



AMERICAN CITIZENS ABROAD
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global foundation FOR EDUCATION AND RESEARCH

July 21, 2022

Erin M. Collins
National Taxpayer Advocate
Office of the Taxpayer Advocate
Internal Revenue Service Building
1111 Constitution Avenue, NW
Washington, D.C. 20224

RE: American Citizens Abroad response to the 2022 Midyear Report to Congress by the National Taxpayer Advocate, Erin Collins, published June 22, 2022

Dear Ms. Collins,

American Citizens Abroad, Inc., and its sister organization, American Citizens Abroad Global Foundation, are delighted to submit this response to the National Taxpayer Advocate's 2022 Midyear Report to Congress (the Midyear Report).

American Citizens Abroad, Inc. (ACA) is a leading advocacy organization bringing to the attention of the Congress and Administration the issues of U.S. citizens living and working overseas. Headquartered in Washington, DC, ACA is nonpartisan, non-profit (section 501(c)(4)), with a 40-plus-year history of advocating on behalf of the community of U.S. citizens living and working overseas. Alongside ACA is its sister charitable (section 501(c)(3)) research and educational organization, American Citizens Abroad Global Foundation (ACAGF).

ACA is delighted that the Midyear Report included two recommendations that have direct implications for U.S. citizens living and working abroad.

1. Develop secure digital communications tools and an authentication process that accommodates non-resident filers.

Free File and other e:filing systems are not accessible to non-resident filers. The systems routinely lack the forms required for declaring income generated abroad and they are unable to upload attachments, which are also routinely required when the filer receives income from an employer or other source that is not registered with the IRS.

Identity verification using the ID.me website and data security concerns remain insurmountable obstacles for creating an IRS online account for U.S. citizens living and working abroad.

An overwhelming proportion of non-resident taxpayers file paper tax returns due to the inaccessibility of IRS online accounts and free filing. Until free file systems and IRS online accounts are available to U.S. citizens abroad, those without the resources to hire professional tax return preparers will be forced to file the paper returns that accumulate in the backlogs the IRS has been working so hard to reduce these last two years.



ACA asks Advocate Collins and the Office of the Taxpayer Advocate to support these improvements to Free File and e: filing systems in order to extend access to non-resident filers and greatly reduce the number of paper forms they file.

- Mandatory inclusion of forms commonly used by non-resident filers (e.g. Forms 2555, 1116, 5471, 3520, 8938);
- Mandatory addition of functionality to enable the filer to upload supplementary schedules and other attachments.

2. End the systemic assessment of international information return penalties.

ACA understands the IRS has paused the systemic assessment of penalties for delinquent international information returns. We presume this is due to the high likelihood that international information returns mailed to the IRS by non-resident filers are not delinquent, but rather stuck in the backlog of paper forms the IRS has yet to deal with. Although COVID has made the systemic assessments a serious problem for even more non-resident filers, the high penalties for late (due, unusually, on March 15th) or lost returns and the difficulty of addressing them has been a problem for a long time.

Testimonials from U.S. citizens living overseas support that past filings of Forms 3520 and 3520-A that have been lost or are untraceable by the IRS have resulted in automatic penalty assessments. These citizens attest to the fact that working to resolve these erroneous penalty assessments with the IRS from distance can be difficult, costly, and lengthy. The system of due process for advising filers of their outstanding IRS debts has also been undermined by COVID-related postal failures. Complicating this is the fact that when penalties exceed \$50,000 non-resident filers become vulnerable to having their passports cancelled or passport renewal applications denied.

As indicated in the Midyear Report, systemic assessment of penalties should end, at least until the IRS has addressed the barriers non-resident filers face arranging and using online accounts to file and using virtual taxpayer support to communicate efficiently with the agency. The IRS should, as a priority, establish Virtual Web Service Delivery (WebSD) for non-resident filers. WebSD needs to be available for filers in all time zones and be staffed by IRS customer service operators with specialist knowledge of filing from abroad.

Taxation and U.S. citizens abroad

The Taxpayer First Act has identified U.S. citizens living and working overseas as an underserved community and the IRS is working to create systems and provide support to these taxpayers. This cannot come fast enough for the estimated 3.9 million U.S. citizens living and working abroad¹. Tax filing for U.S. citizens living and working outside the U.S. is complex, costly and confusing, results in onerous taxation of foreign investments considered Passive Foreign Investment Company (PFICs), involves duplicate reporting regimes like the Foreign Account Tax Compliance Act (FATCA) Form 8938 and the Financial Bank Account Report

¹ ACA and District Economics Group estimate that the total number of Americans abroad at present, excluding members of the military and other government employees and contractors, is approximately 3.9 million individuals.



