



The Honorable Carolyn Maloney  
2308 Rayburn House Office Building  
Washington, D.C. 20515

May 31, 2019

Democrats Abroad  
PO Box 15130  
Washington, DC 20003  
USA

Dear Representative Maloney,

[DemocratsAbroad.org](http://DemocratsAbroad.org)  
[VoteFromAbroad.org](http://VoteFromAbroad.org)

**Re: Ways & Means Committee Members' Day Hearing - June 4, 2019**

Democrats Abroad understands you intend to carry on as Democratic Co-Chair of the Americans Abroad Caucus; we are delighted you will continue to be our official champion in Congress addressing the serious issues that uniquely impact the overseas community of U.S. citizens.

Problems with voting overseas?  
[help@VoteFromAbroad.org](mailto:help@VoteFromAbroad.org)

Further to that role, we respectfully ask that you make a submission to the above captioned on our behalf. You know from meetings with the Democrats Abroad held over many years that U.S. tax laws and regulations contain many provisions that grievously discriminate against Americans residing abroad. Herein we provide a succinct summary of the issues we face being subjected taxation both in the U.S. and in the countries where we live. We hope you will draw upon them to prepare a submission to Chairman Neal's committee. We believe your advice will help motivate the Committee to give robust consideration to the bi-partisan concept of residency-based taxation.

DA Executive Committee:

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- **Out-of-proportion tax filing cost and complexity.** Preparing tax returns that disclose income earned abroad is inordinately complex. The majority of Americans abroad hire expensive tax return preparers<sup>1</sup> who understand both their local tax system and the U.S. tax system. They incur U.S. tax compliance expenses that they cannot afford to produce a tax return that many times shows they owe nothing to the IRS. And when their filing indicates they do have a U.S. tax liability, then they are paying tax twice on the same dollar of income: first to their country of residence and then to the IRS.
- **Double taxation of many types of income.** The Internal Revenue Code does not recognize pensions paid out of non-U.S. retirement accounts and so treats that income as ordinary unearned income, fully taxable at the marginal rate. The Code also treats social welfare payments to unemployed, elderly, disabled or indigent Americans by the government of their country of residence as ordinary unearned income. Social welfare payments are sized at a level adequate to sustain the recipient but become inadequate for survival if the recipient must pay U.S. tax on them.
- **Denial of ordinary financial products and services.** Foreign financial account reporting requirements motivate foreign financial institutions in our countries of residence to withhold financial products and services. Further there are compliance challenges inherent in mandatory electronic filing of FBARs and serious financial information security concerns.

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<sup>1</sup> In 2019 research on the tax filing experience of Americans abroad 54% of respondents say they engage tax return preparers to complete the U.S. tax filings. 61% said they pay \$500 or more.  
<http://bit.ly/23Problems>

- **Numerous barriers to investing and saving for the future**, created by statutory bans on investing in U.S. mutual funds without a U.S. residential address and punitive tax treatment of non-U.S. investment and saving vehicles classed as Passive Foreign Investment Companies.

This is a very brief summary of the serious problems that compliance with U.S. tax laws and regulations causes for Americans abroad. Attached is a more extensive briefing note on tax code discrimination.

From the many meetings Americans abroad have had with Ways and Means Committee members we believe they have a growing understanding of how U.S. tax laws and regulations cause us personal and financial harm; in many ways they unfairly ask much more of us than they do of U.S. citizens living in the U.S.

We thank you for your on-going concern for issues important to your overseas constituency. Raising awareness of non-resident Americans' taxation issues with the Ways and Means Committee in the form of a Member's testimony would be extremely appreciated. We believe that discussion of our issues at this hearing could be a precursor to a hearing focused specifically on the taxation of Americans abroad.

Please contact me or Democrats Abroad Taxation Task Force Chair, Carmelan Polce at [carmelan@democratsabroad.org](mailto:carmelan@democratsabroad.org) or 610-596-8431 at any time with questions.

Thank you.

Sincerely,

/S/

Julia Bryan

International Chair

Democrats Abroad

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How to Fix  
**23 Tax  
Problems  
for Americans  
Abroad**  
with Three Solutions

## **We are asking Congress to -**

1. Enact a switch from Citizenship Based Taxation to **Residency Based Taxation**.
2. Pass the “**Overseas Financial Access Act**” – to eliminate the foreign financial accounts of Americans living abroad from reporting under Foreign Account Tax Compliance Act (FATCA).
3. Pass the HR 141, the “**Social Security Fairness Act**” - to repeal the Windfall Elimination Provision that prevents Americans abroad with pensions in their countries of residence from claiming the full amount of Social Security payments owed to them.
4. Enact a **remedy for American business owners abroad** existentially harmed by the “transition taxes” built into the 2017 Tax Act.
5. Provide an **efficient mechanism for “Accidental Americans” to renounce** their unwanted U.S. citizenship.

