

***ANOTHER* ACCIDENTAL TAX PENALTY FOR AMERICANS ABROAD THIS TIME HITTING SMALL TO MEDIUM-SIZED BUSINESS OWNERS**



“... this law has the potential to financially destroy millions of Americans like myself in a matter of months. *American business owner and Arizona voter living in the UK*

The U.S. Internal Revenue Code includes a lengthy list of provisions that, however inadvertently, impose grave penalties on Americans living and filing taxes from abroad. Over time Congress has implemented tax policies without due consideration for the impact that they have on non-resident taxpayers – who are already paying tax on their income to the countries where they reside. Efforts to eliminate double-taxation have fallen short and U.S. policy remains plagued with a “laundry list” of areas where tax, investment and banking regulations wrongly discriminate against Americans abroad, causing serious financial and emotional hardship. Congressional fixes for legislative oversights that hurt Americans abroad are long overdue, as are mechanisms to ensure such oversights do not continue to occur – as they have in the 2017 Tax Cuts and Jobs Act.

An unfortunate surprise for Americans abroad in the Tax Cuts and Jobs Act

In 2017 the U.S. Congress included Territorial Taxation for Corporations (TTC) in the group of reforms built into the Tax Cuts and Jobs Act (TCJA). We understand that TTC was implemented in order to help level the international tax playing field for U.S. multinational corporations. In introducing TTC Congress included in the TCJA two new “transition tax” provisions to capture tax on corporate profits long kept out of reach of the U.S. Treasury. These new “transition taxes” are our key concern because they materially threaten the viability of businesses owned by Americans living abroad.

The TCJA “Transition Taxes”

15.5% Repatriation Tax - imposed on undistributed (and therefore untaxed by the U.S.) business profits from 1986 through 2017. Overseas resident American business owners declare those undistributed business profits on their 2017 personal tax filing. *This is a retroactive imposition of tax that is unrelated to the realization of revenue that might be used to pay the tax.*

GILTI Tax regime – starting in 2018, mandatory declaration of undistributed business profits on the personal tax filings of business owners abroad, *taxed at the highest personal marginal tax rate and without access to two critical offsets afforded corporate owners of businesses abroad: 1) a 50% deduction and 2) credits for taxes already paid on the profits to the business’s jurisdiction of incorporation.* Further, as with the Repatriation Tax, *the GILTI tax is imposed on profits where there may be no realization of revenue to use to pay the tax.*

Clearly, TTC was enacted to strengthen U.S.-based multinational corporations. We believe the TCJA’s “transition tax” provisions were never meant to beleaguer ordinary, hard-working Americans living and owning companies abroad. In truth, the Repatriation Tax and the GILTI Tax regime will have an enormously harmful financial impact on the estimated 1 million non-resident Americans who own businesses abroad.¹

Transaction Tax impacts on non-resident Americans who own businesses abroad

Americans living abroad owning and operating businesses are an exceedingly diverse group; they are architects, yoga studio owners, retailers, recruiters, beekeepers, IT professionals, film and television producers, music distributors, advertising agency owners, financial

¹ In 2014 research published by Democrats Abroad approximately 20% of respondents identified themselves as “Self-employed/Business Owner.” Given Department of State estimates that 6.5 million voting age Americans live abroad, we estimate that perhaps a million American citizens are impacted by the “transition taxes” in the Tax Cuts and Jobs Act.

service providers and more. When asked in early 2018 about the impact of the TCJA “transition taxes” on their enterprises expat American owners of businesses in their countries of residence provided the following comments:

My family and I own a small private property development company based in the UK and operating since 2001. The profits of this company are fully taxed in the UK and **none of the proceeds have been repatriated to the US as they are used for the continuing financing of the business.**

Massachusetts voter living in the UK

I am a widow, mother of 2 children (ages 16 and 22). My husband was a Canadian glass artist he did not have a pension. I am and have been a self employed graphic designer for many years. I have no pension. **My corporation is just me. It holds my savings which are now being taken away by this tax.**