(FBAR)(FinCEN Form 114), is unfair with regard to the application of certain tax credits for non-residents (Child Tax Credit and Earned Income Credit), exposes filers to double taxation with the Net Investment Income Tax (NIIT), and involves wading through many regulations that overlap with U.S. corporate international tax.

This is just a sampling of the problems on the individual side of reporting, not taking into consideration the filing requirements for small business operations run by U.S. citizens overseas that need to deal with the Transition Tax and Global Intangible Low-Taxed Income (GILTI) regimes (and are denied access to programs available for small businesses through the U.S. tax code such as the Employee Retention Tax Credit and Paycheck Protection Program).

Residence-based taxation (RBT)

ACA has throughout its 40-plus year history advocated for the adoption of Residence-based taxation (RBT) and has produced key documents and research that support the move to RBT, which can be made revenue neutral and tight against abuse. ACA was the first organization to develop a side-by-side analysis that indicates where in the current tax code changes could be made in a move to a system of taxation based on residence (excludes from U.S. taxation foreign earned income). ACA has fielded two research projects on the subject with District Economics Group (DEG), Washington, DC-based economic consulting firm – one in 2017 and one in 2022 - that provide valuable information on the income, assets and taxation of U.S. citizens living and working overseas. This data, one of a kind, supports our position that RBT can be adopted and no one will be any worse off, the U.S. Treasury would not lose revenue and the provisions would be protected against tax abuse.

ACA's research studies provide invaluable data on the community of U.S. citizens living and working overseas. ACA and DEG would be delighted to present to Advocate Collins and the Office of the Taxpayer Advocate the findings of our 2022 research generally, and as they relate to our recommendations about RBT.

Congressional Hearing on taxation and U.S. citizens abroad

ACA has also proposed putting this research work, along with documents and testimony from ACA and other stakeholders, on record with key House and Senate Committees during hearings that focus on the experience of Americans living and working abroad with the U.S. tax system. There are currently three pieces of legislation introduced in Congress that address some of the tax compliance problems of U.S. citizens overseas; H. R. 5800 (The Commission on Americans Living Abroad Act) and H.R. 5799 (The Overseas Americans Financial Access Act) both introduced by Congresswoman Carolyn Maloney, and H.R. 6057 (The Tax Simplification for Americans Abroad Act), introduced by Congressman Donald Beyer. These legislators have asked Congress to address the tax and compliance issues of U.S. citizens living and working overseas, and ACA echoes this call to action.

Never in the history of the U.S. Congress have hearings been held to address the specific issues facing U.S. citizens living and working abroad, not only tax issues but other concerns related to Social Security, Medicare, voting, citizenship transmission and representation. The Americans Abroad Caucus with Co-Chairs Carolyn Maloney, Dina Titus, and Maria Elvira Salazar are hearing from constituents in their districts about the growing concerns of citizens



who chose to live and work overseas. If U.S. citizens are to engage in a global economic marketplace, they need the tools to help them compete for jobs and have full access to financial and banking services. Some U.S. laws, such as FATCA, are hampering this and the Committee needs to hear and understand these issues and problems, in order that proposals, such as the adoption of Residence-based taxation, can be carefully examined.

The concerns over how paper return backlogs, taxpayer helpline accessibility, under-resourcing at the IRS, and the technological issues with IRS systems affect U.S. citizens living and working overseas, as well as how the current citizenship-based tax regime affects these citizens, are all reasons Congress needs to hold hearings on the tax and compliance issues of U.S. citizens overseas and consider legislation such as Residence-based taxation to alleviate the problems. **ACA asks Advocate Collins and the Office of the Taxpayer Advocate to support this important request.**

ACA would like to thank Advocate Collins and the Office of the Taxpayer Advocate for the opportunity to provide these comments and to reiterate our request to present the findings of our research into the Americans abroad community and implications of a shift to Residence-based taxation. For more information on our organization and our work, please visit the ACA website www.americansabroad.org.

Thank you again for your continued support of our issues.

Sincerely,

Marylouise Serrato
Executive Director
American Citizens Abroad, Inc.