## **We recommend Congress -**

- **Hold hearings** to investigate the myriad ways the U.S. Tax Code discriminates against Americans abroad and build support for these three critical reforms.
- Establish a **Commission** to study the impact of Federal laws and regulations **on Americans living abroad** and to avoid passing laws that inadvertently harm Americans abroad in the future.
- Enact **reforms to the Foreign Bank and Financial Accounts Report (FBAR)** reporting requirement for US Citizens in their bona fide country of residence, especially to redress the enormous and out-of-proportion penalties for non-willful non-compliance.

## **We urge Congress to -**

- ✓ Join the **Americans Abroad Caucus**.
- ✓ **Contact us** when you travel to our countries of residence. We would love to meet you in the places we live!

## INTRODUCTION

Democrats Abroad has documented herein the scope of tax problems that uniquely impact Americans living abroad. We hope that by profiling the wide range of U.S. tax code and other provisions that have – however unintended – severe adverse consequences for Americans abroad that we might persuade Congress to act on our behalf and resolve them.

The list includes 23 discrete matters and, to our disappointment, it has recently grown due to provisions in the 2017 Tax Cuts and Jobs Act. As is the case with most of the provisions that vex Americans abroad, the Repatriation Tax and GILTI provisions in the new law were enacted without due consideration for the impact they would have on non-resident filers.

Other examples include: the financial account reporting provision in the Bank Secrecy Act, which includes exorbitant and out-of-proportion penalties for non-compliance and requires updates generally; SEC regulations and the USA PATRIOT Act which make both investing in the U.S. and investing abroad *extremely difficult* for Americans living abroad without a U.S. address; and the Windfall Eliminations Provision, which unintentionally denies fully entitled Social Security benefits to Americans abroad who have pensions in their country of residence. Saving and investing for the future is *extremely difficult* for Americans abroad because of these provisions.

Thus, we are burdened with an unfair, unreasonable and unjust compliance burden that causes financial and personal hardship and that will require remedies across myriad areas of the tax code and other laws, plus within existing U.S. double taxation treaties and the model U.S. tax treaty. We do not believe Congress has the time or political will to implement these remedies and so instead recommend three solutions that would eliminate the problems enumerated herein:

- 1. A switch from our current system of Citizenship-Based Taxation to Residency-Based Taxation.** There is evidence to suggest that Residency-Based Taxation can be implemented on a revenue-neutral basis<sup>2</sup>. A switch from Citizenship-Based Taxation to Residency-Based Taxation would resolve most of the tax problems outlined herein.
- 2. A same country exemption for Americans abroad to eliminate FATCA reporting on financial accounts in their country of residence.** The *Overseas Americans Financial Access Act* would provide Americans abroad from relief from the unintended adverse consequences of the Foreign Account Tax Compliance Act (FATCA). FATCA was enacted to discourage and apprehend those using foreign bank accounts to commit financial crimes and not to cause personal and financial pain to ordinary Americans abroad who use accounts in their countries of residence to pay bills and save for the future.<sup>3</sup>
- 3. Replace the Windfall Eliminations Provision with the Social Security Fairness Act (H.R. 2710).** To restore to Americans abroad the Social Security benefits they have earned and are entitled to.

Filing from abroad alone is inordinately complex and costly. The forms required to declare income generated abroad are highly detailed, preparing them is extremely difficult and it very often requires the support of professional tax return preparers with specialist knowledge of overseas filing.<sup>4</sup> Our recommendations address the filing costs for Americans abroad which far exceeds the costs incurred by U.S. based tax filers.

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<sup>2</sup> <https://www.americansabroad.org/files/586/>

<sup>3</sup> <https://www.finance.senate.gov/download/att-2-democrats-abroad-2014-fatca-research-report>

<sup>4</sup> [https://www.democratsabroad.org/can\\_we\\_please\\_stop\\_paying\\_twice\\_tax\\_reform\\_for\\_americans\\_abroad](https://www.democratsabroad.org/can_we_please_stop_paying_twice_tax_reform_for_americans_abroad)

## TAX CODE PROVISIONS THAT DISCRIMINATE AGAINST AMERICANS ABROAD - AND PROPOSED REMEDIES

In our examination of the provisions in the Internal Revenue Code that govern tax filing and reporting for non-resident Americans we have identified these remedies that are required in order to address the Code's perhaps unintended but certainly adverse consequences.

