



# DEMOCRATS ABROAD

The Honorable Janet Yellen  
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U.S. Department of the Treasury  
1500 Pennsylvania Avenue, NW  
Washington, DC 20220

The Honorable Charles P. Rettig  
Commissioner  
Internal Revenue Service  
1111 Constitution Avenue, NW  
Washington, DC 20224

June 2, 2021

Dear Madam Secretary and Commissioner Rettig,

***Re: Urgent Concerns of Americans Abroad about Expanding FATCA Reporting***

On behalf of the 9 million U.S. citizens living, raising families, and retiring outside the United States, Democrats Abroad has some urgent concerns about the proposal to expand the reporting obligations of foreign financial institutions (FFIs) under the Foreign Account Tax Compliance Act (FATCA) to include account inflows and outflows.<sup>1</sup> We understand that the United States faces on-going challenges to close the gap between what taxes are owed and what taxes are collected and that this has prompted the government to search for new tax enforcement mechanisms. FATCA, however, has already perpetrated enormous disruption for ordinary working-class Americans living abroad who have financial accounts in the country where they live. Expanding FATCA reporting will further limit their banking, saving, and investing options and exacerbate family stress. We urge you to consider the matters raised here and detailed in the attached Statement for the Record we submitted to the May 2021 hearing on “Closing the Tax Gap” held by the Senate Subcommittee on Taxation and IRS Oversight (see Appendix I).

Further, we again request **an exemption from all FATCA reporting of the accounts of law-abiding working-class Americans abroad in the country where they live.**

**ADDING TOTAL ACCOUNT CASH INFLOWS AND OUTFLOWS TO FFI FATCA REPORTS**

Americans living abroad are greatly concerned that the U.S. Treasury proposes to expand FFI disclosure requirements under FATCA by adding total account cash inflows and outflows to reports sent to the IRS. This extra datapoint might mistakenly point the IRS in the direction of taxpayers whose accounts appear, incorrectly, to evidence unreported income. Auditing law-abiding U.S. citizens abroad – who take the trouble, and incur the considerable expense, to file both local (country of residence) and U.S. tax returns, and to report their financial accounts in the country where they live, sometimes on both FBAR and FATCA disclosures<sup>2</sup> – because harmless movements of funds between accounts are mistaken for illicit funds, would add insult to injury.

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<sup>1</sup> <https://home.treasury.gov/system/files/136/The-American-Families-Plan-Tax-Compliance-Agenda.pdf>

<sup>2</sup> “Can We Please Stop Paying Twice? Reforming the U.S. Tax Code for Americans Abroad,” October 2017, [bit.ly/CanWePleaseStopPayingTwice](http://bit.ly/CanWePleaseStopPayingTwice).

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FFIs have invested substantially in systems to produce disclosures that comply with FATCA and OECD Common Reporting Standard. FFIs will need to rebuild reporting protocols to produce these additional data points and we are deeply concerned that the need for additional investment in FATCA compliance frameworks will motivate even more of them to close the accounts of, or deny new accounts to, of customers deemed U.S. Persons.<sup>3</sup>

### **THE BANK LOCKOUT**

At the behest of Congressional aides, Democrats Abroad has surveyed Americans living abroad several times since FATCA was enacted (2012, 2014, 2017, and 2019) to establish what impact it is having on them and their families. Over that time the number of Americans locked out of banking services in the country where they live has grown from one in approximately fourteen to one in three.<sup>4</sup> Foreign banks denying service to Americans abroad are selective about which customers they retain or refuse; many are not only managing their exposure to FATCA but also their exposure to less-profitable customers, made more so because of onerous U.S. compliance obligations. An even more widespread bank lockout is going to strike hardest at Americans with low-to-mid-level banking profiles.

### **FATCA IMPACT ON FAMILY HARMONY AND PROSPERITY**

FATCA can weaken the business and employment possibilities of American families abroad. U.S. citizens report being denied employment, promotions, and business partnerships when roles they seek would necessitate FATCA reporting of company bank accounts when signature authority is held by an individual deemed a U.S. Person.

Further, in our 2019 research, one in four respondents reported being denied access to investment, education-savings or retirement-savings instruments from a bank in their country of residence. When combined with the inability to invest in U.S. savings and investment products (U.S. Know Your Customer rules require account holders to provide a U.S. residential address), this FATCA-related impediment gravely undermines a family's ability to save for the future.

