Revenue Estimates for 2011
Tax Revenue under Citizenship-based Taxation
compared to
Potential Tax Revenue under Residence-based Taxation

	No of filings	Filings with U.S. tax due	U.S. tax due ($ in thousands)	Ave. Tax due $	Note ref.
TAX REVENUE UNDER CITIZENSHIIP-BASED TAXATION					
Tax Revenue from 1040s filing Form 2555	380,286	161,900	4,849,900	30,000	a
Tax Revenue from 1040s filing Form 1116	558,900	50,300	1,509,000	30,000	b
Total filings and taxes	**939,186**	**212,200**	**6,358,900**		c
Less: Refundable Child Tax Credits paid			-38,000		d
Total taxes under citizenship-based taxation			**6,320,900**		e
TAX REVENUE IN FIRST YEAR WITH RBT					
Withholding tax on U.S. source income		4,000,000	4,800,000	1,200	f
Income taxes from individuals taxed as U.S. residents		100,000	1,300,000	13,000	g
Tax revenue on interests in U.S. partnerships		50,000	1,500,000	30,000	h
Tax on capital gains realized on U.S real estate		50,000	1,000,000	20,000	i
Sub-total on-going tax revenues			**8,600,000**		
Back taxes and interest paid by non-residents		3,000,000	3,000,000	1,000	j
Departure tax on unrealized captal gains		20,000	4,000,000	200,000	k
Sub-total first year of RBT transition revenues			**7,000,000**		
Total tax revenue in first year of RBT			**15,600,000**		
IRS administrative savings			300000		l
Total benefit to the United States, first year of RBT			**15,900,000**		

Notes to Exhibit 1

a) Source: IRS Statistics: http://www.irs.gov/taxstats/indtaxstats/article/0,,id=132037,00.html Number of taxpayers filing Form 1040 and Form 2555 (for Foreign Earned Income Exclusion and Foreign Housing Exclusion). It is assumed that 100% of those taxpayers filing Form 2555 are residing overseas. There may be some in transition between the United States and overseas, but this number should be small. The latest data available for the year 2006 showed a total of 334,851 filings, of which 142,524 filings owed U.S. taxes. Total U.S. tax due was $4,269,286,000.

To update the 2006 data to 2011, ACA has applied the same growth rate in number of filings from 2001 to 2006. The increase was 13.6% over five years.

The average tax due is $13,000 on the total number of filings with Form 2555. The average of taxes paid for only those filings with taxes due is $30,000; the tax due is skewed high because all those who owe no U.S. tax are not included and a small number of high income individuals pull up the average.

b) Source: IRS Statistics: http://www.irs.gov/taxstats/indtaxstats/article/0,,id=132037,00.html Table 3: Individual Income Tax Returns with a Foreign Tax Credit or a Form 1116. Taxpayers filing Form 1116 totaled 2,789,002 in 2006 (latest data available). They paid $18.1 billion in foreign taxes. Total foreign tax credits applied against U.S. taxes amounted to $10.68 billion. Of those filing Form 1116, 596,446 filings claimed foreign taxes against "other income" with total foreign taxes paid of $12.18 billion. "Other income" is the category used for salaries and pensions when filing the 1116; hence this category indicates the approximate number of Americans and green card holders residing overseas who filed Form 1116; of those 596,446, 104,195 also filed Form 2555. To avoid double counting with the report under Form 2555, ACA has deducted the 104,195 from 596,446 to obtain 492,251 (rounded to 492,000) as the estimate of the Americans and green card holders residing overseas who filed only Form 1116 in 2006.

The 2006 figure has been increased by 13.6% (following the same logic identified in note a) for Form 2555) to approximate the number of Form 1116 filings from Americans and green card holders residing overseas in 2011, i.e. 558,900. This estimate may be on the high side as Form 1116 is also filed by U.S. residents.

In its 2011 Report to Congress on page 155, the Taxpayer Advocate Service reported that in tax year 2009, "After the application of the Foreign Tax Credit, only 9% of these taxpayers had a U.S. tax liability." (http://www.irs.gov/advocate/article/0,,id=252216,00.html). Therefore 9% of the estimated number of Americans abroad filing Form 1116 has been taken as the number of filings with U.S. taxes due, i.e. 50,300 filings. Table 1116 does not allow an average calculation of U.S. taxes paid as there is no split in revenue between U.S. and overseas residents. To estimate the U.S. taxes paid by Americans abroad filing Form 1116, the average figure of $30,000, determined for those filing who owe taxes with Form 2555 from statistics available, has been applied. This figure is probably significantly overstated as the United States taxes only the excess of the U.S. tax due over the foreign tax paid, if any. In fact, the average of taxes paid on all 558,900 filings of 1116 from overseas is only $2,700.

c) The Taxpayer Advocate Service states on page 151 of its 2011 Report to Congress: "IRS data show that 858,760 taxpayers filed returns from a foreign address in calendar year (CY) 2009". In the ACA table, the estimated total of 2011 taxpayers filing returns from abroad is 939,300, which is 80,540 or 9% more than the 858,760 figure provided by the Taxpayer Advocate Service for the year 2009. This suggests that the ACA estimate is within the ballpark with regard to total overseas filings.

