



AMERICAN CITIZENS ABROAD  
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*global foundation* FOR EDUCATION AND RESEARCH

August 5, 2021

Erin M. Collins  
National Taxpayer Advocate  
Internal Revenue Service  
1111 Constitution Ave. NW  
Washington, DC 20224

Dear Ms. Collins,

I am writing on behalf of Americans Citizens Abroad, Inc. (ACA) regarding the Taxpayer Advocate's recent mid-year Report to Congress.

Thank you for your excellent work in highlighting the issues and concerns of taxpayers and providing the IRS with suggestions on how they can improve servicing and your recommendations for legislative change. Your advocacy on behalf of taxpayers and your oversight of the IRS is much appreciated by the community of Americans living and working overseas.

#### Most Serious Problems and American Overseas Taxpayers

In the *Most Serious Problems* section in your recent report, we were pleased to see highlighted issues such as:

- 1) *Limited Electronic Access to Taxpayer Records Through an Online Account Makes Problem Resolution Difficult for Taxpayers and Results in Inefficient Tax Administration* [https://www.taxpayeradvocate.irs.gov/wp-content/uploads/2021/01/ARC20\\_MSP\\_03\\_OnlineRecords.pdf](https://www.taxpayeradvocate.irs.gov/wp-content/uploads/2021/01/ARC20_MSP_03_OnlineRecords.pdf)
- 2) *Taxpayers Face Significant Difficulty Reaching IRS Representatives Due to Outdated Information Technology and Insufficient Staffing* [https://www.taxpayeradvocate.irs.gov/wp-content/uploads/2021/01/ARC20\\_MSP\\_02\\_Telephone.pdf](https://www.taxpayeradvocate.irs.gov/wp-content/uploads/2021/01/ARC20_MSP_02_Telephone.pdf)
- 3) *The IRS's Assessment of International Penalties Under IRC §§ 6038 and 6038A Is Not Supported by Statute and Systemic Assessments Burden Both Taxpayers and the IRS* [https://www.taxpayeradvocate.irs.gov/wp-content/uploads/2021/01/ARC20\\_MSP\\_08\\_International.pdf](https://www.taxpayeradvocate.irs.gov/wp-content/uploads/2021/01/ARC20_MSP_08_International.pdf)

As you are aware, overseas American taxpayers continue to encounter serious problems accessing the IRS. To begin with, there is no toll-free phone number into the IRS for callers living outside the United States and wait times when calling can be



significant (over an hour). Given the complexity of filing from overseas, and the overlapping regulations governing international businesses and individuals, most Americans overseas are unable to have their questions answered directly by the IRS agents handling the phone lines. Even professional tax preparers admit that the tax filing regulations governing Americans living overseas are difficult for the average taxpayer to understand. This forces most Americans overseas to pay for professional tax preparation services, the cost of which can run into the thousands of dollars for a “simple” filing.

Creating online accounts for government service providers are near to impossible for overseas American taxpayers due to the lack of US indicia needed to verify their identity. ACA understands that the Taxpayer First Act has identified overseas American taxpayers as an underserved population of taxpayers and that the IRS hopes to make changes to their procedures to accommodate them. This is a welcomed development. The Taxpayer Advocate’s recommendations for call-back technology, scanning technology and improvements in the creation of online accounts are excellent recommendations, but these changes must take into consideration the needs of overseas American taxpayers. ACA has been instrumental in providing input to Ken Corbin, Chief Taxpayer Experience Officer, and his team on the special needs of overseas American taxpayers. We hope our suggestions and recommendations, along with those of the Taxpayer Advocate, will result in positive change.

In your mid-year Report to Congress, you also highlight problems with the systemic assessment of IRS penalties for information reporting for Forms 6038/6038A. This problem has also been reported by overseas filers for Forms 3520/3520A. These forms are for the reporting of certain foreign transactions with gifts and trusts. The IRS can take the position that a foreign pension, many mandated by law in the foreign jurisdiction where an American lives, is considered a grantor trust or an employee trust, thus triggering the filing of a 3520-A. Understandably, many Americans overseas are unaware that their foreign pensions are categorized in this manner. Even some tax preparers are unaware of this and failure to file can result in automatic penalties starting at \$10,000 per form. Many individuals are also not aware that they must report the receipt of a foreign gift or inheritance and may face a penalty of up to 25% of the gift. Again, this is an issue where complex tax code, coupled with limited assistance or guidance from the IRS, leads to individuals who are not willfully avoiding their tax filing obligation to get caught up in unjustified penalty assessments.

