



DEMOCRATS ABROAD

Statementsfortherecord@finance.senate.gov
Senate Committee on Finance
Attn. Editorial and Document Section
Rm. SD-219
Dirksen Senate Office Building
Washington, DC 20510-6200

May 19, 2021

STATEMENT FOR THE RECORD

“Closing the Tax Gap: Lost Revenue from Non-Compliance and the Role of Offshore Tax Evasion”

Democrats Abroad thanks the Subcommittee on Taxation and IRS Oversight for the invitation to comment on matters covered in their May 11 hearing on *“Closing the Tax Gap.”* This submission reflects our observations on the testimony of the Subcommittee and witnesses, the experience of Americans abroad contending with provisions in the U.S. tax system established to mitigate offshore tax evasion, and our recommendations for strengthening and reducing the unintended adverse consequences of U.S. anti-avoidance policy.

The State Department estimates there are 9 million Americans living outside the United States. Unfortunately, we suffer from the stubborn misperception that Americans abroad are uniformly “high-rollers” living a life of luxury in low- or no-tax countries. This apocryphal stereotype has driven the development of tax policy and regulations, causing inordinate harm to Americans living abroad.

Research published at the behest of Congressional staff demonstrates that we live abroad primarily because a relationship, employment, education, or adventure took us abroad, and we decided to stay.¹ The vast majority of us are middle-class Americans, working, raising families, and retiring in countries with a higher overall tax-burden than the U.S. **U.S. tax policies and regulations established to stop tax evasion using offshore bank accounts and tax secrecy jurisdictions do not reflect this reality.**

Measures to foil the efforts of tax evaders and other financial criminals penalize millions of ordinary American citizens in extraordinary ways:

- We are being denied even ordinary banking products and services in the places where we live.
- Relationships with non-U.S. spouses are put under strain because many spouses resent the IRS reaching into their financial lives.
- U.S. citizens are frequently removed from the joint accounts we share and assets we own with non-U.S. spouse, putting our financial security at grave risk.
- Americans abroad are denied employment, promotions, and business partnerships when roles involve signatory authority over the business accounts in foreign financial institutions.

Given this accounting of the serious personal and financial problems foreign financial account reporting has caused for Americans abroad, Congress can understand why we react with great

¹ *“Tax Filing From Abroad: 2019 Research on Non-Resident Americans and U.S. taxation”* [Bit.ly/FilingFromAbroad](https://bit.ly/FilingFromAbroad)

concern when hearings like this one focusing on the “tax gap” lean towards strengthening international tax-enforcement provisions.

IRS Acting Chief of Research and Analytics Barry Johnson produced data on funds held by U.S. citizens in non-U.S. bank accounts: an astonishing \$2.7 trillion, according to 2017 FATCA reports. He also noted that \$2 trillion of that is held in tax secrecy jurisdictions² where a scant 6% of Americans abroad live (4% of them in Switzerland where eliminating bank secrecy has been an IRS project for a decade.)³

The comments made in the hearing by Chairman Whitehouse, Senator Warren, and others made clear that the focus of concern is on high earners, but that provides little comfort to Americans abroad who for a decade have been the minnows caught in the FATCA net meant for big fish.

We have reform recommendations that would, in association with other legislation, help the IRS re-fashion the net to better catch bad actors using offshore accounts to commit financial crimes and hide assessable income. The changes will provide consequential relief for Americans abroad and simplify compliance generally. **And, consistent with President Biden’s vision in the American Families Plan, these reforms would help ensure that all Americans have access to essential banking services and the financial infrastructure necessary to live a normal life abroad.**

As the government is building a fairer tax system for all Americans, we propose these updates to the Report of Foreign Bank and Financial Accounts (FBAR):

- indexation to inflation of the FBAR reporting threshold;
- creation of an FBAR filing threshold for Americans abroad that is five (5) times higher than the indexed threshold for domestic filers;
- elimination of duplicate FBAR and FATCA filing;
- modification of the enormously out-of-proportion penalties for non-willful neglect to file FBAR reports;
- provision of an FBAR reporting platform for Spanish and other foreign-language speakers; and
- reinstatement of the option to paper-file the FBAR.

Further, **we re-affirm our support for the Same Country Exception, an exemption for Americans abroad from FATCA reporting of the financial accounts in the country where they live and pay tax.** We believe these financial account reporting reforms fit into the proposed provisions of the American Jobs Plan/Made In America Tax Plan and we want to work with Congress on language to implement them.