d) Americans overseas with low income have the right to claim a refundable child tax credit of $1,000 per child. In 2006 in the statistics of Form 2555, 127,700 filings had average salary income below $41,600. A conservative estimate that 30% of those filings or 38,300 filings claim on average 1 child tax credit gives total credits of $38.3

million. This estimate does not include other tax credits which can be claimed under citizenship-based taxation as no public data is available.

e) The estimated total of $6.3 billion of taxes from CBT may, in fact, be substantially overstated. A study on the actual revenue derived from the imposition of non-resident Americans must be undertaken by the Joint Committee on Taxation. IRS Statistics of Income (SOI) for 2011 show in *Table 5: Gross Collections by Type, Tax and State, Fiscal Year 2011* a total of $6.9 billion of taxes from individuals classified under "International", i.e. individuals with a foreign address. This category includes individual income taxes collected not only from U.S. citizens and legal permanent residents overseas, but also from non-resident aliens. $3.7 billion of this amount was attributed to taxes withheld and $3.2 billion to taxes paid with tax returns. It is likely that an important portion of the withholding taxes relate to non-resident aliens on U.S. source income and to wages paid to U.S. diplomatic staff and military members abroad. Hence, the part of the individual income tax attributable to U.S. private citizens and green card holders abroad is probably in the $3 to $4 billion range, substantially lower than the ACA estimate of $6.3 billion in the table. Source: http://www.irs.gov/uac/SOI-Tax-Stats---Gross-Collections,-by-Type-of-Tax-and-State,-Fiscal-Year---IRS-Data-Book-Table-5
In addition, a 2012 WIRA (IRS Wage and Investment Research and Analysis) study identified 519,049 filings out of a total 1,485,359 international filings as coming from non-resident aliens.

f) The estimated average of taxes withheld per nonresident taxpayer is $1,200. IRS statistics show an average of $300 for foreigners filing form 1042-S in 2009 for withholding taxes. It is expected that the population of Americans abroad would have closer ties and more affinity to the United States as well as more knowledge of U.S. investments and would therefore hold a higher percentage of U.S. securities in their investment portfolios; they are also more likely to have U.S. source pensions and other U.S. passive income. The $1,200 is derived from the following assumptions:

- Financial assets of U.S. persons residing abroad contain on average $100,000 in U.S. financial assets, including shares, bonds, etc.
- Financial assets yield on average 3%, namely $3,000 per year.
- Net withholding tax rates on U.S. source income after rebates provided by international tax treaties will average 20%, for a withholding of $600 per U.S. person per year ($3,000 x 20%).
- In addition, an average amount of $600 per person per year is projected for taxes on other U.S. source income, including rent, patents, royalties, pensions, etc.

IRS statistics of U.S. withholding tax on foreign-owned U.S. source income for 2009 (Form 1042-S) are provided in Table 2 at: http://www.irs.gov/taxstats/indtaxstats/article/0,,id=96993,00.html . The table shows the following information for individual foreigners; the average tax withheld per form is $300 (796,563,000/2,656,106).

Number of forms	2,656,106
U.S. tax withheld (in thousands)	796,563
Total U.S. source income (in thousands)	10,923,300
Principal types of U.S. source income:	
Interest	3,058,736
Dividends	1,597,838
Rents	692,658
Social Security	1,629,765
Personal Services	1.187,781
Notional contracts	174,973

g) There may be certain individuals with temporary employment contracts overseas (less than two years) that Congress deems to be subject to taxation as U.S. residents. Some Americans abroad may have ECI and would therefore be required to file the 1040NR. There will also be taxes related to the period between arrival in a foreign country and establishment of foreign residence for tax purposes. The average tax paid by those still filing under CBT is estimated at $13,000, based on the average taxes paid by all filings for Form 2555 statistics for 2006 when $4.85 billion in taxes were collected from a total of 380,285 filers of Form 2555.

h) In 2008 (the latest data available), tax revenue on foreign recipients of U.S. partnership income amounted to $5.3 billion. It is expected that some Americans abroad would have interests in similar ventures. Tax revenue for U.S. partnership involving Americans overseas is estimated at $1.5 billion, based on 50,000 taxpayers with an average tax of $30,000. Source: IRS statistics – Form 8805: Table Foreign Recipients of U.S. Partnership Income 2008 U.S. Income and Tax Withheld as Reported on Form 8805 by Country of Residence.

i) Americans residing abroad would still be subject to U.S capital gains on the sale of U.S. real estate. 50,000 sales are estimated with an average capital gains tax of $20,000.

j) It is assumed that the 3,000,000 overseas residents who become compliant for the first time will owe on average $1,000 of back-taxes, related interest due and late payment penalties. This estimate is conservative. Higher back taxes collected will favorably impact total revenue under RBT.

k) If there are 4 million taxpayers resident abroad, the wealthy 0.5% with assets exceeding $5 million would represent 20,000 taxpayers. Average total assets are estimated to be $8 million, unrealized capital gains in excess to the exemption amount to be $900,000. At the new 23.8% capital gains tax rate on high income individuals, the average tax due is $200,000.

l) The savings to the IRS is based on an estimate of 3,000 employees at an average cost of $100,000, for $300 million a year or $3 billion over ten years.

Exhibit 2: Implementing RBT

The follow list is not exclusive, but indicative of some of the principal changes to be made to the Tax Code, FATCA regulations and double tax treaties.