**Note:** A switch from [Citizenship-Based Taxation](#) to [Residency-Based Taxation](#) would resolve most of these issues for Americans living abroad.

1. **US Capital Gains Tax Exclusion** – harmonization of capital gains treatment for properties owned by citizens living abroad with the treatment of properties owned by citizens living in the US.
2. **Artificial Capital Gains/Losses due to Currency Fluctuations** – elimination of artificial capital gains and losses when no currency has been exchanged by allowing the currency of the country of residence to be the functional currency for tax reporting purposes.
3. **Applying foreign credits to NIIT** – allow Americans abroad to apply foreign income tax credits in calculating Net Investment Income Tax.
4. **Marital deduction for bequests to foreign surviving spouses** – reinstate the marital deduction for bequests to surviving foreign spouses in the calculation of estate tax.
5. **Declaration of foreign long-term savings plan income** – tax the income from foreign long-term savings plans at the time the money is withdrawn from the plan.
6. **Taxation of welfare payments** – tax imposed on foreign government invalidity, unemployment and social welfare payments to disabled and disadvantaged Americans abroad only by the country making the payments, i.e. the country of residence.
7. **Tax-free transfer of foreign retirement plan assets** – render tax-free the transfer of assets from foreign retirement plans deemed qualified plans under international tax treaties to retirement plans in the taxpayer's new country of residence, be it the US or another country.
8. **Revise punitive PFIC rules** – For citizens residing abroad revise the punitive Passive Foreign Investment Company rules and reporting requirements that apply to non-US pension plans, foreign mutual funds and other investment savings vehicles that prohibit Americans abroad from using them to save efficiently for retirement.
9. **Taxation of non-US non-qualified pension plans** – simplify the reporting structure for non-US, non-qualified pension plans that would alleviate the onerous need for Form 3520 filings for non-employer funded pension schemes.
10. **Reforms to the FEIE and FHE** – maintain the Foreign Earned Income Exclusion, merge it with the Foreign Housing Exclusion and eliminate the ceiling. This would completely eliminate double taxation of the earned income of non-resident taxpayers.
11. **Repeal WEP** – Replace the Windfall Elimination Provision (WEP) which drastically reduces the Social Security payments owed to Americans also receiving foreign pension payments with the Social Security Fairness Act to restore rightful Social Security payments to Americans abroad.
12. **15.5% Repatriation Tax** – Provide an exemption for small to medium sized business owners from the 15.5% Repatriation Tax. Meant as a tax break for American companies retaining profits abroad, it forces small to medium size business owners to declare profits set aside for future capital investment.
13. **GILTI tax regime** - Harmonise the tax treatment of Global Intangible Low Tax Income and Foreign Intangible Direct Income across all types of foreign corporations owned by U.S. persons or entities by giving pass through-type S corporations owned by Americans living abroad access to the same offsets and deductions afforded to C corporations controlled by U.S multinationals.

## IMPROVING TAX FILING AND REPORTING FOR AMERICANS ABROAD

These filing reforms would lose their importance [for most Americans abroad](#) after a switch from **Citizenship-Based Taxation to Residency-Based Taxation**. They would remain enormously helpful for those who do not elect to file as non-resident US citizens for tax purposes.