AMERICANS ABROAD ARE NOT “FAT CATS”

Democrats Abroad wants desperately to vanquish the persistent stereotype that American civilians living abroad are wealthy “fat cats” avoiding U.S. taxes. The vast majority of us are ordinary working-class Americans, about whom our research has found:⁴

- 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;

² <https://fsi.taxjustice.net/en/faq/what-is-a-secrecy-jurisdiction>

³ “Tax Filing From Abroad: 2019 Research on Non-Resident Americans and U.S. taxation,” [Bit.ly/FilingFromAbroad](https://bit.ly/FilingFromAbroad)

⁴ “Tax Filing From Abroad: 2019 Research on Non-Resident Americans and U.S. taxation,” [Bit.ly/FilingFromAbroad](https://bit.ly/FilingFromAbroad)

- 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.; and
- Most live in countries with a higher overall tax-burden than the U.S.

Americans abroad winced at the joke made toward the end of the “Closing the Tax Gap” hearing that lamented the inability to put a “t” on the end of FATCA to draw better attention to the “FATCATS” the law has in its crosshairs. We hope that the Subcommittee members take into account this data and the statistics and comments that follow when they think about FATCA and those Americans abroad who bear its impact.

AMERICANS ABROAD DENIED ACCESS TO EVEN ORDINARY FINANCIAL PRODUCTS AND SERVICES

In implementing FATCA compliance frameworks, some foreign banks and financial institutions have elected to curtail their product offerings to U.S. citizens.

- 36% of Americans abroad have been refused products or services from a foreign bank or financial institution;
- 11% have had accounts in a foreign bank or financial institution closed;
- 10% have been denied a mortgage from a foreign bank or financial institution because of U.S. citizenship; and
- 30% have been denied access to investment or retirement savings vehicles from a foreign bank or financial institution.⁵

Research published in 2014 indicated that one in six Americans abroad has been denied access to financial services because of FATCA. By 2019 that figure had grown to more than one in three. Americans abroad endure on-going difficulty in obtaining even ordinary financial products and services, which gravely impacts their ability to save for the future.

“FATCA has resulted in 6 banks closing my accounts completely or refusing to maintain investment accounts. I had accounts in these banks for 25-40 years.” – New Jersey voter living in Germany

“FATCA has made my life a lot harder. I’ve been denied the opportunity to open accounts with financial institutions in my country of jurisdiction. I’ve been evicted as a client from other banks, because they don’t want to deal with U.S. compliance.” – Washington DC voter living abroad

“My banking options were reduced to one, as all other banks contacted would not accept U.S. citizens. Many investment options are also not available due to U.S. citizenship. Not allowed to invest here or in the U.S.A.” – Montana voter living in Austria⁶

“I was shocked by the closure of two of my local bank accounts, especially as the large bank in question (Deutsche Bank) did not even explain correctly why it had to close those accounts – they basically made up nonsensical reasons (unfounded under the law) and clearly got FATCA wrong.” – Washington DC voter living in Belgium

“I don’t blame German banks for denying me certain services because of FATCA – at the same time, most American banks deny me services because I do not reside in the U.S. Stuck between a rock and a hard place, it feels like my own country is punishing me for living abroad.” – California voter living in Germany⁷

⁵ “Tax Filing From Abroad: 2019 Research on Non-Resident Americans and U.S. taxation,” [Bit.ly/FilingFromAbroad](https://bit.ly/FilingFromAbroad)

⁶ “Tax Filing From Abroad: 2019 Research on Non-Resident Americans and U.S. taxation,” [Bit.ly/FilingFromAbroad](https://bit.ly/FilingFromAbroad)

⁷ “Stories of FATCA: Affecting Everyday Americans Every Day” October 2014, [Bit.ly/FATCAStories2014](https://bit.ly/FATCAStories2014)

"My bank of 17 years, Barclays, will only allow me to have checking accounts and savings accounts that pay simple interest (.01%). I am subject to onerous paperwork. I am being treated like a criminal and I have never done anything wrong." – New York voter living in the United Kingdom⁸

"I am unable to access the majority of "normal" investment products for basic college or retirement savings in either the UK or the U.S. due to my U.S. citizenship. This will have an even greater impact on my children, who will be unable to live normal lives from a tax/savings point of view as dual US/UK citizens living abroad." – Maryland voter living in the United Kingdom⁹

