



AMERICAN CITIZENS ABROAD

EDUCATE, ADVOCATE AND INFORM

September 26, 2022

American Citizens Abroad response to
**Senate Finance Committee Report dated August 24, 2022, entitled
The Shell Bank Loophole**

American Citizens Abroad response to [The Shell Bank Loophole](#), a Senate Finance Committee report of the findings of an investigation into a loophole in the *Foreign Account Tax Compliance Act* (FATCA) that allows banks offshore to hold accounts of U.S. persons without reporting them to the IRS.

American Citizens Abroad, Inc. (ACA) and its sister organization, American Citizens Abroad Global Foundation (ACAGF), are pleased to provide comments on *The Shell Bank Loophole*, focusing our submission on how the structure and enforcement of the *Foreign Account Tax Compliance Act* can be reformed to catch tax cheats and relieve the burden FATCA places on ordinary, law-abiding Americans abroad.

[American Citizens Abroad, Inc.](#) is a leading advocacy organization representing Americans 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 Americans living and working overseas. Alongside ACA is its sister charitable (section 501(c)(3)) research and educational organization, [American Citizens Abroad Global Foundation](#).

ACA thanks the Senate Finance Committee for its report investigating the alleged tax evasion scheme utilizing loopholes in the *Foreign Account Tax Compliance Act* (FATCA) legislation and implementation rules. We understand that Congress and the Department of Treasury had and continue to have high expectations for FATCA in closing the tax gap and recovering lost revenue from non-compliance and offshore tax evasion. We are pleased to see that the U.S. Government is also interested in understanding and addressing the flaws and shortcomings in the structure and enforcement of the law. We ask that you also consider and address the unintended adverse consequences of FATCA for U.S. citizens living and working abroad.

THE SENATE FINANCE COMMITTEE REPORT

The Mossack Fonseca revelations published in the Panama Papers, the Paradise Papers and the Pandora Papers proved beyond any doubt that FATCA has not been able to stop tax evasion when wealthy citizens have their lawyers, bankers, accountants, and formation agents create financial structures layered with anonymous shell companies that hold offshore accounts in tax secrecy jurisdictions. The Senate Finance Committee report explains how some wealthy U.S. citizens have used it as an instrument to create Shell Banks and carry out even more egregious tax cheating.

The report shows that IRS resources are best applied to scrutinizing the obvious places where illegal tax avoidance is happening (i.e., 128,000 closely held FFIs that could be Shell Banks and not real financial institutions). These are not instruments, we stress, used by ordinary US

citizens living and working overseas who simply need banking services to manage their everyday financial affairs.

FATCA AND ITS EFFECTS ON US CITIZENS OVERSEAS

FATCA's original intent was to crack down on tax evasion by US citizens primarily living in the United States with undeclared accounts overseas. U.S. citizens living and working overseas, use their very ordinary checking, saving and investment accounts in foreign financial institutions to pay their bills and save for the future. They have been living with the negative consequences of FATCA for a decade, with little recognition by Congress of the harmful impact it has had on their families and careers. Research published in 2019 indicates that one in three US citizens abroad have been denied a banking product or service since FATCA reporting by FFIs was initiated in 2014¹. Because of FATCA, their financial accounts are being closed, financial instruments denied, their relationships with their non-American spouses averse to FATCA reporting are under strain, and some are denied promotion or partnership in businesses because of FATCA reporting requirements.

ACA has long advocated for a corrective measure for the problems of FATCA with our recommendation for Same Country Exemption (SCE). This would remove from the FATCA reporting regime the accounts of U.S. citizens legitimately resident overseas, both for the individual and the financial institution. ACA has presented its proposal for SCE to the U.S. Treasury and the IRS in our [September 15, 2015](#), [August 10, 2016](#), [August 11, 2022](#), and [September 7, 2022](#) letters. ACA's proposal for SCE does not require legislation to be introduced into Congress and can be easily adopted as an amendment to the FATCA regulations by Treasury Department.