- The definition of "non-resident alien", found at IRC §7701(b)(1)(B) would be amended to refer to "non-resident", which would thus include non-resident Americans and non-resident aliens.
- The Departure Procedure, specific exemptions to RBT as determined by Congress, estate tax applicable and procedures applicable upon return to the United States would be set out in new Internal Revenue Code sections.
- FATCA regulations and IGAs concerning FATCA must be modified to state that foreign financial institutions and U.S. withholding agents are to treat non-resident Americans as non-U.S. persons for FATCA purposes. Foreign financial institutions would not be obligated to file financial information concerning non-resident Americans with the IRS or their government, as applicable. Non-resident Americans would provide foreign financial institutions and withholding agents with Form W-8BEN accompanied by a copy of their Departure Certificate;
- Bilateral tax treaties would have to be updated to eliminate the impact of the "savings clause" on non-resident Americans and otherwise modified to conform to residence-based taxation. Treaties must ensure that non-resident Americans are treated the same way as non-resident aliens are treated and that the existing reduced treaty tax rates would extend to all non-residents. Congress can pass legislation which unilaterally eliminates the "savings clause". Foreign governments would not object to this unilateral action; in fact, they would view it favorably as their citizens who are also U.S. citizens would benefit.
- In addition to the "savings clause, a nexus clause is added to U.S. treaties by treaty partners with residence-based taxation that denies treaty benefits to U.S. citizens and green card holders resident in their country who are not substantially present or who do not have a nexus such as a permanent home in the United States. This may require modification. See for example, Article XXIX(2) and (3) (saving clause and exceptions) and Article IV(2) (residence definition) of the treaty with Canada.
- New provisions in bilateral tax treaties, subject to negotiation, should aim to allow the non-resident American to apply any Departure Tax paid as a tax credit against any foreign tax on capital gains realized on the assets subject to the Departure Tax.
- Certain bilateral tax treaties should be renogiated to ensure that Americans residing overseas are not penalized on their U.S.-source retirement income; for example, France has a 30% withholding rate on private pensions whereas most other countries have a 0% withholding rate on such income.
- To prevent double taxation on the Departure Tax paid to the U.S. on unrealized capital gains, it would be desirable if the United States could negotiate that such tax should be creditable against future foreign taxes on capital gains realized on those same assets.
- Non-resident Americans holding a Departure Certificate will no longer be required to report foreign accounts or assets owned on the FBAR or on Form 8938. The Bank Secrecy Act and the FATCA legislation must be modified accordingly.
- Americans resident abroad under RBT would no longer pay U.S. Social Security and Medicare taxes. Social Security agreements should be changed to make application of Social Security tax on Americans abroad consistent with the changed tax rules (for example a consistent detached worker rule).

- Any income earned in the United States by non-resident Americans will require filing Form 1040NR, the form used by non-resident aliens who are engaged in trade or business in the United States or who earn income from U.S. sources, including deferred compensation earned by individuals relating to work performed in the United States regardless of when paid. Possibly the Form 1040NR may have to be modified to make it applicable to non-resident Americans.
- U.S. tax policy on green card holders must be aligned with rights of re-entry into the United States as defined by U.S. immigration law. Legal permanent residents who lose the right to live in the United States must file a final tax return, be current with their U.S. tax obligations, and pay the Departure Tax, if applicable.
- Non-resident Americans with a Departure Certificate are not considered to be U.S. persons with regard to Securities and Exchange Commission (SEC) restrictions on foreign investments. A copy of the IRS Departure Certificate will provide foreign businesses and banks with proof of local residence and non-applicability of U.S. citizenship-based taxation laws and SEC restrictions that prohibit American citizens from investing in certain foreign securities. SEC regulations need adapting to reflect the impact of RBT.
- The estate and gift exclusion for non-resident aliens under current law of $60,000 must be significantly increased to reflect the current exclusion for U.S. residents as it will be applicable to all non-residents, including non-resident Americans under RBT.
- The W-8 BEN form may need modification to include non-resident Americans.

* * * * *

End Notes

[1] The National Taxpayers Advocate reports can be found at :
http://www.irs.gov/uac/National-Taxpayer-Advocate's-2011-Annual-Report-to-Congress
http://www.taxpayeradvocate.irs.gov//userfiles/file/FY13ObjectivesReporttoCongress.pdf
http://www.taxpayeradvocate.irs.gov/userfiles/file/Full-Report/Most-Serious-Problems-International-Taxpayer-Issues.pdf
http://www.taxpayeradvocate.irs.gov/userfiles/file/Full-Report/Most-Serious-Problems-IRS-Offshore-Voluntary-Disclosure-Programs.pdf

[2] Bernard Schneider, *The End of Taxation Without End: A New Tax Regime for U.S. Expatriates*, Virginia Tax Review, Vol. 32, No. 1, 2012. Source: http://papers.ssrn.com/sol3/papers.cfm?abstract_id=2186076. See also:

A Coherent Policy Proposal for U.S. Residence-Based Taxation of Individuals by Cynthia Blum and Paula N. Singer, The Vanderbilt University Law School, Vanderbilt Journal of Transnational Law, May 2008. 41 Vand. J. Transnat'l L. 705; *Tax Reform for Americans Abroad* by Paula N. Singer, Tax Notes International, May 25, 2009, p. 673; *The Case Against Taxing Citizens* by Reuven S. Avi-Yonah, PUBLIC LAW AND LEGAL THEORY WORKING PAPER SERIES, Working paper No. 190, March 2010, Empirical Legal Studies Center Working Paper No. 10-009.

http://www.law.umich.edu/centersandprograms/elsc/abstracts/pages/papers.aspx; *A Proposal for Taking the Complexities out of Taxing U.S. Retirement Distributions to Foreign Nationals* by Cynthia Blum and Paula N. Singer, Florida Tax Review, Volume 11, Number 10, 2012.