AMERICANS ABROAD SUFFER RELATIONSHIP STRESS WITH NON-U.S. SPOUSES

Research published in 2019 found that nearly one in five Americans abroad had been removed from a joint financial account held with a domestic spouse/partner, up from one in eight in 2014.¹⁰

- 19% have been removed from an account with their non-U.S. spouse/partner;
- 4% report that their non-U.S. spouse/partner would like to divorce/separate due to U.S. foreign financial account disclosure requirements;
- 9% have been denied an account in a foreign financial institution for a U.S. citizen child;
- 5% have been denied trustee or power of attorney abroad; and
- 7% have been denied or lost position in a non-commercial organization requiring foreign bank-signature authority.¹¹

The strain FATCA has placed on the relationships of Americans abroad with their non-U.S. partners is certainly under-reported as well. Individuals denied joint ownership of financial accounts and other assets sacrifice consequential financial support and control. They become dependent on their non-U.S. spouses, which brings financial and even physical risk.

"My husband refuses to share a main savings account with me now, which puts me at a disadvantage in the event that something should happen to me, as I would have no legal access to that account. It has put great stress on my marriage." – Iowa voter living in Germany

"I fear that because of FATCA I will lose all means of independent access to funds and, if something happens to my husband, I won't be able to access our household accounts because my name is not included on the accounts. FATCA is driving us to keep large amounts of money at home, which is not a safe option in most countries." – American voter living in Vietnam

"My non-U.S. husband does not understand how it can be possible that I am obliged to send his personal financial information to a foreign government. Therefore, we have taken my name off our accounts. After 30 years of marriage, I no longer have free access to our money. I am not sure what situation I would be in if he were to pass away suddenly." – American voter living in Italy¹²

"The FATCA, FBAR, and PFIC requirements are having a material negative impact on me and my family and are just so unfair. I can understand why the U.S. wants to suppress tax avoidance, but the legislative framework has delivered a blunt instrument that treats the wealthiest and poorest

⁸ "Stories of FATCA: Affecting Everyday Americans Every Day," October 2014, Bit.ly/FATCAStories2014

⁹ "Can We Please Stop Paying Twice? Reforming the Tax Code for Americans Abroad," October 2017, bit.ly/CanWePleaseStopPayingTwice

¹⁰ "Tax Filing From Abroad: 2019 Research on Non-Resident Americans and U.S. taxation," Bit.ly/FilingFromAbroad and "Stories of FATCA: Affecting Everyday Americans Every Day" October 2014, Bit.ly/FATCAResearch2014

¹¹ "Tax Filing From Abroad: 2019 Research on Non-Resident Americans and U.S. taxation," Bit.ly/FilingFromAbroad

¹² "Stories of FATCA: Affecting Everyday Americans Every Day" October 2014, Bit.ly/FATCAStories2014

alike as far as reporting requirements are concerned. The results are absurd, costly, and unimaginably stressful.” – California voter living in New Zealand¹³

AMERICANS ABROAD ARE DENIED OPPORTUNITIES

Americans whose role or position depends upon them having signature authority over foreign bank accounts will have FATCA reporting issues even if they are not the beneficiary of the account nor a shareholder in the business.

- 3% of Americans abroad have been denied employment positions requiring signature authority on business accounts in a foreign bank;
- 7% have been refused participation in business and partnership opportunities; and
- 4% have been asked by their employer to surrender signature authority over business accounts in a foreign bank.¹⁴

Americans abroad report being deemed ineligible for these roles, are unable to advance in their profession or to start their own business.

“I (was) told due to reporting/signing requirements a U.S. citizen could not be offered the Job.” – Delaware voter living in Austria

“I was told they did not want an ‘American person’... Too costly, complicated, and dangerous, they said.” – American living abroad¹⁵

“The legislation was cited by the prospective employer who indicated that they would only engage me if I accepted cash payments. I figured this was a sure fire way to get arrested and dragged into an expensive legal proceeding that would only result in my paying out even more money, so I declined the position at the local university.” – American living in Thailand

