



**DEMOCRATS ABROAD SUBMISSION TO THE BIDEN-HARRIS TRANSITION TEAM**

**TREASURY AND IRS ISSUES  
WITH RECOMMENDATIONS FOR IMPROVING ENGAGEMENT  
WITH AMERICANS ABROAD**

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## I. Summary

Democrats Abroad is honored to present to the Biden-Harris Transition Team our views on tax and other issues impacting Americans abroad. We are proud of our contributions to the election of Joe Biden and Kamala Harris, including our work increasing the overseas-vote which helped lead to wins in key states such as Arizona and Georgia.

The State Department estimates there are 9 million Americans living outside the United States. Unfortunately, we suffer from the stubborn misperception - driving the development of tax policy and regulations - that Americans abroad are uniformly high-rollers, living a life of luxury in low- or no-tax countries. Research indicates we live abroad primarily because a relationship, employment, education, or adventure took us abroad, and we decided to stay.<sup>1</sup> The vast majority of us are ordinary working-class Americans, living, raising families, and retiring in countries with (often) a higher overall tax-burden than the U.S. The tax policies and regulations that focus on Americans abroad do not reflect this reality - but instead punish millions of American citizens in attempts to successfully foil a few.

We also suffer from serious deficiencies in IRS service and support. For many years the IRS has provided little to no advice about the tax-filing obligations of non-resident citizens. Ignorance, misinformation, and confusion abound, even among consulate and embassy staff. In recent years the IRS has withdrawn staff from international postings and replaced them with online support that vastly underestimates how inordinately difficult it is to file taxes from abroad.

The experiences of Americans abroad in accessing the pandemic aid in the 2020 CARES Act provide further evidence of the need for greater attention by the IRS to our needs. Research indicates that only 2 in 3 Americans abroad who were eligible for a CARES Act payment received one; and 70% of them received a check, which took on average 12 weeks to arrive and be converted into cash.<sup>2</sup>

Democrats Abroad and the other organizations advocating on behalf of Americans Abroad **have been working for many years to persuade Congress to end the double taxation of our income, simplify filing from abroad, and remove the barriers to banking, saving, and investing** which the Internal Revenue Code and other laws and regulations place before Americans abroad. We have the following recommendations for how Treasury and the IRS can better service Americans abroad and reduce the hardships we suffer due to laws enacted and rules established without due consideration of the impact they would have on us:

1. Address the bias in tax enforcement that prioritises the discouragement and apprehension of tax cheats over the welfare of ordinary, law-abiding, working-class Americans abroad;
2. Establish a communication channel with Americans abroad through which we can help achieve a better balance between tax enforcement (aimed at tax cheats) and tax compliance (aimed at ordinary law-abiding taxpayers);

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<sup>1</sup> *Tax Filing From Abroad: Research on Americans Abroad and U.S. Taxation*, March 2019

<sup>2</sup> *Americans Abroad and the CARES Act: Research on the CARES Act Aid Programs and Recommendations for Improving the Delivery of Pandemic Aid to Americans Living Abroad*, November 2020

3. Restore IRS staff in overseas locations and improve online assistance and telephone support to Americans abroad;
4. Expand the availability and utility of Free File systems for Americans abroad; and
5. Ensure equal access to aid programs such as those in the CARES Act by 1) provisioning resources such as the online aid-registration tools with screens that accommodate the identification information (address and phone number) of Americans abroad, and 2) providing Americans abroad with the option of having aid paid into their local bank account via IBAN (International Bank Account Number).

## II. Introduction

For many years Americans abroad have been speaking to U.S. lawmakers about the genuine personal and financial hardships they experience due to the taxation of their income both by their country of residence and by the U.S. The harm caused to Americans abroad by inordinately complex U.S. tax-filing, by double taxation, and by policy-borne barriers to banking, saving, and investing, is so severe that it often feels to them that the U.S. is punishing them for leaving the country.

This harm results because Congress enacts tax policy, and Treasury implements it, without adequate consideration for the impact it might have on ordinary working-class Americans living abroad because a relationship, education, adventure, or employment brought them there, and they decided to stay.<sup>3</sup> We do not live abroad to avoid paying taxes; we pay taxes in the countries we live in, the vast majority of which have higher tax rates than does the U.S.<sup>4</sup> Americans abroad need Treasury officials and the IRS to understand who we are so that, in writing rules, they can strike a better balance between discouraging and apprehending tax cheats - which we strongly support - and caring for the welfare of ordinary Americans living abroad.

