

**Subject: Comments: International Tax Reform Working Group**

**The Honorable Devin Nunes**

**The Honorable Earl Blumenauer**

April 10, 2013

## **It is urgent that the United States adopt residence-based taxation (RBT)**

I support the ACA proposal for RBT submitted to the Ways and Means International Tax Reform Working Group and urge you to include RBT in your reform. As an American citizen brought up and educated in the United States, who has now lived 48 years abroad and has visited many Congressional offices over the years concerning overseas Americans, permit me to provide you will some personal insights.

### **A revolution is under way**

In 1776, the United States declared independence because the mother country on the other side of the ocean was imposing taxes on the colonies for the benefit of England. Resentment started when Britain tried to enforce the Navigation Act after 1763. Resentment increased with the Stamp Act in 1765, a way for Britain to tax the colonies. The British Tea Act of 1773 led to the Tea Party and we all know the outcome - the American Revolution and independence crying out "no taxation without representation".

Today, the estimated 7 million Americans resident abroad, of whom the majority are long-term overseas residents in high tax OECD countries, face a comparable situation. Their representation in Congress is non-existent in reality. Americans abroad amount to only 1 to 2% of the votes in any particular state; Congressmen and Senators have ignored their tax issues. The unjustified myth that Americans abroad are wealthy and disloyal restricts a rational approach to the problems because of political image issues.

Citizenship-based taxation (CBT) has existed ever since the federal income tax was adopted. Despite CBT being an anomaly involving double taxation, taxation of phantom gains and explicit tax code discrimination, it was grudgingly tolerated by Americans abroad because it was essentially voluntary, most often involved little tax or no U.S. tax liability and basically was not enforced. In particular, the FBAR filing requirement was so obscure that even the big four accounting firms were not aware of the filing obligation dating from 1970 and failed to inform Americans abroad of the need to file the FBAR.

Since 2001, a series of legislative events have radically changed the situation:

- In 2001, the Patriot Act made anything foreign suspect, including Americans residing overseas.
- In 2004, Congress, under the Jobs Act, drastically increased the FBAR civil and criminal penalties to confiscatory levels, creating a disguised form of taxation on assets held overseas.
- In 2006 administration of the FBAR reports was transferred to the IRS for enforcement.
- In 2006 the Tax Increase Prevention and Reconciliation Act (TIPRA) extended the Bush tax cuts and included a compensatory revenue raising provision that reduced the benefit of the foreign earned income exclusion, limited the foreign housing allowance and pushed Americans overseas into higher tax brackets, thereby increasing U.S. tax liabilities for many Americans abroad.

- In 2008 the law relating to renunciation of U.S. citizenship was revised under Section 877A and introduced an Exit Tax on wealthy individuals (defined as “covered”). The law also provided that Americans who inherit from estates of former “covered” U.S. citizens are subject to U.S. inheritance tax with no exclusion. This outrageous discriminatory provision aims to discourage renunciation of citizenship, but in fact penalizes children of former U.S. citizens for an act they did not commit. In practice, it encourages the children to also renounce their U.S. citizenship.
- In 2009 the IRS launched its initiative against tax evasion linked to foreign assets through the Overseas Voluntary Disclosure Programs and a threatening public relations campaign. While it justifiably targeted U.S. resident tax evaders, it simultaneously trapped Americans abroad who necessarily have foreign assets. The IRS’s one size fits all policy and bait and switch tactics led to abuses of Americans abroad which inspired sharp criticism from the National Taxpayer Advocate.
- In 2010 FATCA was slipped into the HIRE bill with no debate in Congress and no cost/benefit analysis. FATCA aims to provide the door that closes the fiscal trap by requiring foreign financial institutions to report to the IRS on assets held overseas by U.S. persons. It effectively cuts off many Americans from foreign financial institutions which find it too onerous to maintain American clients. FATCA creates a barrier to free movement of capital and people.
- In 2012 S.3457 proposed to grant the IRS the authority to have a U.S. passport cancelled or not issued if the IRS determined that the individual owed \$50,000 or more U.S. tax.
- In 2012 the Ex-patriot Act, S.3205, proposed to deny any “covered” expatriate re-entry into the United States, with retroactive effect for ten years prior to enactment of the law. The Reed Amendment of the 1996 Illegal Immigration Reform and Immigrant Responsibility Act already allows the United States to deny entry of former citizens into the United States.
- In 2013, S.268 was introduced; it compounds difficulties created by FATCA.
- In 2013 the Senate Finance Committee included in its tax reform recommendations a provision which would grant the IRS authority to cancel a U.S. passport for tax collection purposes.