“Americans abroad should be huge advocates for America and American businesses. Instead, the U.S. government makes it difficult to save for retirement, puts on onerous reporting requirements that mean that most foreign (and in some cases U.S.) entities won’t hire you if signature authority is required. I know of at least one large U.S. tech firm that has simply stopped hiring Americans abroad – too difficult and expensive for the company and the employee. I’m watching two friends try to figure out how to comply with the GILTI tax without completely destroying their small business. How is any of that good for American business or employment of Americans?” – Texas voter living in Australia¹⁶

MAKING THE CASE FOR REFORMS TO FBAR AND FATCA

Court cases involving FBAR violations are not rare. The foreign financial account reporting requirement is clearly instrumental in the apprehension of tax evaders using offshore financial accounts to hide assessable income. The perpetrators, however, are invariably citizens living inside the U.S. rather than abroad.¹⁷

Rules guiding the implementation of FBAR have not been adjusted since the law was passed in 1970. Reasonable updates can both improve the report’s focus on bad actors and simplify compliance for Americans abroad.

¹³ “Tax Filing From Abroad: 2019 Research on Non-Resident Americans and U.S. taxation,” Bit.ly/FilingFromAbroad

¹⁴ “Tax Filing From Abroad: 2019 Research on Non-Resident Americans and U.S. taxation,” Bit.ly/FilingFromAbroad

¹⁵ “Stories of FATCA: Affecting Everyday Americans Every Day” October 2014, Bit.ly/FATCAStories2014

¹⁶ “Tax Filing From Abroad: 2019 Research on Non-Resident Americans and U.S. taxation,” Bit.ly/FilingFromAbroad

¹⁷ <https://www.cbo.gov/sites/default/files/114th-congress-2015-2016/workingpaper/52199-wp-taxcompliance.pdf>

PROPOSAL: We propose the following reforms to the FBAR

1. Index the \$10,000 reporting threshold for inflation;
2. Create a separate reporting threshold for Americans living abroad, perhaps 5 times higher;
3. Address the duplication of reporting on FBAR and FATCA, as recommended by the IRS National Taxpayer Advocate;
4. Modify the out-of-proportion penalties for non-willful failure to disclose accounts;
5. Restore the option to submit FBAR paper filings; and
6. Provide for FBAR reporting in Spanish and other languages.

Further, we re-affirm our long-standing support for the *Overseas Americans Financial Access Act* which would exempt from FATCA reporting the foreign financial accounts of Americans abroad in the countries where they live and face taxation because tax cheats do not hide assessable income in the countries where they live. Further, the Corporate Transparency Act adds a powerful new tool for discouraging and apprehending tax cheats. As the law mandating disclosure of beneficial interests in anonymous shell companies is implemented, reports will illuminate the activities of the tax cheats and other bad actors that foreign financial account disclosure did not.

Consistent with President Biden’s vision in the American Families Plan, these reforms would help ensure that all Americans have access to essential banking services and the financial infrastructure necessary live a normal life abroad. They can be modified to exempt certain individuals from eligibility and ensure they enhance existing tax-enforcement mechanisms. They will focus policy on bad actors, and provide relief to those who have long suffered unintended adverse consequences, such as bank lock-outs. Finally, these FBAR and FATCA reform recommendations are entirely consistent with the goal of getting everyone to pay their fair share.

CONCLUSION

Democrats Abroad understands that non-resident Americans are bystanders in an on-going war against tax cheats and other malign actors who abuse foreign financial accounts, anonymous shell companies, and tax-secrecy jurisdictions. We know that those seeking to hide assessable income from the IRS, or crimes from law enforcement, engage legions of clever lawyers, bankers, accountants, and formation agents to collaborate on the development of ever-more-complex illicit schemes.

But Americans abroad also need government officials to understand our experience of anti-abuse laws, so that they can strike a better balance in policy-making between, on the one hand, discouraging and apprehending financial criminals – which we strongly support – and, on the other hand, caring for the welfare of ordinary Americans living abroad.

In this submission we have demonstrated how the household accounts, retirement savings, family harmony and personal security of Americans abroad have been gravely impacted by FATCA. As we noted in the title of a research report we published in 2014, FATCA affects everyday Americans every day.¹⁸ Can you imagine the reaction of Americans abroad when they heard Treasury Inspector General for Tax Administration J. Russell George testify that **the IRS has STILL “taken virtually no compliance action to meaningfully enforce FATCA”?**¹⁹

¹⁸ “FATCA: Affecting Everyday Americans Every Day,” October 2014, bit.ly/FATCAResearch2014

¹⁹ The IRS, after doing an enormous amount of work with countries around the world to get FATCA off the ground, still lacks the ability to match up the information it receives from banks with the information it receives from taxpayers.