[3] Foreign tax credits can be applied against earned income to the extent not allocable to excluded income.

[4] Under the Bush tax cuts, ordinary dividends received from domestic corporations and qualifying foreign corporations are considered "qualifying dividend" income and are taxed at the preferential capital gain rates. Effective for tax years ending on or after May 6, 2003, and beginning prior to January 1, 2013, The Jobs and Growth Tax Relief Reconciliation Act of 2003 (2003 JGTRRA) reduces the 10% and 20% rates on the adjusted net capital gain to 5% and 15%, respectively. The 5% rate is further reduced to 0% for tax years ending after December 31, 2007, and beginning before January 1, 2013. The 0% rate applies to taxpayers in the 10% and 15% income tax brackets. For 2012, for married filing jointly returns, for example, the 15% bracket ends at $70,700. So for joint returns below this amount, qualifying dividends are taxed at a 0% rate. With the permanent extension of the Bush tax cuts passed on December 31, 2012, this general rule should apply to 2013 and beyond.

[5] http://www.taxpayeradvocate.irs.gov/userfiles/file/Full-Report/Most-Serious-Problems-International-Taxpayer-Issues.pdf The National Taxpayer Advocate 2012 Annual Report to Congress cites the 2012 WIRA Research Study 23-24 as its source. Further perspective on why 82% of Americans abroad do not have a U.S. tax liability comes from the National Taxpayer Advocate 2011 Report to Congress: (http://www.irs.gov/uac/National-Taxpayer-Advocate's-2011-Annual-Report-to-Congress). It reported that in tax year 2009, "After the application of the Foreign Tax Credit, only about nine per cent of these taxpayers had a U.S. tax liability.", p.155. Since the passage of TIPRA legislation in 2006, many Americans abroad no longer use the Foreign Earned Income Exclusion because any non-excluded income is taxed at the marginal rate that would have applied if there had been no exclusion (exclusion with progression). This change is not reflected in the 2006 statistics**.** IRS statistics on international taxes are produced every five years; the 2011 statistics are not yet available. However, about 10% of Americans abroad reside in countries with tax systems that are radically different from the U.S. in that their tax revenue is generated primarily or exclusively, not from taxes on income, but from very high consumption or other indirect taxes, which are neither deductible nor creditable against the U.S. tax liability. Americans in these low income tax countries cannot benefit from foreign tax credits; they apply the foreign earned income exclusion and any income earned over the foreign earned income exclusion is subject to U.S. taxation. (The foreign earned income exclusion, which was $95,100 in 2012, would exceed $250,000 if it had been adjusted for inflation since introduced in 1962.) Hence, 58% of filers of Form 2555 have no U.S. tax liability, based on IRS Form 2555 statistics for 2006, the latest available. (http://www.irs.gov/taxstats/indtaxstats/article/0,,id=132037,00.html). One reason why proportionally more taxpayers filing Form 2555 owe U.S. taxes than those filing Form 1116 is because of the low cap on the amount of foreign earned income exclusion which does not correspond to economic reality.

[6] Source: http://www.taxpolicycenter.org/taxfacts/displayafact.cfm?Docid=200. In 2010, the U.S. Treasury collected $2,162.3 billion in total revenues and the amount estimated for 2011 is $2,173.7 billion. The 0.3% is based on ACA's estimate that total tax revenue collected from Americans abroad amounts to $6.3 billion; details of this estimate are found in Exhibit1.

[7] http://www.taxpayeradvocate.irs.gov/userfiles/file/Full-Report/Most-Serious-Problems-International-Taxpayer-Issues.pdf , p. 267 for details of the number of international individual taxpayer filings and http://www.irs.gov/uac/SOI-Tax-Stats---Gross-Collections,-by-Type-of-Tax-and-State,-Fiscal-Year---IRS-Data-Book-Table-5 for details of international individual withholding taxes and taxes paid. Since there is no way to split out accurately tax revenues from Americans abroad, ACA has kept the estimate based on Form 2555 and Form 1116 statistics.

[8] A full list of the reduced treaty tax rates by country and by type of income can be found in IRS Publication 515, starting on page 39. Table 1 illustrates treaty rates on passive income. Table 2 illustrates the conditions for exemption from tax for income related to U.S. activities. If full identity of the beneficial owner is known to the withholding agent, the reduced treaty withholding rate can be immediately applied. The "closer connection exception" requires submitting Form 8840; the procedure is explained in IRS Publication 519.

[9] In addition to the "savings clause, a nexus clause is added to U.S. treaties by treaty partners with residence-based taxation that denies treaty benefits to U.S. citizens and green card holders resident in their country who are not substantially present or who do not have a nexus such as a permanent home in the United States. See for example, Article XXIX(2) and (3) (saving clause and exceptions) and Article IV(2) (residence definition) of the treaty with Canada.

[10] The Gulf region, In particular, is reported to have very few professional tax preparers.