14. **Optional simplified earnings declaration** – provide non-resident taxpayers who owe no US federal income tax with the option of a one-sentence, handwritten or printed declaration of earnings, accompanied by a tax return or assessment from the taxpayer’s country of residence
15. **Expand the criteria for determining the threshold for who must file** – add a provision so that foreign earned income that can be excluded under current rules does not need to be included when determining your gross income for filing purposes.
16. **Make electronic tax return filing possible for non-resident taxpayers declaring foreign tax credits** - Allow taxpayers using the free, fillable IRS electronic forms to exclude the attachments eliminating the need for the taxpayer to file the return by post.
17. **Translated IRS publications and forms** – provide translated versions of IRS publications and tax forms commonly used by non-resident, non-English speaking US citizens.
18. **Harmonize International Tax Treaties** – align all international tax treaties with the US Model Income Tax Convention of November 15, 2006, especially (but not exclusively) as they apply to private pensions, social welfare benefits, annuities, alimony, child support and pension plans.
19. **Promote the Streamline Filing Compliance (Offshore) Procedures (SFCP)** – expand awareness of the SFCP, a tax compliance restoration program introduced in 2014 for Americans who non-wilfully are not compliant with their tax filing and reporting obligations.
20. **Improve communication** – encourage the IRS to do even more to expand communication with Americans living abroad, starting with the establishment of non-resident taxpayer support hotlines operated by officials schooled in matters unique to non-resident filers and including the reopening of overseas IRS offices and the restoration of offshore services lost due to cuts in IRS funding.
21. **Protect American Citizens Services** – ensure that proposed cuts to State Department funding do not result in further reductions in American Citizen Services provided by U.S. consulates and embassies, which often include advice about tax filing deadlines and local tax return services.
22. **Reform the Foreign Account Tax Compliance Act (FATCA)** – exempt from FATCA reporting, by both the U.S. citizen abroad and their financial account provider, the financial accounts of law-abiding overseas resident U.S. citizens in their bona fide country of residence.
23. **Reform the Foreign Bank and Financial Accounts Report (FBAR) reporting requirement for U.S. Citizens in their bona fide country of residence** – as follows
  - Redress the enormous, out of proportion penalties – civil and criminal – imposed by the IRS for non-wilfully neglecting to file forms;
  - Adjust for inflation the \$10,000 aggregate threshold amount that triggers a FBAR filing requirement, which has not been adjusted since the Bank Secrecy Act was enacted in 1970;
  - Eliminate the duplication of information disclosed on the FBAR and FATCA reports;
  - Exempt U.S. citizens from reporting foreign financial accounts that are not reportable by financial institutions in their country of residence;
  - Address the vulnerability of FBAR data security inherent in electronic filing; and
  - Remove the burden imposed on filers who are computer illiterate or with no access to computers by eliminating recently introduced mandatory electronic FBAR reporting.

## **REGULATIONS CONSTRAINING BANKING, INVESTMENT AND RETIREMENT SAVINGS FOR AMERICANS ABROAD**

**Note:** A switch from Citizenship-Based Taxation to Residency-Based Taxation would resolve most of these issues for Americans living abroad.

Investment options for Americans abroad are increasingly limited and fraught. Due to SEC regulations and legislation designed to protect consumers in the market for financial products, a provider of financial fund products must be registered to sell and market their products in the jurisdiction where investors are domiciled. Although U.S. brokerage firms have over time turned a blind eye to this requirement, more recently, in an atmosphere of increased disclosure and oversight, many have elected to prohibit clients residing abroad from buying U.S. mutual funds in order to avoid the registration requirement. Exchange-Traded Funds are a legal work-around for Americans abroad interested in a mutual fund-type investment exposure, however even Exchange-Traded Funds may not be an option for individuals whose foreign and/or U.S. bank and brokerage accounts have been closed.

Features of the U.S. tax code impacting investments, savings plans and retirement savings uniquely penalize Americans residing abroad in the following ways:

- Punitive taxation of retirement savings plans which qualify and are taxed under local laws but are not qualified plans for U.S. tax purposes;
- Punitive taxation of foreign government sponsored retirement savings programs that are not qualified plans for U.S. tax purposes;
- Punitive PFIC rules noted above make investing for the future enormously difficult;
- Capital gains tax laws that do not take into account currency fluctuations, thereby creating assessable capital gains upon the sale of assets even if no currency was exchanged;
- The inability to claim the foreign tax credit against taxes owing under the Affordable Care Act, the 3.8% Net Investment Income Tax;
- Inflexible regulations involving Social Security and Medicare contributions particularly disadvantage (double-tax and other) self-employed Americans abroad.
- The Windfall Elimination Provision drastically reduces the Social Security payments owed to Americans also receiving foreign pension payments;
- The Social Security benefit taxation regime for taxpayers who are Married Filing Separately provides no exclusion for spouses. Americans married to foreign nationals normally file as Married Filing Separately and as such cannot receive the exclusion afforded Americans married to Americans who file jointly;
- Social Security contributions required of self-employed Americans abroad are taxed (15.5%) even if they are already making contributions to an aged pension contribution scheme in their country of residence;
- Welfare payments made by foreign governments to Americans who are elderly, disabled, or indigent are subject to US tax though they are normally not taxed abroad.

### **U.S. BANKING ALSO CONSTRAINED**

The USA PATRIOT Act, ratified after the terrorist attacks of 9/11, established new “Know Your Customer” rules for US financial institutions. As a result, banks and financial institutions are no longer willing to hold or open accounts for customers whose only address is outside of the United States. This has constrained the banking, saving and investment activities of Americans abroad. A sensible reform would be to exempt American citizens living abroad from this provision even if they have only a non-US address.