Wisconsin voter living in Canada

I operate my company with just myself and my spouse and make minimal profit (\$20,000 PA at the most after all UK taxes have been paid) and most recently a loss, none the less I file my US taxes at a cost of \$1000 each time and **now I find I might be hit with an extra US tax making my company potentially nonviable.**

American living in the UK

I run a technology company from Hong Kong with offices in three territories (China, HK and Taiwan). We have 10 employees and are an exceedingly small company who struggle every day to meet bills and grow our company. **But we have big dreams and want to succeed. Don't snuff out small business owners like myself.** We are the past, present and future of American business both at home and abroad.

New Jersey voter living in Hong Kong

As an architect, I established my small office of 6 employees as a Professional Corporation. This means that the US government is attempting to take a percentage of my savings, which will be needed to weather downturns in the market, which greatly affects my ability to retain employees and keep my business open. I have no home office in the US, nor is there any way for me to benefit from the large corporation tax breaks. **This is simply the US siphoning away the funds I need to keep my business up and running.**

Massachusetts voter living in Canada

I have been in Canada for several decades, except for 1997-2001 when my wife and I lived and worked in the U.S. For the past 11 years I have been doing IT consulting for the Canadian government, which required having a corporation. I have built up savings within the corporation which are meant for my retirement, and it operates solely within Canada, i.e. not a branch operation of any U.S. company. It was a shock to learn from my accountant that **I am facing a tax of about \$12,000 on my retained earnings, as a result of the subject legislation.**

North Carolina voter living in Canada

My family business is a simple IT training and consulting corporation that employs me and my husband only. We file and pay taxes in Australia and the US as required. **This new tax can ruin us**, and if we were simply living in the US, would not apply to us. **This is unfair.**
California voter living in Australia

I have a little landscaping business with 5 employees. I am very proud of the work we do, but keeping on top of all of the paperwork is a struggle for me. I am happy to pay my fair share of taxes, but **this law is not fair.**
California voter living in Canada

My business is a one person marketing consulting corporation in which I maintain a simple portfolio to save for my retirement. This is a travesty.
Vermont voter living in Canada

I am a VERY small business owner, running a private counselling practice out of my home. I am very worried that the new laws will be punitive. I already have to pay a tax accountant more than \$600 CDN each year for preparing my US tax returns yearly. My fear is that the increased complexity will not only raise the amount I need to pay them, but will result in my needing to pay taxes twice on the same money.
Massachusetts voter living in Canada

My business, REDACTED, is a values based business with a focus on sustainability. We make the best REDACTED in Vancouver, BC and strive to be the best employer in our industry. The livelihood of my family and the 100 staff that REDACTED employs is in danger from this policy mistake.
Washington state voter living in Canada

I am a small business person with a trading company and some small service businesses. I declare my businesses and income and pay the taxes due both locally and to the US Treasury. Although I have lived overseas for over 40 years, **I am proud to be an American and to support the government with my tax dollars. But this latest abomination of a regime is putting an unbearable burden on me and countless other Americans for little tangible benefit.** We're the small worthless fish being swooped up by a giant drift net meant to catch the larger valuable prey, and we're being left to suffocate and die for lack of interest. Please help us.
Wisconsin voter living in Taiwan

I am a practicing physician. I am shareholder in our small incorporated family owned medical business. **This Canadian only corporation serves only local people, and the income from this stays in Canada and is effectively our only pension.** The Repatriation/GILT is unfair taxation! We have diligently and without fail filed our US Tax returns all the years that we have been required to do so in addition the Treasury Department forms at excess cost to us.
California voter living in Canada

I run a one-person incorporated consulting business. I have worked part-time for the past nine years, with the specific purpose of putting money aside to send my two

daughters to college in the US. Any additional penalizing taxes paid out of my corporation will be a direct hit to the tuition funds I have worked hard to save, and result in a higher need for federal financial aid.