[11] The IRS has reduced its overseas offices to only four cities – London, Paris, Frankfurt and Beijing. Staffing in each office is minimal and access hours limited to just 3 to 5 hours a day. There is no toll-free IRS number for calls made by Americans

overseas. IRS outreach is primarily via its internet site, which is not sufficient. The U.S. Consulate in Dubai turned down an offer by a tax attorney to give U.S. tax seminars for them at no cost! They acknowledged that the information would be invaluable, but turned down the offers on grounds they could not be seen to be promoting a private non-US government advisor in any way. Other consulates no doubt follow the same policy.

[12] The United States requires Americans abroad to use the U.S. dollar as the functional currency for tax reporting purposes whereas it does allow American owned corporations overseas to use the local currency as the functional currency.

[13] Americans abroad must file taxes in the country of residence and in the United States. U.S. forms are particularly complicated. For example, Form 1116 (Foreign Tax Credit) generally requires professional software for accurate completion (IRS Publication 514, *Foreign Tax Credit for Individuals* is 40 pages long); Form 5471 is overwhelmingly onerous for small business owners under the controlled foreign corporation rules as this form was developed essentially for very large multinational companies; Form 8621 for PFICs (passive foreign investment companies) is another nightmare as most foreign pensions are in this category and the American overseas usually has no control or choice in the matter; the PFIC filing is so complicated that some professional tax preparers refuse to take clients who require such filing.

[14] Bilateral Totalization agreements are social security treaties with foreign governments that intend to ensure that social security taxes are paid to only one country. The United States has Totalization agreements with only 24 countries. For more information on agreements, see www.ssa.gov/international.

[15] FBAR regulations require that Americans report to the U.S. not only foreign financial accounts over which the individual has ownership, but also foreign financial accounts over which the American has only signature authority. The consequence is that corporations overseas do not hire Americans in positions which require signature authority over corporate accounts.

[16] The risk of serious identity theft is high as information on the 1040, Form 8938 and FBAR include the Social Security number, income, taxes due, birthdate, bank account numbers, bank addresses, name and number of life insurance policies, highest maximum balance, personal investments, home address, signature, etc.

[17] *Risk Net* cited FATCA data exchange as one of the top ten risks for identity theft in 2013, stating: "Greater mandated information exchange, under legislation such as Fatca and the intergovernmental agreements supporting it, opens the door still further to data theft or misuse. It may also leave banks and other financial institutions vulnerable to penalties under national data protection laws, if their information exchanges are not conducted carefully." Source:
https://www.google.com/search?hl=en&gl=us&tbm=nws&q=Market+vulnerable+to+FATCA&oq=Market+vulnerable+to+FATCA&gs_l=news-cc.1.0.43j43i400.1961.4754.0.6628.2.2.0.0.0.0.245.476.2-2.2..0...0.0...1ac.1.dMb-VMfcwJg
Other articles indicate that the sharp increase in identity theft is becoming a major concern.
http://thehill.com/blogs/on-the-money/domestic-taxes/164391-gao-taxpayer-identity-theft-on-the-rise
http://www.gao.gov/assets/130/126293.pdf
http://www.accountingtoday.com/news/IRS-Prodded-Cut-Identity-Theft-Tax-Gap-62389-1.html?pg=1

[18] **GAO (then called the General Accounting Office)**, "*American Employment Abroad Discouraged by U.S. Income Tax Laws*", (ID-81-29), 1981 stated: *"The competitiveness of U.S. exports in the world market has become a major national concern because of the deficit in the U.S. balance of trade that developed in the 1970s and its implications for real income and employment in the United States. This problem has the focus of major initiatives to improve Government export promotion programs and to identify and correct Government disincentives to exports.*

To adequately promote and service U.S. products and operations in foreign countries, U.S. companies employ a large force of U.S. citizens abroad. There is widespread concern that tax provisions contained in the Foreign Earned Income Act of 1978 are proving a disincentive to employment of U.S. citizens abroad, and, therefore, adversely affecting exports. A GAO survey of a group of major U.S. companies having substantial operations abroad revealed that U.S. taxes were an important factor in reducing the number of Americans employed overseas." http://www.gao.gov/assets/140/132160.pdf

[19] **President's Export Council**, *"Task Force to Study the Tax Treatment of Americans Working Overseas"*, December 10, 1979, stated: "*Americans working overseas are essential to a viable export program. An increase in the number of Americans assigned abroad can increase our exports, reduce the negative balance of payments, enhance our country's image, and raise employment in the U.S. Recognizing that it is in the best interest of our nation to encourage Americans to work overseas, the Task Force*

recommends the adoption of tax policies that are comparable to those of major competing industrial nations, none of which now tax citizens who meet overseas residency tests."

[20] *A Coherent Policy Proposal for U.S. Residence-Based Taxation of Individuals* by Cynthia Blum and Paula N. Singer, The Vanderbilt University Law School, Vanderbilt Journal of Transnational Law, May 2008. 41 Vand. J. Transnat'l L. 705.

Tax Reform for Americans Abroad by Paula N. Singer, Tax Notes International, May 25, 2009, p. 673.

