AMERICAN CITIZENS ABROAD
EDUCATE, ADVOCATE AND INFORM

Americans overseas have been advocating for over a year for changes in the tax rules applicable to them. The House leadership and the Chairman of both of the tax-writing committees have stated on a number of occasions that they believe something should be done and work on solutions is underway. The Administration, including OMB Director Mulvaney, has been supportive as well.

Both the House and the Senate tax bills contain versions of territorial taxation for U.S. corporations whereby foreign income is not taxed. These take the form of a participation exemption, but this benefit runs only to U.S. corporations. Individuals, and Americans abroad in particular, are not benefited at all. They remain taxable on their worldwide income including, of course, foreign income. Americans overseas are especially disadvantaged because living overseas, their income is overwhelmingly foreign source.

There is a straightforward, potentially revenue neutral approach to correcting this situation. Residency-based taxation rules, which would not tax the foreign income of Americans truly resident in a foreign country, can be adopted. U.S. income would remain taxable. This arrives at the same benefit given to U.S. corporations under the territorial approach, residency-based taxation for individuals being the equivalent of territorial taxation for corporations.

The details of a potentially revenue-neutral RBT approach are set forth in a side-by-side comparison with current law.https://www.americansabroad.org/media/files/files/e547e516/Residency-Based_Taxation_ACA_Side-By-Side_Comparison_Vanilla_Approach_171101_v2_.pdf. This approach was revised several times in response to comments from individuals on Capitol Hill and at Treasury and members of the public.

An analysis of the basic RBT approach has been conducted, and it was determined to be revenue neutral within the 10-year Congressional budget window of 2018-2027.https://www.americansabroad.org/media/files/files/dc1e1c4e/DEG_short_memo_on_RBT_proposal_11.06.2017.pdf.

The drafting of RBT is greatly helped by the fact that most of the legislative language already exists in the Code and need only be modified to apply to U.S. citizens qualifying for RBT.

The existing rules allowing qualified residents abroad to exclude a capped amount of foreign earned income would not be repealed; RBT would simply be added. As a result, no one need be worse off since individuals could choose RBT or continue as they were.

As a practical matter, RBT is the only realistic way to change the tax rules to help Americans abroad. Merely doing away with the cap on the foreign earned income exclusion loses a significant amount of revenue and tilts heavily in favor of high earners in low tax countries. Trying to modify the participation exemption in H.R. 1 so as to provide benefits to individuals, not only would muddy the water for these corporate provisions, which no one wants, but it would also be a revenue loser and extraordinarily complicated.

In order not to lose a large amount of revenue, RBT must include a "Departure Tax". Long-term residents abroad, reasonably, would be exempt ("grandfathered"). Only new-to-RBT individuals would be affected. There would be a relatively high threshold for triggering the "Departure Tax," and some things, such as, US real property, would be excluded.

All the groups representing Americans abroad, it is believed, support residency-based taxation. And all of them understand that, at this stage of tax reform, any proposal must be essentially revenue neutral. While in theory it might be nice to not have a Departure Tax, those close to the details understand that it is necessary.

JCT attorneys and revenue estimators are available to help finalize a proposal, which can be agreed on both the Senate and House sides.

ACA urges that a revenue-neutral, tight-against-abuse, harmful-to-no-one approach to residency-based taxation can be added to H.R. 1.