This stream of legislation and proposals categorizes Americans abroad as suspected criminals seeking to escape U.S. taxes. Congress has outdone George III and has turned the United States into a fiscal prison, including legislation which is deemed anti-constitutional under the Fifth Amendment<sup>1</sup> and is contrary to Articles of the Universal Declaration of Human Rights.<sup>2</sup>

The foundation of the U.S. fiscal prison is citizenship-based taxation. Americans working and living abroad carry a ball and chain of dual taxation throughout their entire lives up to and including death. Americans abroad already pay taxes in the country where they reside and receive governmental services. The additional U.S. tax obligation creates inevitable incompatibilities and discrimination and even requires Americans abroad to break foreign exchange control laws to pay U.S. taxes.

**A revolution among long-term overseas residents is now underway.** Five years ago, Americans abroad never talked about renunciation of citizenship. Today, it is a common topic in the press and among the community abroad. For more and more individuals, renunciation is the only solution to an intolerable situation created by the U.S. imposing its laws beyond its borders. The United States is literally

destroying the community of Americans abroad, which plays an essential role in representing U.S. interests and goodwill overseas. The United States is shooting itself in the foot.

While the absolute number of renunciations, currently around 2,000 a year, is insignificant compared to the average annual U.S. citizenship naturalizations of 680,000, renunciations have multiplied seven times over the last four years. So far we have seen only the tip of the iceberg if CBT remains in force.

Today's situation leads to serious hidden prejudice for the United States. U.S. exports are far below where they should to be because citizenship-based discourages U.S. companies from deploying U.S. citizens overseas to sell U.S. products; the law makes them too expensive. U.S. tax law and FATCA create insurmountable barriers for small and medium-sized companies to establish beachheads abroad to develop exports. The loss represents millions of U.S. jobs, hundreds of billions of dollars of exports, billions of dollars of U.S. tax revenue, and an unsustainable trade and budget deficit. Americans married to a foreign spouse, who represent about a third of the Americans resident abroad, now hesitate to register their children born abroad with the U.S. Embassy. The hot thing among young adults in their twenties is to renounce U.S. citizenship; they are aware of the impossible web of U.S. regulations that restrict job opportunities and personal freedom. Pushing away the young generation of Americans abroad is an immense loss to the United States. In prior generations, many highly educated multi-lingual American children returned to the United States, founded companies and created jobs in the U.S.

**Adopting RBT will stop this revolution immediately.** RBT law needs to be drafted in the spirit to allow free movement of individuals to leave and return to the United States, to reinforce the competitiveness of Americans and the United States overseas, to provide a simple, non-penalizing transition to RBT for the community of Americans already overseas, to ensure that Americans abroad are not subject to FATCA and FBAR, to adapt existing bilateral tax treaties and enter into new tax treaties so that withholding tax rates on U.S. source income are reasonable and to ensure that Americans abroad who have the majority of their assets in the United States (retirement funds, pension funds, real estate) are not disadvantaged under RBT with regard to either income or estate taxes.

I thank you for the opportunity to comment and hold high hopes that your bi-partisan efforts will lead to the constructive tax reform so necessary for Americans residing abroad.

Sincerely yours,

Jacqueline Bugnion

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<sup>1</sup> William Thomas Worster, Lecturer and Research Director International Law, Bynkershoek Institute, The Hague University, Netherlands, "The Constitutionality of the Taxation Consequences for Renouncing U.S. Citizenship", Florida Tax Review, Volume 9, Number 11, 2010. Mr. Worster opens his article with the following statement: "U.S. citizens are held to a special taxation regime as a consequence for renouncing citizenship that is unique in the world and, this article will argue, unconstitutional."

<sup>2</sup> Universal Declaration of Human Rights: Article 2- Everyone is entitled to the rights and freedoms set forth in this Declaration, without distinction of any kind, such as race, color, sex, language, religion, political or other opinion, national or social origin, property, birth or other status....; Article 7 - All are equal before the law and are entitled without any discrimination to equal protection of the law. All are entitled to equal protection against any discrimination in violation of this Declaration and against any incitement to such discrimination. Article 13 (2) – Everyone has the right to leave his country, including his own, and to return to his own.