The Case Against Taxing Citizens by Reuven S. Avi-Yonah, PUBLIC LAW AND LEGAL THEORY WORKING PAPER SERIES, Working paper No. 190, March 2010, Empirical Legal Studies Center Working Paper No. 10-009.

http://www.law.umich.edu/centersandprograms/elsc/abstracts/pages/papers.aspx

A Proposal for Taking the Complexities out of Taxing U.S. Retirement Distributions to Foreign Nationals by Cynthia Blum and Paula N. Singer, Florida Tax Review, Volume 11, Number 10, 2012.
The End of Taxation Without End: A New Tax Regime for U.S. Expatriates by Bernard Schneider. Virginia Tax Review, Vol. 32, No. 1, 2012. Source: http://papers.ssrn.com/sol3/papers.cfm?abstract_id=2186076

[21] **Joint Committee on Taxation**, September 6, 2011, (JCX-42-11) prepared for the Public Hearing before the Senate Committee on Finance of September 8, 2011, "Present Law and Issues in U.S. Taxation of Cross-Border Income", p. 93. http://www.jct.gov/publications.html?func=startdown&id=4355. The statement of the Joint Committee on Taxation is:

Treatment of individuals

> "Although most commentary on the issues of worldwide and territorial bases of taxing jurisdiction have focused on competitiveness of U.S. companies in comparison to foreign owned companies subject to territorial systems, a shift to a territorial system could also include provisions related to the treatment of individual taxpayers. Such reform would constitute a significant departure from long-standing policies, although it would have the effect of aligning the U.S. basis of taxation more closely with that of its trading partners.
>
> The U.S. has consistently defended its assertion of worldwide jurisdiction with respect to its citizens and residents, both in the structure of the Code and in the terms of various bilateral and multilateral agreements. To the extent the U.S. has ceded such authority in practice, it reflects acceptance of international norms in favor of relief from double taxation and the policy favoring the facilitation of employment of U.S. citizens or residents abroad.
>
> If the broad assertion of taxing jurisdiction is to be conceded in favor of expanding territorial taxation to individuals, the scope of any such expansion should be considered. For example, the exclusion could apply only to earned income by increasing or removing caps on the foreign earned income exclusion and making the exclusion available to Federal employees. The treatment of unearned income may require revisions to the rules for determining source of such income, and create a need for new rules to establish status as a nonresident citizen. Such rules in turn would require anti-abuse provisions, possibly modeled on rules governing tax-motivated expatriation."

[22] Ironically, the United States joined in Resolution 2023 of the Security Council of the United Nations on December 5, 2011 condemning Eritrea for imposing a ***"Diaspora tax"*** on its citizens residing overseas. Citizenship-based taxation is nothing more than a tax on the American diaspora under a different name.

[23] In a speech on December 5, 2011 before the United Nations, Susan Rice, U.S. representative to the United Nations, supported a UN resolution condemning Eritrea for the violation of the Universal Human Rights of its expatriate citizens because of its levying of a tax on the income of expatriates of that country which provided funds to destabilize that section of Africa. U.N. resolution 2023 condemning Eritrea for its Diaspora tax passed with ample majority. Articles 10 and 11 state:

> "10. *Condemns* the use of the 'Diaspora tax' on Eritrean diaspora by the Eritrean Government to destabilize the Horn of Africa region or violate relevant resolutions, including 1844 (2008), 1862 (2009) and 1907 (2009), including for

purposes such as procuring arms and related materiel for transfer to armed opposition groups or providing any services or financial transfers provided directly or indirectly to such groups, as outlined in the findings of the Somalia/Eritrea Monitoring Group in its 18 July 2011 report (S/2011/433), and *decides* that Eritrea shall cease these practices;"

"11. *Decides* that Eritrea shall cease using extortion, threats of violence, fraud and other illicit means to collect taxes outside of Eritrea from its nationals or other individuals of Eritrean descent, *decides* further that States shall undertake appropriate measures to hold accountable, consistent with international law, those individuals on their territory who are acting, officially or unofficially, on behalf of the Eritrean Government or the PFDJ contrary to the prohibitions imposed in this paragraph and the laws of the States concerned, and *calls upon* States to take such action as may be appropriate consistent with their domestic law and international relevant instruments, including the 1961 Vienna Convention on Diplomatic Relations and the 1963 Vienna Convention on Consular Relations, to prevent such individuals from facilitating further violations;"

[24] The National Taxpayer Advocate Report 2012 Annual Report to Congress highlights the failings of the current IRS programs for voluntary compliance and why they discourage Americans abroad from entering into compliance. Source: http://www.taxpayeradvocate.irs.gov/userfiles/file/Full-Report/Most-Serious-Problems-IRS-Offshore-Voluntary-Disclosure-Programs.pdf

[25] Americans abroad would submit a copy of the IRS "Departure Certificate" to foreign financial institutions and U.S. withholding agents with a signed Form W-8, which would automatically override any formerly signed and submitted W-9, so as to be taxed by the U.S. on the same basis as a non-resident alien. U.S. withholding agents are required to collect withholding taxes and report income paid and taxes withheld on Form 1042-S information return.

[25]Overseas residents who have received the Departure Certificate from the IRS are no longer required to file Form 1040, related schedules and all other forms related to investments overseas. The following list is indicative, and by no means exhaustive, of IRS and Treasury forms which are no longer required to be filed by non-resident Americans:

- 1040, U.S. Income Tax Return
- 1041, U.S. Income Tax Return for Estates and Trusts
- 3520, Annual return to Report Transaction with Foreign Trusts and Receipt of Certain Foreign Gifts (except in the case of death of a Bona fide resident overseas, in which case the return must be filed)
- 3520-A, Annual Information Return of a Foreign Trust with a U.S. Owner
- 5471, Information Return of U.S. Persons with Respect to Certain Foreign Corporations
- 8621, Return by a Shareholder of a Passive Foreign Investment Company or a Qualified Electing Fund
- 8814, Parent's Election to Report Child's Interest and Dividends (if your dependent child is also a bona fide overseas resident)
- 8865, Return of U.S. Persons with Respect to Certain Foreign Partnerships
- 8891, Beneficiaries of Certain Canadian Registered Retirement Plans
- 8938, Statement of Specified Foreign Financial Assets (FATCA)
- TD F 9022.1, Report of Foreign Bank and Financial Accounts (FBAR), filed with the Department of the Treasury.