Representative Carolyn Maloney has introduced a similar proposal with her legislation H.R. 5799, *The Overseas Americans Financial Access Act*. Recently a delegation from the European Union (Petitions Committee) met with the U.S. Congress advocating for similar treatment, as their dual national EU citizens have reported extensive financial lock-out due to FATCA.

Ordinary U.S. citizens living and working overseas are clearly not the target of FATCA and should be protected from its reach. U.S. citizens living abroad have been speaking to Congress, the U.S. Treasury and the IRS for a decade about the serious personal and financial burden FATCA places upon them. If U.S. citizens are to engage in a global economic marketplace, they and their families need the tools to help them compete for jobs and have full access to financial and banking services. FATCA is preventing that.

IMPORTANT ACA RESEARCH ON U.S. CITIZENS OVERSEAS

Although ACA advocates for the adoption of the FATCA Same Country Exemption (SCE), the solution to the tax and compliance issues facing U.S. citizens living and working overseas, is to make an important step towards [residence-based taxation \(RBT\)](#). Simply put, under a system of RBT, U.S. citizens overseas would be taxed by the United States only on income-sourced in the United States and in relation to economic activity in the United States. Foreign-sourced income would not be subject to U.S. taxation. ACA has worked extensively on the issue of RBT and fielded two research studies on the subject, the first in 2017 and recently in 2022. ACA's research, produced with District Economics Group (DEG), a Washington, DC-

¹ "Tax Filing From Abroad: Research on Non-Resident Citizens and U.S. Taxation" March, 2019, Democrats Abroad, [tinyurl.com/2019TaxFilingFromAbroad](https://www.tinyurl.com/2019TaxFilingFromAbroad)

based consultancy firm, identifies the size, tax compliancy, income and investment make-up of the community of U.S. citizens living and working overseas.

This data is unique in that neither the U.S. Treasury nor the IRS has a complete picture of this community and ACA's data is able to round out government data to give an accurate picture of the community of overseas taxpayers. ACA research also supports that adopting RBT can be done without losing revenue, i.e., it can be made "revenue neutral". Using ACA's "[side-by-side](#)" comparative of current tax law and where in the tax code changes can be made to adopt RBT, DEG has been able to estimate that over a ten-year period RBT can be made revenue neutral. A summary of the ACA/DEG research can be found [here](#). Sitting alongside that is an informative video by Mike Udell, DEG principal, [here](#). ACA looks forward to presenting this research to the Senate Finance Committee and Committee staff as this is critical data for the Committee when reviewing FATCA enforcement and potential new regulations.

When Treasury Department was writing the FATCA regulations and considering whether to include a Same Country Exemption (SCE), it was unclear how many American taxpayers residing overseas might be "covered" by the exemption, how much taxable income might be involved and what the revenue loss might be. On this subject, Treasury was operating in the dark. This has changed. Recent data, most prominently that developed in the ACA/DEG study, which was recently released, largely answers these questions. This research has been provided to Treasury Office of Tax Analysis and the Joint Committee on Taxation. Based on its own analysis of the data, Treasury need no longer be afraid that a SCE would create a big hole in the reporting system. Also, with SCE, the taxpayer would have to identify him or herself as a U.S. Citizen and represent that he/she is entitled to the exemption. The onus would be on the individual taxpayer. The usual strict rules surrounding this type of certification would apply.²

CONGRESSIONAL HEARINGS ON TAXATION AND AMERICANS ABROAD

ACA has proposed putting our 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 U.S. citizens 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 specifically address all the 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. Some U.S. laws, such as FATCA, are hampering U.S. citizens abroad from accessing financial and banking services, competing for jobs and fully participating in the global economic marketplace. 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 properly examined.

² For an explanation of the workings of a same country exemption, see <https://www.americansabroad.org/media/files/files/feffd7bf/same-country-exemption-2015-04-06.pdf>.

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 the Senate Finance Committee to support this important request.**

ACA would like to thank Chairman Wyden, Ranking Member Crapo and the Senate Finance Committee for the opportunity to present these comments. For more information, please visit the ACA website www.americansabroad.org or telephone +1 202 322 8441 and/or email marylouise.serrato@americansabroad.org.