Americans abroad understand that we are collateral damage in an on-going war against tax cheats. Those seeking to hide assessable income from the IRS engage a stable of clever lawyers, bankers, accountants, and arrangers to collaborate on the development of ever-more complex tax-avoidance schemes. The IRS fight against these tireless efforts routinely results in policy that makes life harder for ordinary Americans abroad. The irony is that we support this fight; if the IRS wins, we all win.

We also understand that the IRS has itself suffered from years of underfunding. Because U.S. citizens and companies owned by U.S. individuals and companies are subject to U.S. taxation even when they reside (are registered, in the case of companies) abroad, Congress has tasked the IRS with the administration of a global tax system. But, from year to year, Congress asks the IRS to do more with less, with ordinary citizens ultimately bearing the brunt. For example, cost-cutting has forced the IRS to withdraw agents stationed abroad. Research in 2017 found that 55% of Americans abroad engaged tax professionals to prepare their American tax-filing, at an average cost of \$500.<sup>5</sup> Given the paucity of resources that the IRS has allocated to the support of Americans abroad, it appears that Congress has not provided the IRS with the resources it needs to succeed in administering a global tax system. The problems Americans abroad experienced accessing CARES Act aid provides further proof.

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<sup>3</sup> *Tax Filing from Abroad: Research on Americans Abroad and U.S. Taxation*, March 2019

<sup>4</sup> <https://www.taxpolicycenter.org/briefing-book/how-do-us-taxes-compared-internationally>

<sup>5</sup> This compares to 2-3% of U.S.-based Americans who engage a preparer at an average cost of \$176. *Can We Please Stop Paying Twice? Reforming the U.S. Tax Code for Americans Abroad*, October 2017

### III. Americans Abroad and U.S. Taxation

#### a) We are not “fat cats”

Democrats Abroad wants desperately to vanquish the persistent, apocryphal stereotype that the 9 million American civilians living abroad are wealthy “fat cats” doing so to avoid taxes. The vast majority of us are ordinary working-class Americans, about whom research has found:<sup>6</sup>

- 61% had household income less than \$100,000;
- 72% were married, 71% of whom to non-U.S. spouses;
- 63% owned their own home;
- 32% had moved abroad for marriage or a relationship;
- 25% had left the U.S. for work/employment;
- 64% had made their home abroad and had no plan to return to the U.S.;
- Most lived in countries with a higher overall tax-burden than the U.S.

#### b) Issues for individuals

While the *Foreign Earned Income Exclusion* and *Foreign Tax Credit* provide some protection from double taxation, **there are many types of income that fall outside those provisions and are double taxed**, such as income associated with retirees and with vulnerable citizens living on foreign government social welfare. Some U.S. tax treaties protect savings in statutory retirement accounts from double taxation, but most do not.

Filing from abroad is inordinately complex, forcing most Americans abroad to seek the services of expensive tax-return preparers who understand the tax systems of both the U.S. and the country where they reside. On average, Americans abroad pay nearly triple what U.S.-based filers pay for tax preparation.<sup>7</sup> Therefore, **most are paying heavily to maintain U.S. tax compliance even though they owe no tax** to the U.S. government.

The burden of tax-filing from abroad is compounded **by foreign financial-account reporting requirements**. Since the Foreign Account Tax Compliance Act (FATCA) fully implemented double-disclosure foreign account and financial-asset reporting - meaning that both the individual and their bank must report - 30% of Americans abroad have reported impaired access to even ordinary financial products and services where they live.<sup>8</sup> This “lockout” of Americans abroad by foreign banks and financial institutions has been enormously disruptive for those affected.

Failure to comply with FBAR reporting requirements for foreign bank and other financial accounts carries **heavy penalties that are far out of proportion to the taxpayer lapse**, especially when, for example, it is due to ignorance borne of IRS neglect, language barriers, or lack of ability to use or to access electronic devices which are mandatory for FBAR filing.

Punitive tax-treatment of non-U.S. investing (PFICs) and saving vehicles, combined with provisions in securities, national security, and banking laws, **make saving for retirement or the family’s future very expensive and inefficient, if not impossible**.

<sup>6</sup> *Tax Filing from Abroad: Research on Americans Abroad and U.S. Taxation*, March 2019

<sup>7</sup> *Can We Please Stop Paying Twice? Reforming the U.S. Tax Code for Americans Abroad*, October 2017

<sup>8</sup> *Tax Filing From Abroad: Research on Americans Abroad and U.S. Taxation*, March 2019

**Even the family home puts the non-resident taxpayer at risk.** Americans abroad are entitled to no deduction for interest on a home mortgage, nor to favorable capital-gains treatment on sale. In fact, they are at risk of a capital-gains tax-liability should fluctuations in exchange rates create an artificial gain at the time of sale or even re-finance.

