



DEMOCRATS ABROAD

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Senate Committee on Finance
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April 20, 2021

RE: Overhauling International Taxation framework – a Response with Recommendations from U.S. citizens living abroad

Democrats Abroad is pleased to provide comment on the document entitled “*Overhauling International Taxation*” published by Senate Finance Committee Chair Senator Ron Wyden, Senator Sherrod Brown and Senator Mark Warner. Our submission focuses on the way that international taxation impacts American workers and families who rely on small to medium sized businesses registered by Americans living abroad in the countries where they live.

The new taxes on foreign profits established in the 2017 *Tax Cuts and Jobs Act* (“TCJA”) target not only offshore subsidiaries of U.S. multinationals like Google and Apple, but also, the small to medium sized businesses owned by ordinary Americans living abroad. For example: the freelance graphic design business of a Wisconsin voter living in Canada; the 6-person architecture business owned by a Massachusetts voter living in Denmark; the husband and wife IT company operated by a North Carolina voter living in Sweden; the yoga school of a Washington voter living in Japan¹; the restaurant that is owned by a Virginia voter living in the Netherlands; and the small furniture restoration business of an New Jersey voter living in the United Kingdom.

Democrats Abroad supports reforms to the TCJA that remove incentives to offshore jobs and R&D, move profits to low-tax jurisdictions, and abuse tax havens. But, we also need Congress to fix the flaws in the TCJA that double tax working class Americans living abroad who have small and medium sized businesses they rely on to support their families.

The *Repatriation Tax* and *GILTI Tax* were established to implement territorial taxation for corporations, help U.S. multinationals efficiently repatriate profits held offshore and ease the taxation of future offshore profits. Evidence suggests the small to medium sized businesses owned and operated by Americans living abroad were not the subject of the reforms, but they are inadvertently penalized with the double taxation of their past, present and future profits. The belated rules changes finalized by Treasury in the middle of 2020 fall short of providing genuine relief to Americans abroad who own and operate small and medium size businesses.

Noting that, and the intention of Congress to increase *GILTI taxes*, as well as the Biden Administration plan to place the greatest burden of taxation on those with the greatest ability to pay, **we ask Congress to include in the international taxation reforms an exemption from taxes on the profits of controlled foreign corporations owned by Sec 911 bona fide Americans abroad who have income under \$400,000.** Taxpayers demonstrate proof of their offshore residency using the IRS Substantial Presence Test on Form 2555.

¹ “Another Accidental Tax Penalty for Americans Abroad: This time hitting small to medium sized business owners.”
<http://bit.ly/AnotherAccidentalTax>

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Background

Research published in 2019 at the behest of Congressional and Congressional Committee staff demonstrates that the vast majority of the estimated 9 million Americans living outside the U.S. are not very different from Americans living in communities across the country when it comes to age, marital status, employment and household income. They are ordinary, middle class Americans who left the U.S. for a marriage/relationship (32%) or study/adventure (24%). Almost one in four (24.5%) moved abroad for work. Household income data confirms they are not wealthy “fat cats” or “high rollers” living abroad to game the international tax system. In fact, most Americans abroad live in countries with a higher overall tax burden than the U.S.²

Research on Americans abroad published in 2017 and 2019 indicates somewhere between 2% and 20% of Americans abroad own and operate small to medium sized businesses registered in the countries where they live.³ They often move abroad without having language proficiency, local contacts or locally recognizable qualifications; but they frequently have marketable skills in abundance and so start their own businesses into which they pour considerable financial, personal and even emotional resources.

The “transition taxes” introduced in the TCJA – the *Repatriation Tax* and the *GILTI Tax* - were carefully negotiated by corporate America over many years, but they came as a great shock to small business owners living abroad. Although the *Repatriation Tax* and *GILTI Tax* provide enormous tax relief to U.S. multinationals, enabling them to repatriate profits of their offshore subsidiaries at deeply discounted tax rates and with lots of offsets and deductions that ensure little to no tax is due, the impact on individuals who own companies registered abroad has been devastating.

Owners of small to medium sized businesses without access to employer-provided retirement savings plans often retain profits in their businesses to save for retirement. The TCJA’s *Repatriation Tax*, imposed retroactively on retained profits going back as far as 1986, will devour their retirement savings. Those without funds to meet the tax have had to liquidate assets, which may have attracted capital gains or other local tax, further increasing their financial pain.