Even our earliest research into the impact of FATCA reporting on Americans abroad yielded harrowing accounts of family distress and financial upheaval following its introduction (see Appendix II). While both men and women living abroad are affected by FATCA, women are harmed more because of their higher rate of marriage to non-U.S.-citizen spouses, combined with their lower income and higher unemployment rate.<sup>5</sup> Changes in account management proposed by some non-U.S. spouses threaten the financial security and mental and physical well-being of American women abroad.

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<sup>3</sup> ...Furthermore, the regulation imposed large costs on some foreign financial institutions, resulting in significant reduction in financial performance (Belnap, Thornock, and Williams [2018]). Anecdotal and press evidence shows that some foreign financial institutions chose to discontinue banking with U.S. citizens in an effort to reduce or minimize the costs of FATCA reporting. Consequently, even compliant U.S. citizens abroad struggled to retain or open a foreign bank account intended for legitimate purposes (such as direct deposits and mortgages) postFATCA (Harvey [2012])"

"Transparency and Tax Evasion: Evidence from the Foreign Account Tax Compliance Act (FATCA)" De Simone et al, 2020.

<sup>4</sup> "Impact of FBAR and FATCA on Americans Living and Working Overseas", May 2012,

<http://bit.ly/FBARFATCAResearch2012> and "Tax Filing From Abroad: 2019 Research on Non-Resident Americans and U.S. taxation" March 2019, [Bit.ly/FilingFromAbroad](http://bit.ly/FilingFromAbroad).

<sup>5</sup> "Tax Filing From Abroad: 2019 Research on Non-Resident Americans and U.S. Taxation – Datapack," March 2019, [Bit.ly/TaxFilingFromAbroadDatapack](http://bit.ly/TaxFilingFromAbroadDatapack).

## FATCA REPORT FUTILITY

Ordinary law-abiding Americans living abroad – the unintended objects of FATCA – have suffered an extraordinary amount of personal and financial disruption, anxiety, and distress, and yet, after ten years, the IRS has not been able to use FATCA reports to identify and apprehend genuine lawbreakers. You can imagine the outrage that Americans abroad felt hearing this from the Treasury Inspector General at the Senate Subcommittee hearing referenced above. There have been at least three Congressional hearings this year discussing the need to capture the tax that is lost due to “offshoring,” and at no time have lawmakers noted the predicament of Americans abroad caught in the unintended adverse consequences of well-intentioned tax-enforcement measures. We are either unseen or overlooked, which is extremely frustrating.

Adding to our FATCA frustration is the knowledge that FATCA reports fail to illuminate really egregious tax-avoidance activities that involve anonymous shell companies that can be used to perpetrate a range of financial crimes. The release of the Panama Papers and Paradise Papers made plain that the prevalent method of tax evasion used by the very wealthy involves anonymous shell companies **which are not traceable to the taxpayer who has hidden their untaxed income in the shell company’s bank accounts.** The Mossak Fonseca files leaked to the investigating journalists contained the names of the taxpayer beneficiaries. But more important than the revelation of the names of the sports stars, celebrities, politicians, and other tax cheats was the revelation that FATCA is powerless to detect and deter tax avoidance behaviors of this kind. You can understand how Americans abroad see FATCA reporting as futile. The FFIs holding those accounts do not know the names of the U.S. taxpayers who ultimately control the money in them, and so cannot include them in their FATCA disclosures.

We are delighted that the Corporate Transparency Act (CTA, P.L. 116-283) gives the IRS the transparency tools it needs to identify the beneficiaries of anonymous shell companies. We are also pleased to see the government turning attention to cryptocurrencies as they rapidly becoming the reservoir of choice for illicit funds.

We hope that Congress recognizes that FATCA has limitations as a mechanism for discouraging and apprehending tax cheats, and that Americans living abroad need urgent relief to reduce the unintended negative consequences of FATCA summarized above.

## A FATCA EXCEPTION FOR LAW-ABIDING WORKING-CLASS AMERICANS ABROAD

For many years, advocates for Americans living abroad – such as Democrats Abroad – have asked for a FATCA “same-country exception” (the *Overseas Americans Financial Access Act*),<sup>6</sup> a reform that would exempt from all FATCA disclosure the accounts of Americans abroad in the country where they live and are tax residents.

- Only tax-compliant Americans who satisfy the IRS overseas Substantial Presence Test would be eligible for the exemption.
- Taxpayers eligible for the exemption are already paying tax in the country where they live. Their financial accounts are disclosed to their local tax authority.

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<sup>6</sup> <https://www.congress.gov/bill/116th-congress/house-bill/4362?q=%7B%22search%22%3A%5B%22Overseas+Americans+Financial+Access+Act%22%5D%7D&s=1&r=1>

- Tax cheats do not hide assessable income in accounts in the country where they live and are already paying taxes.
- Taxpayers eligible for the exemption are already making FBAR disclosures, so the Financial Crimes Enforcement Network retains oversight of their accounts.

