



AMERICAN CITIZENS ABROAD

EDUCATE, ADVOCATE AND INFORM

March 22, 2018

David Kautter
Assistant Secretary for Tax Policy
US Department of Treasury
and Commissioner (Acting) Internal Revenue Service

Chip Harter
Deputy Assistant Secretary (International Tax Affairs)
US Department of Treasury

Dear Sirs,

This is written on behalf of American Citizens Abroad, Inc. (ACA) and its sister organization, American Citizens Abroad Global Foundation. These entities, both of which are nonpartisan and qualified exempt organizations, represent Americans abroad.

There are an estimated approximately 8.5 to 9 million Americans abroad. Of these, after eliminating members of the armed services and government employees and contractors and making a number of other adjustments, there are approximately 4 million US residents overseas. Based on public information, there are approximately 1,700,000 overseas tax return filers. This figure reduces to approximately 1.2 million overseas tax returns, after again eliminating federal government employees. From public information, it's difficult to derive how many of these tax returns include Forms 5471 for controlled foreign corporations (CFC). Since a high percentage of entities characterized as corporations owned by Americans abroad will be CFCs, a good guess is that there easily might be over 10,000 CFCs in the hands of Americans abroad. Revenue estimators at the Treasury Department and Joint Committee on Taxation will have more complete information. (ACA, employing the services of District Economics Group, since May 2017 has worked to develop baseline information about Americans abroad and their taxation. While this gives us a great deal of insight, it obviously is not the final word on this subject.)

ACA writes to request, urgently, relief from imposition of certain reporting and filing requirements contained in the Tax Cuts and Jobs Act (TCJA) enacted last December, which requirements affect Americans abroad with CFCs.

Along with a number of other things, this Act affects American individuals residing abroad who have a reportable interest in a controlled foreign corporation. The so-called transition tax rules in amended section 965, as well as the rules creating a constructive distribution of accumulated



earnings and profits and, for those that qualify, a 15.5% or 8% rate on distributions, will affect many Americans abroad.

For example, an American abroad who owns a controlled foreign corporation will need to figure out whether that CFC has accumulated earnings and profits as of November 2, 2017; if so, what the size and character of these earnings are; likely bring current the calculation of accumulated earnings and profits; and make the calculation of earnings subject to tax under new section 965. The last calculation must be in conformance with new, very detailed rules.

For thousands of Americans abroad these new provisions create a compliance nightmare. We submit that as to an overwhelming majority of them, they will not be able to comply within the time deadlines. The calculation of the figures is relevant for the April 15, 2018 reporting.

Remarkably, apparently there is no *de minimis* rule, which might save the day for many taxpayers having small businesses operating through what for US tax purposes is a corporation.

The new rules call for reporting which, frankly, for many American individuals living abroad is nigh-on impossible.

Not only is reporting by these taxpayers extremely difficult, but, we submit, the Internal Revenue Service will be hard-pressed – we think overwhelmed. Allocation of IRS examiners trained in the subpart F rules to this subject – the transition tax rules – must be viewed as quite inefficient and a waste of valuable resources. All this comes at a time when the IRS is having to deal with a large number of other problems arising from TCJA.

ACA requests on behalf of Americans abroad:

For taxpayers residing abroad, the reporting requirements under section 965 should be modified. The filing deadline should be extended and late-filing, late-payment and Form 5471-related penalties should be waived.

In all events, the reporting requirement should not come into effect until the Treasury Department publishes and finalizes regulations on this subject. We note the Treasury Department's and IRS's undertaking in Notices 2018-7 and 2018-13 to go through the regulations process.

Whenever the reporting requirements kick in, a *de minimis* rule should apply to exempt small taxpayers resident outside the US. This is a common-sense approach. The same type of approach was applied in the case of the filing of Forms 8938 (Statement of Specified Foreign Financial Assets).

We wish to associate ourselves with other groups representing Americans abroad, including Republicans Overseas, Democrats Abroad, AARO, and FAWCO, all of whom, we understand,



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support the granting of relief, in one form or another. And we applaud other individuals and groups who have sprung into action.

As you no doubt are aware, Members of Congress are preparing legislation which would obviate, for Americans resident abroad, calculations and filings relating to the transition tax rules. This legislation, broadly speaking, will move US tax law from citizenship-based taxation to residency-based taxation, sometimes referred to as territorial taxation for individuals. It makes good sense to delay reporting of the section 965 tax for Americans abroad. Congress should be given the chance to solve this problem.

Thank you for your consideration of our points.

Sincerely,

Marylouise Serrato
Executive Director

American Citizens Abroad, Inc.

Jonathan Lachowitz
Chairman

American Citizens Abroad, Inc.

Charles M Bruce
Legal Counsel

American Citizens Abroad, Inc.

CC: The Honorable Orrin G. Hatch
Chairman
Committee on Finance
United States Senate

The Honorable Kevin Brady
Chairman
Ways and Means Committee
United States House of Representatives