



AMERICAN CITIZENS ABROAD

EDUCATE, ADVOCATE AND INFORM

November 1, 2018

The Honorable Kevin Brady
Chairman
Ways and Means Committee
United States House of Representatives
1102 Longworth House Office Building
Washington, DC 20515

The Honorable Richard Neal
Ranking Member
Ways and Means Committee
United States House of Representatives
1102 Longworth House Office Building
Washington, DC 20515

RE: Tax Cuts and Jobs Act 2.0 Must Include Residency-Based Tax Reform for US Citizens Living and Working Overseas

Dear Chairman Brady and Ranking Member Neal:

American Citizens Abroad, Inc. (ACA), a qualified section 501(c)(4) tax-exempt social welfare organization, is a nonprofit, nonpartisan, volunteer, membership organization. Alongside of ACA sits our sister organization, American Citizens Abroad Global Foundation (ACAGF), a publicly-supported section 501(c)(3) charity.

ACA believes it is uniquely qualified to comment on tax reform for US citizens living and working overseas as we bring to the conversation 40 years of experience and expertise on the subject. ACA is constantly feeling the pulse of the community of US citizen overseas through our membership, our social media outreach and our organizational network.

It is ACA's belief that the time has come to pass tax reform for US citizens overseas. Extensive work on the subject has been undertaken and assurances given by Congress and the Tax-Writing Committees See: Colloquy on house floor (https://www.c-span.org/video/?c4692161/congressman-holdings-comment-rbt&mc_cid=1cf1050358&mc_eid=c09bdc671c). The Tax Cuts and Jobs Act 2.0 must include residency-based tax reform for US citizens living and working overseas.

An extensive body of work exists and Congress has the data to develop legislation.

On December 5, 2016, ACA was the first organization to provide to the public, the Congress and the tax-writing committees a roadmap or “vanilla approach” to Residency-based taxation (RBT) by taking the current regime – Citizenship-based taxation (CBT) and showing where changes in the tax code can be made to transition to RBT. (<https://www.americansabroad.org/media/files/page/60567bc4/residency-based-taxation-aca-side-by-side-comparison-current-law-and-vanilla-approach-180420-1600.pdf>)



ACA Global Foundation, ACA's educational and research "sister" organization, was the first (and to this date the only) organization to develop baseline data depicting the situation of US citizens abroad. This data can be used to make unofficial revenue estimates for RBT, including its various working parts. This data and these estimates were prepared by District Economics Group (DEG), a firm that specializes in economic analysis and insights into the federal revenue, legislative, and regulatory policymaking process, located in Washington, DC. The ACA/DEG analysis (https://www.americansabroad.org/media/files/files/dc1e1c4e/DEG_short_memo_on_RBT_proposal_11.06.2017.pdf) has been provided to the Joint Committee on Taxation, the House Ways and Means Committee, and several interested Members offices. The analysis includes important data on the size, make-up and asset composition of US citizens living and working overseas. ACA and DEG continue to work on this subject.

The ACA/DEG analysis shows that, with careful choices, enactment of RBT can be accomplished in a revenue-neutral way. ACA is also convinced that the change can be made "tight against abuse" and without making anyone worse off than they are under current rules.

Why is tax reform for US citizens overseas needed?

In the passage of the Tax Cuts and Jobs Act (TCJA) on December 22, 2017, the tax treatment of US citizens living and working overseas was not addressed. In addition, the effects of the new tax reforms on US citizens overseas were not considered in the development of the legislation. The result is that the tax situation for US citizens living and working overseas has not improved and in many cases, has become much worse.

Under TCJA, territorial taxation was passed for US Corporations. Congress acknowledged that "territoriality" is the worldwide standard of taxation and the fair and honest way to tax US corporations operating internationally. This treatment needs to be applied to US citizens living internationally through residency-based taxation. Simply put, adopting RBT would take out from US taxation the foreign income earned by US citizens who are legitimately resident overseas. An RBT regime would mirror what was done for US corporations through the new territoriality taxation regime.

TCJA and its effects on US citizens overseas.

TCJA moved the US from a worldwide tax system to a participation exemption system by giving US corporations a 100% dividend-received deduction for dividends distributed by a controlled foreign corporation (CFC). To transition to that new system, the measure imposes a one-time deemed repatriation tax, payable over 8 years, on unremitted earnings and profits at a rate of 8 percent for illiquid assets and 15.5 percent for cash and cash equivalents. The dividends-received deduction is available only to US corporations that are shareholders in the CFC. The deduction is not available to



individuals, nor is it available to foreign corporations, which, for example, are owned by US individuals, including individuals living abroad. On the other hand, the repatriation tax would apply to everyone, not merely US corporations.

It is very common for US citizens living and working in a foreign country to own a foreign company. They might have a small business that is owned and operated through an entity created under local foreign law but characterized as a corporation for US tax purposes. This might be done to comply with local rules that influence the decision to incorporate. It might be done to protect against all kinds of liabilities under local rules. Most Americans abroad who are “hit” by these new rules will not have “incorporated” with US taxes in mind.

ACA has heard from small business owners, who were never “socking away” income offshore to avoid US taxation, about the life-changing effects the law is having on them and their businesses. Many of these individuals have been setting aside profits in their foreign company simply because, rather than paying out profits to themselves, they are in effect financing future operations and perhaps future expansion. By nature, the business is “foreign”; it is situated and operates outside the US; all its employees live outside the US. There may be no connection with the US other than the fact that some or all of the shareholders are US citizens. Some believe they will have to liquidate their businesses because the cost to calculate, and pay, the tax will bankrupt them.

<https://www.americansabroad.org/media/files/files/6ed55928/submission-treasury-transition-tax-regs-181008-1-final-002-.pdf>

Congress needs to act now.

Citizenship-based taxation (CBT) was put in place at the time of the Civil War. Reasons for its adoption no longer relate to the realities of the 21st Century. Congress and the Treasury, in their attempts to crack down on tax evasion, have passed legislation and implemented regulatory practices that are catching – for good reason -- individuals involved in criminal tax evasion. However, this has been done at a cost to law-abiding US citizens who are living and working overseas.

Increased compliance costs, ever more complex tax regulations and filing requirements – most times forcing US citizens overseas to have to pay expensive fees for professional tax preparers – are complicating the lives of everyday citizens, resulting in increased instances of double taxation, locking citizens out of foreign banking and investment access, forcing some citizens into bankruptcy or having to choose renunciation of their US citizenship in order to survive.

CBT, the passage of the Foreign Account Tax Compliance Act (FATCA), the active enforcement of the Foreign Bank Account Report (FBAR) and now the Global Intangible Low-Taxed Income (GILTI) and transition tax regimes are taking US citizens living and working overseas to the edge. ACA believes that many of the negative effects of these



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policies are unintended consequences due to Congress' lack of understanding of the community of US citizens living overseas. Congress now has the ability to correct this.

For all the aforementioned reasons and because no subsection of US citizenry should be ignored and forgotten in tax reform, Congress must pass tax reform for US citizens living and working overseas as part of TCJA 2.0.

Sincerely,

/S/

Marylouise Serrato
Executive Director
American Citizens Abroad, Inc.