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The American Families Plan Tax Compliance Agenda makes no mention whatsoever of U.S. citizens living outside the United States, leaving 9 million Americans abroad uncertain about future unintended consequences. This is our third letter to you in three months. We seem not to be getting our message through. When policymaking occurs without consideration of what effects it will have on Americans living abroad, we suffer. We need you and others in government to not only acknowledge that Americans abroad are chronically underserved and overlooked, but to listen to the advice we regularly offer and translate it into just tax policy for all.

Thank you for your attention to these issues. We hope to continue the conversation with you to resolve our concerns.

Please contact Carmelan Polce of the Democrats Abroad Taxation Task Force (+61 404 767 088 or [carmelan@democratsabroad.org](mailto:carmelan@democratsabroad.org)) or the undersigned with any questions about the information and recommendations provided above.

Sincerely,

/S/

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## APPENDIX I

Democrats Abroad Statement for the Record for the hearing entitled *“Closing the Tax Gap: Lost Revenue from Non-Compliance and the Role of Offshore Tax Evasion,”* submitted to the Senate Subcommittee on Taxation and IRS Oversight on May 19, 2021



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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.<sup>1</sup> 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 concern when hearings like this one focusing on the “tax gap” lean towards strengthening international tax-enforcement provisions.

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

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 jurisdictions<sup>2</sup> 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.)<sup>3</sup>

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:<sup>4</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.; and
- Most live in countries with a higher overall tax-burden than the U.S.

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

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

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



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.<sup>5</sup>

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 Austria<sup>6</sup>*

*“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 Germany<sup>7</sup>*

*“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 Kingdom<sup>8</sup>*

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

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

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

<sup>8</sup> “Stories of FATCA: Affecting Everyday Americans Every Day,” October 2014, [Bit.ly/FATCAStories2014](https://bit.ly/FATCAStories2014)

*"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 Kingdom<sup>9</sup>

#### **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.<sup>10</sup>

- 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.<sup>11</sup>

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 Italy<sup>12</sup>

*"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 alike as far as reporting requirements are concerned. The results are absurd, costly, and unimaginably stressful."* – California voter living in New Zealand<sup>13</sup>

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<sup>9</sup> *"Can We Please Stop Paying Twice? Reforming the Tax Code for Americans Abroad,"* October 2017, [bit.ly/CanWePleaseStopPayingTwice](http://bit.ly/CanWePleaseStopPayingTwice)

<sup>10</sup> *"Tax Filing From Abroad: 2019 Research on Non-Resident Americans and U.S. taxation,"* [bit.ly/FilingFromAbroad](http://bit.ly/FilingFromAbroad) and *"Stories of FATCA: Affecting Everyday Americans Every Day" October 2014,* [bit.ly/FATCAResearch2014](http://bit.ly/FATCAResearch2014)

<sup>11</sup> *"Tax Filing From Abroad: 2019 Research on Non-Resident Americans and U.S. taxation,"* [bit.ly/FilingFromAbroad](http://bit.ly/FilingFromAbroad)

<sup>12</sup> *"Stories of FATCA: Affecting Everyday Americans Every Day" October 2014,* [bit.ly/FATCAStories2014](http://bit.ly/FATCAStories2014)

<sup>13</sup> *"Tax Filing From Abroad: 2019 Research on Non-Resident Americans and U.S. taxation,"* [bit.ly/FilingFromAbroad](http://bit.ly/FilingFromAbroad)

## 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.<sup>14</sup>

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 abroad<sup>15</sup>

*"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 Australia<sup>16</sup>

## 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.<sup>17</sup>

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.

### **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;

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<sup>14</sup> "Tax Filing From Abroad: 2019 Research on Non-Resident Americans and U.S. taxation," [Bit.ly/FilingFromAbroad](https://bit.ly/FilingFromAbroad)

<sup>15</sup> "Stories of FATCA: Affecting Everyday Americans Every Day" October 2014, [Bit.ly/FATCAStories2014](https://bit.ly/FATCAStories2014)

<sup>16</sup> "Tax Filing From Abroad: 2019 Research on Non-Resident Americans and U.S. taxation," [Bit.ly/FilingFromAbroad](https://bit.ly/FilingFromAbroad)

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

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.<sup>18</sup> 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”?**<sup>19</sup>

**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**

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<sup>18</sup> “FATCA: Affecting Everyday Americans Every Day,” October 2014, [bit.ly/FATCAResearch2014](http://bit.ly/FATCAResearch2014)

<sup>19</sup> 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. <https://www.finance.senate.gov/hearings/closing-the-tax-gap-lost-revenue-from-noncompliance-and-the-role-of-offshore-tax-evasion>

**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.”<sup>20</sup>*

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.