The TCJA’s *GILTI Taxes* on all future earnings – **earnings already taxed in the country where the business is registered and operates** - must be declared on the owner’s personal tax filing, taxed at the taxpayer’s marginal rate rather than the 10.5% rate (50% of 21% corporate tax rate) available to corporations, and afforded none of the foreign tax credits available to corporations. New GILTI rules published by Treasury in the middle of 2020 gave individuals a means of taking the discounted corporate tax rate (Sec. 962 election) and the 50% tax rate discount (Sec. 250 deduction) available to corporations. Claiming the Sec. 962 election and Sec. 250 deduction, however, is inordinately complex and very expensive. Further, it does not completely resolve the double taxation issues, as the profits of their companies will be taxed yet again when the profits are paid out to the business owner as dividends. So although regulatory relief was provided, it is incomplete and it is not commercially accessible to ordinary working class Americans abroad who rely on their businesses to provide for themselves and their families. Many of them have already been forced to close their businesses after years of investment and effort or undergo costly corporate re-structuring. In either case the outcome is highly punitive.

² “Tax Filing From Abroad: Research on Non-Resident Americans and U.S. Taxation”, March 2019. [Bit.ly/FilingFromAbroad](https://bit.ly/FilingFromAbroad)

³ “Tax Filing From Abroad: Research on Non-Resident Americans and U.S. Taxation”, March 2019. [Bit.ly/FilingFromAbroad](https://bit.ly/FilingFromAbroad) and “Can We Please Stop Paying Twice?”, October 2017 [Bit.ly/CanWePleaseStopPayingTwice](https://bit.ly/CanWePleaseStopPayingTwice)

The Case for a GILTI exemption

Americans abroad owning and operating businesses are an exceedingly diverse group; they are architects, yoga instructors, retailers, recruiters, beekeepers, IT professionals, film and television producers, music distributors, advertising agents, financial services providers and more. Comments from some of them about the TCJA are included in a briefing document we published for Congress in 2018 entitled *“Another Accidental Tax Penalty for Americans Abroad: This time hitting small to medium sized business owners.”*⁴

Americans abroad advocacy groups have met with Congress many times and over many years about reforms to address the many provisions of the tax code that discriminate against Americans abroad. The 2017 TCJA made things even worse for Americans abroad who own businesses. The absence of a mechanism in the law to provide American business owners abroad with the same 50% deduction and credits for tax already paid that are enjoyed by U.S. multinationals suggests **the TCJA Repatriation and GILTI tax provisions were not conceived with the small to medium sized businesses of Americans abroad in mind.** The law’s double taxation of their companies’ profits seems to have been an unintended consequence and perhaps even a flaw or oversight in the drafting.

The high cost and extreme difficulty business owners abroad have in accessing the GILTI tax relief Treasury has subsequently provided indicates that **the TCJA “fix” for American business owners abroad is incomplete at best (and a failure at worst).** The adverse consequences, which appear to have been unintended, have not been abated.

Americans business owners abroad have truly suffered under the burden of the double taxation wrought by *Repatriation* and *GILTI*. And now the pandemic has in many cases increased economic duress. **The prospect of the GILTI tax increasing further is causing anger and levels of distress for everyday working class American families that Congress should find intolerable and unacceptable.**

At a minimum we hold the government to the promise made by the Biden administration not to increase taxes on citizens making under \$400,000 per year; **an increase in the GILTI tax would violate that pledge.** Further, we point to actions by Congress itself in creating policies that treat low income Americans differently from high income Americans. The income-based eligibility criteria for pandemic aid is the most recent case in point. Further, reports suggest a compromise on the SALT cap might also include an exemption for those with income less than \$150,000. **Congress can further progress its ambition of creating tax policy that puts the greatest tax burden on those with the greatest ability to pay by implementing an exemption from GILTI for working class American business owners abroad with income under \$400,000.**

Americans Abroad are Infrastructure

Americans living abroad manage U.S. businesses and other enterprises, promote U.S. interests and serve as unofficial ambassadors of American culture and values. They make a contribution to the U.S. economy, industry, foreign relations, incoming investment and cultural exchange that Congress has made little attempt to understand. Americans abroad are yet another component of U.S. infrastructure that the government has neglected and in which the government has underinvested.

When Congress enacts laws and regulators promulgate implementation rules without considering the impact on ordinary, working class Americans abroad they create grave,

⁴ “Can We Please Stop Paying Twice?”, October 2017 [Bit.ly/CanWePleaseStopPayingTwice](https://bit.ly/CanWePleaseStopPayingTwice)

unintended personal and financial consequences. Given the harm they cause, it is not difficult to understand why Americans abroad have come to believe they are being punished for moving away from the U.S.

Americans abroad need Congress to understand that filing from abroad is extremely costly and stunning in its complexity. They need Congress to understand that the IRC is in many ways highly punitive to ordinary American families living middle class lives abroad and is, therefore, unjust.

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 they do business with. **Americans abroad believe it is past time that their issues be heard, documented in the public record, and addressed by the government they help elect.**

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/

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