[26] If RBT is introduced and there is a withholding tax on U.S. source Social Security payments, the provisions of the Windfall Elimination Provision (WEP) which affect Americans abroad should be revised in the course of tax reform so as not to penalize Americans who have had careers split between the United States and overseas. Under WEP, if an Americans receives social security income from a foreign government, the amount of U.S. Social Security paid is substantially reduced (by up to 50%) from the normal amount due, yet foreign social security revenues are pro rata to the period of contribution. WEP regulations should not apply to Americans residing abroad who receive foreign social security revenues, particularly if a U.S. withholding tax is applied to U.S. social security payments.

[27] Non-resident Americans would show the IRS "Departure Certificate" to foreign financial institutions and U.S. withholding agents, sign a W8 and cancel any formerly signed W9, so as to be taxed by the U.S. as a non-resident alien. U.S. withholding agents are required to collect withholding taxes and report income paid and taxes withheld on Form 1042-S information return.

[28] http://www.irs.gov/pub/irs-pdf/p519.pdf U.S. Tax Guide for Aliens, Publication 519, p. 4.

[29] The current definition of a non-resident alien for estate, generation-skipping, and gift tax purposes is a non-U.S. citizen not domiciled in the United States. This would have to be changed to include American citizens who reside overseas.

[30] Under RBT, Americans with a Departure Certificate who return to the U.S. should have foreign pension accounts automatically considered "tax qualified" by the IRS; they would be subject to U.S. income tax only at the time distributions start in retirement. They should not be subject to PFIC rules. Otherwise, the treatment of foreign pensions may discourage Americans from returning to the United States.

[31] For instance, the United States does not have tax treaties with Brazil and Argentina, but these countries are vital trade partners and have established tax systems.

[32] This provision exempting dual citizens who return to the country of their other nationality of the tax on unrealized capital gains is already present in Section 877A.

[33] Long-term Americans resident abroad prior to enactment of RBT should not be subject to the Departure Tax for several reasons:

- They did not leave the country for tax reasons, but for personal and professional reasons.
- They have been subject to and complied with unfair double tax filing and sometimes double taxation under CBT.
- Most have resided overseas for more than 10 years, many for most of their lives.
- If the Departure Tax were applicable, life-time savings, earned and accumulated abroad, would be unfairly taxed on exaggerated long-term unrealized capital gains as the U.S. dollar is the required functional currency for determining capital gains calculations. Such gains would be artificially blown-up by the devaluation of the U.S. dollar against most foreign currencies over the past forty years since the United States left the gold standard. It would largely amount to a tax on the devaluation of the U.S. dollar.

[34] In Section 877A of the tax code, the asset threshold is $2,000,000, not indexed to inflation, while the 2012 threshold for average income tax paid over the five prior years, indexed to inflation, was $151,000 and the excluded amount of unrealized capital gains not subject to the tax, indexed to inflation, was $651,000. The RBT reform proposal has increased the asset threshold to $5 million so that the law would not penalize U.S. citizens who may be sent abroad by their U.S. employer to represent company interests. On page 9 of the RBT proposal, the two amounts indexed to inflation have been adopted, but rounded respectively to $150,000 and $650,000.

[35] The punitive measures that can affect Americans who renounce their citizenship are:

- Section 2801, an estate penalizing measure (no estate exemption granted) against U.S. persons who inherit money from individuals who have renounced their citizenship or green card;
- Section 6039G(d) which requires the Secretary of the Treasury to publish names of individuals who renounce their citizenship or green card;
- The Reed Amendment of 2011 to the Immigration and Nationality Act, which denies re-entry into the United States if the U.S. Attorney General determines that a former citizen renounced his or her citizenship to avoid U.S. taxes.

[36] One of the reasons for advocating RBT with a Departure Procedure is, in fact, to allow U.S. citizens to maintain their citizenship when residing abroad.

[37] In addition to tax considerations, not including real estate in the mark-to-market calculation will avoid pressuring Americans to sell their U.S. real estate at what could be an unfavorable moment when moving overseas; investments in real estate are not as liquid as those in securities. Maintaining a prior U.S. residence also eases the return to the United States after completion of overseas assignments.

[38] This exceedingly low limit of $60,000 exclusion discourages investment in the United States. Foreign financial institutions actively advise non-resident aliens who are advancing in age to divest their U.S. investments. Proof of the inappropriateness of this $60,000 exemption limit is that the total amount of tax collected under this law in 2011 was only $15.2 million. Source:
http://www.irs.gov/uac/SOI-Tax-Stats---Nonresident-Alien-Estate-Tax-Returns-with-Non-Treaty-Status: 2011 data show 97 returns filed and $8.4 million of estate tax collected.
http://www.irs.gov/uac/SOI-Tax-Stats---Nonresident-Alien-Estate-Tax-Returns-with-Treaty-Status: 2011 data show 341 returns and just $6.8 million of estate tax collected.

