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Senate Committee on Finance
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How U.S. International Tax Policy Impacts American Workers, Jobs and Investment
Thursday, March 25, 2021

Submission by the Association of Americans Resident Overseas to the U.S.
Senate Committee on Finance

The Association of Americans Resident Overseas (AARO) welcomes the Committee's review of U.S. international tax policy and its impact on American workers. Such a review is badly needed, especially in view of the damage the current U.S. tax framework has caused to American workers, retirees and small business owners resident overseas and their families.

We are aware that Congress plans to revisit the 2017 Tax Cuts and Jobs Act (TCJA), focusing mainly on its impact on multi-national enterprises (MNEs): the framework for taxing them, applicable rates and the impact on federal revenues. MNEs and their employees are important, but they are only a subset of the businesses and workers affected by international tax policies. We encourage the Committee to broaden its work to take full account of the impact of these policies beyond the large company sector to avoid inadvertent damage to small business owners and overseas American workers and entrepreneurs.

Congress' immediate task in this regard should be to reverse the damage caused by the TCJA itself. For overseas workers, entrepreneurs and small businesses this means fixing the Global Intangible and Low Income (GILTI) Tax and the so-called "Transition Tax" imposed under the TCJA. Only a small number of large companies owe meaningful taxes under these provisions. But even small amounts of tax and heavy compliance costs create a massive burden on large numbers of small businesses owned by Americans outside the United States. Congress should fix the problems.

Congress should also take care to ensure that no new provisions damaging to small American-owned businesses overseas are introduced inadvertently. The Committee can play an important role here by insisting that any implementing measures affecting businesses located overseas are subjected to a serious regulatory impact analysis and ensuring that this is reflected in the measures.

We strongly encourage Congress to extend its review of policies toward international taxation beyond businesses to individuals. Its purpose should be to correct the damage caused by longstanding features of the tax code and badly targeted enforcement provisions aimed at overseas Americans. Most problems would be substantially mitigated by ending taxation on the basis of citizenship and respecting international norms that would limit the application of U.S. tax laws to areas over which the United States has jurisdiction.

The most important issues ([a broad survey is available on AARO's web site](#)) include:

- Collective investment instruments (e.g., mutual funds) and savings vehicles (e.g., 401[k] plans and IRAs) that are tax favoured in the United States, to encourage saving and retirement planning, are often targeted punitively by the U.S. tax code when located where their American owners resident overseas live. The GAO reported extensively on this to Chairman Wyden (then the Ranking Member) on January 31, 2018 ([GAO-18-19](#)), [summarizing the situation well](#). Tax treatment of these savings instruments and vehicles should be aligned regardless of their location.
- Issues of double taxation and irreconcilable inconsistencies between U.S. and country of residence tax frameworks remain significant problems for many overseas Americans, especially those whose earnings are above the earned income exclusion (\$108,700 in 2021) specified in Form 2555.
- Americans abroad increasingly encounter extreme difficulties in trying to contact the IRS and are left in the dark concerning the status of their filing, as they can no longer obtain status transcripts.
- Reporting requirements for tax filing are excessively complex and time-consuming. Skilled, expensive, in many countries bilingual, professional assistance is often required. IRS estimates of time typically needed by non-resident filers for record-keeping and filing are summarized [HERE](#). To take an example, for a simple 401(k) equivalent, deemed to be a foreign employees' trust covered by section 402(b) of the tax code (thus requiring Forms 3520 and 3520A), containing two mutual funds (requiring Form 8621 for each fund), could involve more than 160 hours of record-keeping and reporting. This would only be a part of the full return.
- Multiple reporting requirements for foreign financial accounts, applying to both individuals (i.e., FINCEN Form 114 and IRS Form 8938) and their local banks (IRS Form 8966), are duplicative, overlapping and serve no known useful purpose. In addition, compliance costs to banks and the risk of disproportionate penalties have led banks to reject American clients on a large scale, making access to the financial system, necessary for making payments, one of the most serious problems confronting Americans overseas. In 2019 the GAO reported on [these issues in detail](#).
- The same GAO report (GAO-19-180) also called attention to the adverse impact financial reporting requirements were having [on overseas American workers, jobs and promotion prospects](#).

As a final point, AARO takes this occasion to reiterate its longstanding request that the Committee and the rest of Congress move away from its persistent tendency to regard the overseas American community through a distorted lens that perceives all Americans living outside the U.S. as well as the businesses they might operate as being in the same basket as rich individuals who have sought to hide their wealth overseas or large and nominally American corporations that have used various legal means to minimize their fiscal liability. The vast majority of the millions of Americans living and working overseas are exactly like the millions living in the United States. Their continued stigmatization and subjection to unfair tax policies as a consequence is patently unjust and unseemly for a country like the U.S., which is committed to the principle of fairness and justice for all its citizens.

Although AARO is committed to the larger goal of ending the current system of citizenship-based taxation, it calls, in this instance, for a careful and well-studied examination of the real challenges facing American small businesses and entrepreneurs overseas. Americans who moved overseas did not lose their citizenship as a result of doing so. It is wrongheaded for Congress to inflict punitive measures on everyone due to understandable concern about the illegal or questionable practices of a few. Justice and fairness demand better.

We thank the Committee for the opportunity to comment on these important issues.

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