Another problem that many overseas American taxpayers face with the IRS is the ability to use direct deposit services if they do not have a US-based bank account. Most US-based banks will not take on overseas American clients unless they have a US-residential address. To assist with this problem, ACA became a qualified organization with the State Department Federal Credit Union (SDFCU) in 2013. Now, through ACA



membership, overseas Americans can apply for a US-based SDFCU account using their foreign residential addresses. The SDFCU account has been a life-saver for the community. For most the application process is simple and can easily be done online. SDFCU has helped many overseas Americans with direct deposit of their EIP stimulus checks (many foreign financial institutions refuse to accept these checks for deposit), roll-over of 401s and IRAs into SDFCU products without having to incur tax consequences related to early withdrawal (many accounts having been closed by US-based investment providers such as Morgan Stanley and Fidelity due to the use of foreign addresses as the address of record). An SDFCU account also helps facilitate with the deposit of Social Security benefits.

The ability for Americans overseas to create IRS online accounts with the IRS and provide banking information would greatly assist overseas American taxpayers with making their tax payments and receiving their tax refunds. Online IRS accounts are also critical for overseas American taxpayers as they would allow them to consult IRS notifications, check on their returns and view the most current information on their filings on a timely basis. As the IRS currently relies on hard-copy mailings of notifications, which often arrive late and after the deadline for action for Americans overseas, having this information available to them online is invaluable.

#### Most Litigated Issues: Significant Cases

ACA notes that in the *Most Litigated Issues: Significant cases*, section of your report you have highlighted the Silver vs. the IRS lawsuit challenging the IRS's failure to carry out evaluations under the Regulatory Flexibility Act (RFA) and the Paperwork Reduction Act (PRA) [https://www.taxpayeradvocate.irs.gov/wp-content/uploads/2021/01/ARC20\\_FullReport.pdf](https://www.taxpayeradvocate.irs.gov/wp-content/uploads/2021/01/ARC20_FullReport.pdf). ACA is pleased to see that the Taxpayer Advocate acknowledge the taxpayer burden which occurs when the IRS makes and/or changes rules.

ACA was the first organization to highlight the RFA oversight by the IRS and Treasury in our testimony to the IRS on October 22, 2018 [aca-comm-testimony-irs-965-regs-22-oct-2018.pdf \(americansabroad.org\)](https://www.americansabroad.org/aca-comm-testimony-irs-965-regs-22-oct-2018.pdf). Included in our testimony highlighting the need for increased due diligence regarding the RFA and similar regulations, ACA also recommends the application of a *de minimis* ruling for the Transition Tax and GILTI regimes. A *de minimis* ruling would take out from reporting small businesses overseas that were never intended to be caught up in the Tax Cuts and Jobs Act of 2017 (TCJA). TCJA legislation focuses on US multi-nationals that are offshoring profits and not the small coffee shop in Stockholm, the yoga studio in Paris or the one-man consultancy in Budapest owned by an American. Some small businesses overseas caught up in the TCJA reporting regime could not afford the cost to come into compliance and simply closed their businesses. Congress and the IRS did not do the



research necessary to determine how many small American owned businesses were located overseas and simply determined that to set up a business overseas was no easy task and therefore, there are essentially no small businesses owned by Americans overseas. This is not the case and there are many small businesses owned by Americans overseas that may have been created or organized under foreign local laws, but as they are owned by Americans, would be considered a US business.

### ACA Support for Legislative Recommendations

ACA is pleased to see the three legislative recommendations proposed by the Taxpayer Advocate in this year's report to Congress.

- 1) *Require the IRS to Mail Notices at Least Quarterly to Taxpayers With Delinquent Tax Liabilities*, [https://www.taxpayeradvocate.irs.gov/wp-content/uploads/2021/01/ARC20\\_PurpleBook\\_03\\_ImproveAssmtCollect\\_18.pdf](https://www.taxpayeradvocate.irs.gov/wp-content/uploads/2021/01/ARC20_PurpleBook_03_ImproveAssmtCollect_18.pdf)
- 2) *Harmonize Reporting Requirements for Taxpayers Subject to Both the Report of Foreign Bank and Financial Accounts and the Foreign Account Tax Compliance Act by Eliminating Duplication and Excluding Accounts a U.S. Person Maintains in the Country Where He or She Is a Bona Fide Resident*  
[https://www.taxpayeradvocate.irs.gov/wp-content/uploads/2021/01/ARC20\\_PurpleBook\\_02\\_ImproveFiling\\_9.pdf](https://www.taxpayeradvocate.irs.gov/wp-content/uploads/2021/01/ARC20_PurpleBook_02_ImproveFiling_9.pdf)
- 3) *Modify the Definition of 'Willful' for Purposes of Finding FBAR Violations and Reduce the Maximum Penalty Amounts.*  
[https://www.taxpayeradvocate.irs.gov/wp-content/uploads/2021/01/ARC20\\_PurpleBook\\_04\\_ReformPenInts\\_35.pdf](https://www.taxpayeradvocate.irs.gov/wp-content/uploads/2021/01/ARC20_PurpleBook_04_ReformPenInts_35.pdf)

