ASSOCIATION OF AMERICANS RESIDENT OVERSEAS
Since 1973

4 rue de Chevreuse
75006 Paris, France
Tel: +33 (0)1 4720 2415
Website: www.aaro.org
Email: contact@aaro.org

Summary of the Residence-Based Taxation for Americans Abroad Act[1]

By Doris L. Speer, President April 6, 2025

Persons Who May Elect RBT

- An American abroad who is a tax resident of a foreign country may elect to terminate residency for Federal income tax purposes while maintaining U.S. citizenship (electing person).
- An election is not effective unless the electing person certifies having been compliant with the Internal Revenue Code for the last 5 years and has paid or deferred any required Departure Tax (see below).
- An individual born outside the United States is treated as an electing person until becoming a resident of the U.S. or its territories.
- U.S. citizens employed by the U.S. Federal Government may not elect RBT.
- An electing person:
    1. would be treated thereafter as a non-resident alien for tax purposes (see below); and
    2. would no longer be subject to reporting requirements with respect to FBAR, FATCA, foreign corporations and a few others (one must be cautious as some reporting requirements continue).

Termination of Election

- An election for RBT terminates as of the December 31 before the year one establishes or re-establishes residency[2] in the U.S. or its territories.
- If an election for RBT terminates before the beginning of the 4th year after election, the election is retroactively reversed and the person must refile taxes under CBT and satisfy reporting requirements for all applicable years.

Income Taxation as a Non-Resident Alien

Electing persons:

- would be subject to income tax only on their U.S. source income, the same way as non-resident aliens are (see attached chart); and
- would benefit from the provisions of any applicable tax treaty without application of the saving clause, which the United States waives for electing persons.

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[1] The Residence-Based Taxation for Americans Abroad Act, H.R. 10468 (the Bill), was introduced by Darin LaHood in December 2024, in the 118th Congress. This Summary is intended to aid the layperson in understanding the Bill; therefore, certain details have been omitted and certain concepts have been paraphrased. For specifics, refer to the text of the Bill.

[2] The Substantial Presence test determines if one is a resident. An election for RBT terminates if one is present in the U.S. or its territories more than a certain number of days over a three-year period per a formula set forth in IRC Section 7701(b)(2)(C)(i). For an idea of magnitude, this averages to not more than 4 months/year over the 3 year-period.

Departure Tax

- Electing persons who have a net worth on January 1 of the year of election greater than the estate and gift tax exemption ($13.99 million in 2025)[3] are subject to a capital gains realization event; all property would be deemed sold for its fair market value as of the previous December 31.
- The following property is exempted from the calculation of the Departure Tax:
    1. deferred compensation items, including foreign pension plans;
    2. “qualified” pension plans and retirement accounts;
    3. specified tax deferred accounts, including 529 accounts and health savings accounts;
    4. interests in nongrantor trusts;
    5. U.S. real estate; and
    6. primary residence outside the United States.
- Electing persons may elect to defer Departure Tax with respect to property non-readily tradable on an established securities market until such property is sold, provided they provide adequate security.

Grandfather Rules for Current Long-term Overseas Residents

The following persons are exempt from the Departure Tax:

- An electing person who
    1. on the date of introduction of the Bill is a tax resident of a foreign country, and that country is the place where the person regularly, normally or customarily lives;
    2. has not been resident[4] of the U.S. or its territories for at least 3 of the 5 years preceding introduction of the Bill; and
    3. certifies to have satisfied the requirements of the Internal Revenue Code for the last 3 years.
- An electing person who has not been a resident of the U.S. or its territories [5] either (i) between age 25 and the date of enactment of the Bill or (ii) between March 18, 2010 and the date of enactment of the Bill, in each case regardless of whether the person has been compliant with U.S. tax obligations.

Certificate of Nonresidency

- Treasury will issue a Certificate of Nonresidency to electing persons and those born abroad upon application and payment of a $100 application fee (fee adjusted annually for cost-of-living).
- The Certificate of Nonresidency terminates once one becomes a resident[6] of the U.S. or its territories.

Foreign Financial Institutions (FFIs)

- Those with a Certificate of Nonresidency are not considered a “United States person” for purposes of FATCA reporting, implying that FFIs would not be required to report their accounts.
- FFIs shall not have policies or practices discriminating against opening or maintaining an account for U.S. citizens resident in their country.

General Comment: Considerable discretionary power has been accorded to Treasury and the IRS under the Bill. Many implications of it will only be known when corresponding regulations are implemented.

[3] 26 U.S. Code § 2010(c)(3).
[4] Under the Substantial Presence test.
[5] Under the Substantial Presence test.
[6] Under the Substantial Presence test.