Illinois voter living in Canada

I am the owner of a small software development business that has never done any business in the U.S., yet still reports to the U.S. IRS, and will continue to do so as long as deemed that the cost is within reason. **My options are simply to shut it down or expatriate.**

California voter living in Sweden

All of these comments, and several more not listed here, demonstrate that many Americans business owners living abroad fear that this additional tax burden will *force them to close their businesses*. In addition to the new transition tax burden American business owners abroad will bear, they are also being subjected to even greater tax filing/compliance costs. The new rules for calculating the “transition taxes” are exceedingly technical and organizing accurate filings is proving very time-consuming and complex. U.S. expat tax professionals hired to prepare these filings are passing on to American business owners abroad the additional cost of their time and labor, enlarging the financial burden the new TCJA taxes places on the taxpayer.

Further, while U.S. corporations establish subsidiary businesses abroad in order to expand the operations and profitability of their U.S.-based parent company, U.S. citizens abroad establish businesses in their countries of residence in order to build a life and future abroad.

These are *desperate cries* from your constituents for help.

I set up my business only in June last year (2017) as a stop-gap to enable me to earn consulting fees during a period of unemployment following involuntary redundancy. I am earning a fraction of what I earned when employed (about 75% less), yet I am now faced with the cost of employing a tax preparer to deal with the complexity of earning my small income through a UK limited company that I own rather than through a UK company owned by someone else. **On 2017 income of about US\$15,000, I expect a bill from a tax preparer in excess of US\$2,000, more than 10% of my total income, only to comply with the filing burden placed on me as UK business owner who happens to possess a US passport. I can't even estimate what the cost will be if any US taxes are owed.**

I have lived outside the United States for nearly 25 years and have filed my tax returns and FinCen and FATCA forms without the assistance of a tax preparer for the last 15 years. **Now, at a time when I am on significantly reduced income, I am being penalised for being a US citizen earning money the wrong way.**

Virginia voter living in the UK

As a simple freelance consultant to the life sciences industry, I only established a British limited company on the request of my corporate clients to ensure compliance with local employment regulations and law. I have no employees and no teams of accountants and finance advisors. Between the transition tax and the small fortune I will spend on tax accountants, **my financial position will suffer detrimental damage** – not only will I suffer

a significant income loss, the reduced income will severely impact my likelihood of being able to re-mortgage my home and potentially force me and my wife to sell our home at a loss. I have been fully compliant with US tax and reporting laws for the 10 years of living overseas – **this law however has the potential to financially destroy millions of Americans like myself in a matter of months.**

I beg you, PLEASE PLEASE PLEASE PLEASE PLEASE PLEASE remove innocent overseas US business owners from this broad net of unintended taxation. I believe it was not intended to financially destroy people like me, but it is has the potential to do exactly that.

Arizona voter living in the UK

We believe strongly that a remedy is needed to exempt these taxpayers from a potentially crushing new tax liability - one that Congress never intended.

Transaction Tax Remedy

We believe Americans overseas with interests in foreign corporations should be exempt from the Repatriation Tax and from the GILTI Tax regime for any given year so long as:

- (1) they meet the conditions required for exemption under IRC Section 911, and
- (2) they are individual U.S. Shareholders.

This solution both achieves the U.S. Congress's goal of capturing corporate tax it has been long-denied, and recognizes that the profits of businesses owned by Americans living abroad were never meant to be repatriated to the U.S. because they are needed to sustain the underlying business entities and the American expatriate families who rely upon them.

We strongly urge Congress to correct this unintended tax burden which harms Americans and their opportunities for personal savings and economic growth. American business owners abroad should be exempted from these transition taxes so they can remain positioned to manage and grow their businesses and take care of their families.

Democrats Abroad Taxation Task Force

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