Ordinary law-abiding Americans abroad, the unintended objects of FATCA, have suffered an extraordinary amount of personal and financial disruption, anxiety and duress, and yet, after ten years, the IRS has still not begun to use FATCA reports to identify and apprehend genuine lawbreakers. This is a disturbing injustice, and we strongly urge the Subcommittee to review our research, the testimonials of your constituents abroad, and the abundant scholarly material indicating the ways that Congress can provide relief to law-abiding Americans abroad.

Former National Taxpayer Advocate Nina Olsen made this comment during the hearing:

“The IRS needs transformational change, change that must occur in the context of minimizing undue taxpayer burden and protecting taxpayer rights.”²⁰

We agree. We support enhanced funding for the IRS, which we ask to include funding to address the serious deficiencies in IRS service and support to Americans abroad trying to comply with their filing and reporting responsibilities.

For many years the IRS has provided little to no advice about tax-filing obligations to 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 telephone and online support that vastly underestimates how inordinately difficult it is to file taxes from abroad. FreeFile programs are not suited to non-resident filers, and free support from volunteer tax-return preparers available to aged and indigent taxpayers in the U.S. is not accessible to those living abroad. These are all matters that should be addressed with the new IRS funding proposed by President Biden.

Thank you for the opportunity to comment and provide recommendations. Not since the Carter Administration has there been a hearing in the U.S. Congress on Americans living abroad and the range of serious personal and financial problems U.S. taxation causes for them, their families, their businesses, and the U.S. and non-U.S. entities with which they do business. **We re-state our belief that it is past time that the issues of Americans abroad be heard, documented in the public record, and addressed by the government.**

Thank you for your interest in these matters. Please contact Carmelan Polce of our Taxation Task Force (+61 404 767 088 or carmelan@democratsabroad.org) or the undersigned with any questions about the information and recommendations provided herein.

Sincerely,

/S/

Candice Kerestan
International Chair
Democrats Abroad

+49 157 5210 9769

chair@democratsabroad.org

<https://www.finance.senate.gov/hearings/closing-the-tax-gap-lost-revenue-from-noncompliance-and-the-role-of-offshore-tax-evasion>

²⁰ <https://www.finance.senate.gov/hearings/closing-the-tax-gap-lost-revenue-from-noncompliance-and-the-role-of-offshore-tax-evasion>

CC: The Honorable Nancy Pelosi
Speaker of the House
U.S. House of Representatives
Office of the Speaker, U.S. Capitol
Washington, DC 20515

The Honorable Charles Schumer
Majority Leader
United States Senate
S-224, United States Capitol
Washington, DC 20515

The Honorable Kevin McCarthy
Minority Leader
U.S. House of Representatives
H-204, United States Capitol
Washington, DC 20515

The Honorable Mitch McConnell
Minority Leader
United States Senate
S-230, United States Capitol
Washington, DC 20515

The Honorable Ron Wyden
Chairman
Committee of Finance
United States Senate
221 Dirksen Senate Office Building
Washington, DC 20510

The Honorable Mike Crapo
Ranking Member
Committee of Finance
United States Senate
219 Dirksen Senate Office Building
Washington, DC 20510

The Honorable Sheldon Whitehouse
Chair
Subcommittee on Taxation and IRS
Oversight
United States Senate
530 Hart Senate Office Building
Washington, DC 20510

The Honorable John Thune
Ranking Member
Subcommittee on Taxation and IRS
Oversight
United States Senate
511 Dirksen Senate Office Building
Washington, DC 20510

The Honorable Richard E. Neal
Chairman
Committee on Ways and Means
U.S. House of Representatives
1102 Longworth House Office Building
Washington, DC 20515

The Honorable Kevin Brady
Ranking Member
Committee on Ways and Means
U.S. House of Representatives
1139 Longworth House Office Building
Washington, DC 20515

The Honorable Carolyn Maloney
Co-Chair
Americans Abroad Caucus
2308 Rayburn House Office Building
Washington, DC 20515

The Honorable Dina Titus
Co-Chair
Americans Abroad Caucus
2464 Rayburn House Office Building
Washington, DC 20515