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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](mailto:carmelan@democratsabroad.org)) or the undersigned with any questions about the information and recommendations provided herein.

Sincerely,

/S/

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

## APPENDIX II

These voices from our research over the years demonstrate how FATCA has had a direct negative impact on spousal relationships and family cohesion.

*“This situation is extremely stressful. My husband is Canadian and is the sole wage earner, as I am a stay-at-home mother. It has put extreme stress on our marriage and is pulling us apart. Money which used to be “ours” is now being seen as “his” that he feels should be in a separate account in his name only. This leaves me feeling vulnerable as I have no income.” - Impact of FBAR and FATCA on Americans living and Working Overseas, May 2012. [Bit.ly/FBARFATCAResearch2012](http://Bit.ly/FBARFATCAResearch2012).*

*“My life is a mess now. My husband works in a financial services company and he is trying to make partner. He said that he cannot agree to surrender his financial information to the U.S. government and his company is reluctant to promote him because of the risk that I pose to their small company.” - Impact of FBAR and FATCA on Americans living and Working Overseas, May 2012, [Bit.ly/FBARFATCAResearch2012](http://Bit.ly/FBARFATCAResearch2012).*

*“My husband and I were forced to reorganize our finances totally. He opted not to give me joint ownership of our home. He closed our joint account. Even the bank was shocked when I explained that I was required to report 100% of the amount in the joint account which was created with his earnings. My future is less secure financially thanks to (FATCA).” - FATCA: Affecting Everyday Americans Every Day, October 2014, [Bit.ly/FATCAResearch2014](http://Bit.ly/FATCAResearch2014).*

*FATCA has delayed my decision to marry my girlfriend, and even buy a house together or undertake any type of joint savings plans for fear of bringing her in to the U.S. tax regime, even though she is not a U.S. citizen.” - FATCA: Affecting Everyday Americans Every Day, October 2014, [Bit.ly/FATCAResearch2014](http://Bit.ly/FATCAResearch2014).*

*“I feel that FATCA places the financial security of US citizens residing overseas at risk -- particularly women married to non-US spouses. Our family relocates every few years. In the past, we were able to open joint accounts, but because of FATCA this is no longer an option. Banks we applied to in Vietnam also would not issue a bank card to me because of my citizenship. I have NO direct way to access funds to pay personal expenses. I will become solely dependent on my husband for a cash allowance. I fear that because of FATCA I will lose all means of independent access to monetary funds overseas and if something happens to my husband I won't be able to access our household accounts because my name is not included on any accounts.”- FATCA: Affecting Everyday Americans Every Day, October 2014, [Bit.ly/FATCAResearch2014](http://Bit.ly/FATCAResearch2014).*

*FATCA and FinCen filing is REALLY IRRITATING and makes filing even more stressful. There was a time, till my wife surrendered her green card, my wife would have to declare her bank accounts too. She was outraged with my government which created a lot of tension. - Research for [Can We Please Stop Paying Twice? Reforming the U.S. Tax Code for Americans Abroad](#), October 2017, [Bit.ly/CanWePleaseStopPayingTwice](http://Bit.ly/CanWePleaseStopPayingTwice).*

*Our tax advisor suggested that the best way to deal with [FATCA] was to have nothing at all in my name - no joint bank account, get my name of the house title, etc - live like a 1950s housewife, essentially. - Research for [Can We Please Stop Paying Twice? Reforming the U.S. Tax Code for Americans Abroad](#), October 2017, [Bit.ly/CanWePleaseStopPayingTwice](http://Bit.ly/CanWePleaseStopPayingTwice).*

*My non-U.S. wife and I have placed assets in her name so that foreign banks are willing to deal with us. - [Tax Filing From Abroad: Research on Non-Resident Americans and U.S. Taxation](#), March 2019. [Bit.ly/FilingFromAbroad](http://Bit.ly/FilingFromAbroad).*

*My Non-U.S. citizen husband will not allow me access to a joint account nor be on the title to our house or car because of FBAR and FATCA reporting requirements. I'm lucky to not be in an abusive relationship. -[Tax Filing From Abroad: Research on Non-Resident Americans and U.S. Taxation](#), March 2019, [Bit.ly/FilingFromAbroad](http://Bit.ly/FilingFromAbroad).*