[39] Certain professions, such as professors and students, already have specific rules under Social Security Totalization agreements whereby there is a period when foreigners in the United States for a short period remain covered by Social Security system of their country of origin and may not be subject to U.S. taxation. One could imagine a similar treatment with regard to taxation of Americans abroad on short term mandates under RBT. For a detailed discussion of the various immigration categories with particular conditions, see Paula Singer, "Certain Nonresident Aliens Are Now Obligated for U.S. Self-Employment Tax, Tax Notes International, Volume 62, Number 1, April 4, 2011. http://www.windstar.com/public/paula-singer-publications.html

[40] There may be some instances when Americans abroad may face higher taxes. For instance, an American abroad with a modest total income who effectively owes little or no tax in the country of residence may pay higher total taxes if an important part of the revenue is U.S. source subject to U.S. withholding taxes under RBT. At the other extreme, the foreign country of residence may not accept application of foreign tax credits against capital gains realized on securities which had been subject to the U.S. Departure Tax under RBT; obtaining recognition of such a tax credit would depend on acceptance by the foreign government under bilateral tax treaty with the United States. A model for such a clause is the provision in Article XIII(7) of the tax treaty with Canada. Nevertheless, the vast majority of Americans abroad will not have to pay the Departure Tax and will not be affected if such a clause cannot be negotiated. Americans who reside in countries that do not have a bilateral tax treaty with the United States may face issues of double taxation on dividends, for example, but they would be liberated from the current double taxation on Social Security contributions under CBT. The great majority of Americans abroad reside in countries which do have bilateral tax treaties with the United States.

[41] The United States has bilateral Totalization agreements aiming to eliminate double taxation on social security charges with only 24 countries.

[42] This number is based on recent ratios of federal tax revenue as a proportion of GDP, i.e. 15%,
Source: http://www.taxpolicycenter.org/taxfacts/displayafact.cfm?Docid=200

[43] $100 billion of additional exports represents an increase of 5% of total exports, based on 2011 data when total US. Exports totaled $2.105 trillion.

[44] Only a small fraction of all small and medium-sized companies are exporting. If more small and medium-sized companies can be encouraged to initiate export activities, the potential for improving the nation's foreign trade balance and creating jobs in the U.S. is significant. Within the framework of the National Export Initiative, the Small Business Administration (SBA) is undertaking a comprehensive program to encourage more small and medium-sized companies to export. As stated on page 55 of the SBA report, http://www.sba.gov/sites/default/files/files/small_business_report_final.pdf, "With 95% of the world's customers living outside our borders and the International Monetary Fund forecasting that over 87% of economic growth over the next five years will take place outside of the United States, there are enormous possibilities for American small businesses to sell their products and services around the globe."

[45] http://www.taxpayeradvocate.irs.gov/userfiles/file/Full-Report/Most-Serious-Problems-International-Taxpayer-Issues.pdf p. 271. The National Taxpayer Advocate calls for a $10,000 ceiling for annual unpaid taxes instead of the $1,500 under the current IRS program for Americans abroad. The Advocate also calls for no penalties for non-filing or late filing.

[46] http://www.taxpayeradvocate.irs.gov/userfiles/file/Full-Report/Most-Serious-Problems-International-Taxpayer-Issues.pdf p. 270. The National Taxpayer Advocate states: "The IRS does not have sufficient resources to identify or take enforcement actions against all non-filers. Moreover, this type of action may lack economic sense given that the AGI [adjusted gross income] reported by international taxpayers is often not high enough to generate tax liability."

[47] Afroyim v. Rusk 387 U.S. 253 (1967) overruled the Supreme Court's own precedent and law dating from 1907 that mandated loss of citizenship for voting in an election in a foreign country. Citizenship which had been lost under prior law was reinstated automatically following the decision.

[48] These 4 million taxpayers are estimated from among the approximate 12 million Americans and green card holders residing overseas. IRS estimates 7 million Americans reside abroad (cited in the Taxpayer Advocate Report to Congress for the year 2011, p. 151). ACA estimates 5 million green card holders reside abroad, based on the following analysis. In fiscal year 2010, 1.2 million individuals obtained a green card as reported in the Taxpayer Advocate Service 2011 Report to Congress on page 130; at

this rate, over a 20 year period, approximately 24 million individuals obtain a green card; ACA has estimated that 20% would return to their country of origin, yet maintain their green card. The proposed ACA legislation will help regularize the U.S. tax situations of those green card holders who have left the United States without officially renouncing their green card. No one, including the State Department and the IRS, knows that actual number of Americans and green card holders abroad. For a full review of various estimates of U.S. citizens abroad, see Bernard Schneider's paper, *The End of Taxation Without End: A New Tax Regime for U.S. Expatriates*, Virginia Tax Review, Vol. 32, No. 1, 2012.
Source: http://papers.ssrn.com/sol3/papers.cfm?abstract_id=2186076 , pp. 8-17.

[49] This estimate of Departure Tax presumes $6 million average in assets of which $2 million represents unrealized capital gain (30% of total asset value). Of this $2 million unrealized capital gain, $651,000 (for 2012) is exempt from Departure Tax and $1,341,000 is taxed at the capital gains rate of 15%, yielding Departure Tax due of $201,150 (rounded to $200,000 above) on average.