**c) Issues for employees and small business owners**

U.S. taxation puts job-seeking Americans abroad pursuing tax-equalization **at a competitive disadvantage in the job market** as it makes them 40% more expensive for companies to hire than those of other nationalities.

Financial-account reporting requirements make Americans abroad **very unattractive as business partners** to those averse to sending their business's financial information to the U.S. government. Non-U.S. domestic partners of Americans abroad often remove their U.S. spouse from financial accounts to avoid U.S. reporting requirements, making the American vulnerable to financial abuse, manipulation, or neglect.

**The Repatriation Tax and GILTI taxes in the 2017 Tax Cuts and Jobs Act are causing enormous financial problems** for Americans who own small to medium-sized businesses abroad. The reforms that ushered in these new taxes have been enormously beneficial for American companies with profits in overseas subsidiaries. Conversely, for Americans abroad, retirement savings held in their business are being drained to pay Repatriation tax and their future earnings are double-taxed by GILTI; they are being forced to either re-structure those businesses at considerable cost or to close them entirely.

**d) How Treasury can help**

Democrats Abroad and other organizations advocating on behalf of Americans abroad will continue the work we have been doing to expand Congressional support for reforms to simplify filing from abroad, end double taxation, and remove barriers to banking, saving, and investing. **Commensurately, we ask Treasury to remain mindful that the regulations created to implement the Internal Revenue Code, and to enforce compliance by the very few who flout it, often impose an unreasonably high cost on many millions of Americans abroad.** We unequivocally support policy to discourage and apprehend tax cheats, **but a better balance needs to be struck between stopping bad actors and hurting ordinary, law-abiding citizens.**

Advocacy groups such as ours often struggle to communicate with departments such as the U.S. Treasury in order to provide information we believe will help to implement policy successfully. **We seek a communication channel with Treasury regulators** to provide them with the information essential for understanding the impact of legislation, including FATCA and the TCJA Repatriation and GILTI taxes, on Americans abroad.

**IV. IRS support to Americans abroad**

**a) Woefully inadequate for many decades**

We understand that U.S.-based Americans often struggle to prepare their tax filings; however, in addition to interpreting provisions for declaring income generated abroad, our challenges also include

understanding the convergence of the Internal Revenue Code with laws and regulations of the country where we live and where we also pay tax. Filing from abroad is inordinately difficult.

**IRS outreach about tax compliance to Americans moving or living abroad has been negligible over time.** As a result, many Americans abroad – including officials in U.S. embassies and consulates - are ignorant, misinformed, or confused about U.S. tax-filing and reporting rules and obligations. **There is no longer any support from the IRS available outside the U.S.** To aid with compliance the IRS has provided:

- a series of opaque webpages;
- a 1-800 number not accessible from most other countries, operated by agents without the specialist understanding of the issues particular to non-resident filers; and
- a few Free File systems that a) are only available to those on income below \$72,000 (about 45% of Americans abroad);<sup>9</sup> and b) lack the full array of forms many need to declare income from abroad.

In summary, **Americans abroad do not have reliable, easily accessible advice and support from the IRS** in order to file returns accurately and in a timely manner.

#### **b) CARES Act aid as a case in point**

The experience of Americans abroad accessing CARES Act aid further underscores the need for the IRS to improve its engagement with us. Research published in November 2020 found that only 2 in 3 eligible Americans abroad (in the target income-group making less than \$100,000) received an economic impact payment; the online aid registration tools failed to accept non-U.S. addresses and phone numbers; and no option was provided to have the stimulus paid into non-U.S. bank accounts, so 70% received checks, which took, on average, more than 12 weeks to convert to cash in hand.<sup>10</sup>

#### **c) How Treasury can help**

Our recommendations for how Treasury and the IRS can improve engagement with Americans abroad are pretty simple:

- Restore staffing levels in locations outside the U.S. and improve online assistance;
- Establish a 24/7 helpline dedicated to non-resident taxpayers, with specialist operators expert in the process and issues of filing from abroad;
- Require the companies in the Free File Alliance<sup>11</sup> to fully accommodate non-resident taxpayers in the free systems they publish, with an income threshold that at least matches the *Foreign Earned Income Exclusion* and all the forms relevant to non-resident filers.

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<sup>9</sup> *Tax Filing From Abroad: Research on Americans Abroad and U.S. Taxation*, March 2019

<sup>10</sup> *Americans Abroad and the CARES Act: Research on the CARES Act Aid Programs and Recommendations for Improving the Delivery of Pandemic Aid to Americans Living Abroad*, November 2020

<sup>11</sup> <https://freefilealliance.org/>