Americans overseas face problems with timely receipt of IRS notifications as all are sent via hard copy mail. As noted earlier, mail delays on both the US and international side often result in taxpayers receiving notifications for action arriving past the deadline to respond. This is especially concerning given the Passport Revocation Provision which can put an American at risk of being denied renewal of a passport or worse, having a passport revoked because of a tax debt. A US passport for an American living and working overseas is a critical document and, in some cases, the only officially recognized proof of US citizenship. Loss of a US passport, potentially due to an erroneous tax debt assessment, can have life altering ramifications. ACA has highlighted this on our website: [Passport Revocation Legislation Update | Washington, DC | \(americansabroad.org\)](#). Timely and secure communications from the IRS to taxpayers is a priority in particular for the community living and working overseas and we are pleased to see the Taxpayer Advocates advocacy on this issue.



ACA was also pleased to see the Taxpayer Advocate's continued support for harmonization of Form 8938 (FATCA) and Form Fin-CEN-114 (FBAR) reporting. These filings continue to be problematic for many overseas taxpayers. ACA advocates for the adoption of Same Country Exemption (SCE) for FATCA reporting which would eliminate the need for Americans overseas to report and file a Form 8938 on bank accounts they legitimately hold in their country of residence, treating these accounts as what they are, essentially "local" to the Americans who owns them. These same accounts would also not be reportable by the foreign financial institutions where they are held, thus mitigating the banking lockout Americans overseas are experiencing. See: ["Same Country Exemption" for FATCA Reporting | Washington, DC | \(americansabroad.org\)](#).

As your mid-year Report to Congress states, many overseas Americans are still unaware of their obligation to file an FBAR and there are many "non-willful" individuals who want to come into compliance. The IRS's need for a subjective interpretation of willful behavior is understood to ensure that those who are truly willful don't slip through the cracks. However, many overseas taxpayers want to do the right thing and catch up on their FBAR filings and most truly did not know they needed to file or misunderstood the types of accounts needed to be listed on an FBAR (pension accounts that are not recognized by the IRS).

Not understanding what the IRS will consider "willful" behavior leads many to shy away from coming into compliance and given the media reporting of the past experiences of "non willful" individuals who were caught up in the Overseas Voluntary Disclosure Programs (OVDP) -- programs which were never intended for the non-willful - and with no clear cut understanding of how the IRS will view their behavior, many simply continue to avoid filing FBARs out of fear of the excessive penalty applications for non-willful behavior.

### Summary

In closing, ACA believes that the way forward to alleviate many of the tax and filing issues is adoption of Residence-Based Taxation (RBT). Residence-Based Taxation removes taxing and reporting to the IRS of foreign earned income or income that is generated outside of the United States and in no way connected to economic activity in the United States. As you are no doubt aware, this taxation regime is the global norm for most industrialized nations, the US being the outlier in this regard. ACA has done extensive work in support of RBT beginning with our side-by-side comparative or roadmap indicating current tax law and where in the tax code a change is needed to adopt RBT, see: [residency-based-taxation-aca-side-by-side-comparison-current-law-and-vanilla-approach-180420-1600.pdf \(americansabroad.org\)](#).



August 5, 2021  
Page 6

ACA's sister organization responsible for research and educational efforts, ACA Global Foundation (ACAGF) [American Citizens Abroad Global Foundation - Home \(acaglobalfoundation.org\)](http://americansabroad.org), raised funds in 2017 to run revenue estimates on ACA's "roadmap" for RBT and found that it could be made revenue neutral within a 10 year period, see: [DEG short memo on RBT proposal 11.06.2017.pdf \(americansabroad.org\)](http://americansabroad.org). The research work was done by an independent, non-partisan consulting firm in Washington, DC, District Economic Group (DEG) [districteconomics.com](http://districteconomics.com) and has been presented to Congressional leadership, the tax writing committees in both the House and Senate, the Joint Committee on Taxation (JCT) and the US Treasury.

ACAGF is following up with the 2017 research project and has raised funds to update the data. ACAGF expects to have an updated report issued later this month. Key to our data set is defining the size, income and asset make up, compliance and investment practices of Americans living and working overseas. To our knowledge, there is no complete US government record of this information. The IRS has some information, and the US State Department has additional information. However, we believe that ACA has the best privately held data of this nature for Americans living and working overseas. ACAGF recently hosted a webinar with Mike Udell, the principal of DEG, where he outlines the research project and the importance of this data for advancing RBT. <https://vimeo.com/572828597>

I would welcome the opportunity to meet with you to introduce you to ACA and ACAGF and discuss some of these issues. I will have our Administrative Director, Julie Sanford, get in touch to find a convenient time when I might meet with you or your staff.

Thank you again for your continued support of our issues.

Sincerely,

Marylouise Serrato  
Executive Director  
American Citizens Abroad, Inc.