

February 16, 2022

The Honorable Ron Wyden

Chairman - Senate Finance Committee

United States Senate

221 Dirksen Senate Office Building

Washington, DC 20510

The Honorable Mike Crapo

Ranking Member - Senate Finance Committee

United States Senate

219 Dirksen Senate Office Building

Washington, DC 20510

**Re: Hearing on Spotlighting IRS Customer Service Challenges on February 17, 2022**

Dear Chairman Wyden, Ranking Member Crapo, and Members of the Committee:

Democrats Abroad greatly appreciates your holding this important hearing. We recognize the enormous challenges facing the Internal Revenue Service (IRS) in this COVID-19 era. However, just as the IRS is required to assist Americans living in the U.S., it must help Americans living abroad, of whom there are an estimated nine million,[[1]](#footnote-0) the overwhelming majority of whom are working or middle class.[[2]](#footnote-1) Our recommendations would increase tax compliance while also alleviating problems faced by them. We strongly support the National Taxpayer Advocate’s recommendations to reform the tax code.

Americans living abroad are subject to potentially devastating penalties for failure to file a variety of documents accurately, even for inadvertent non-compliance. The inability of the IRS to address their questions makes it more likely that filers will get it wrong. As a result, the inaccessibility of these basic services leads to further non-compliance, as evidenced by the low rate of filing compared to domestic citizens.

We have long advocated common-sense solutions to many of the problems raised in the National Taxpayer Advocate’s Purple Books. Despite years of their recommendations – and despite many of the proposed solutions being revenue-neutral or even revenue-positive – at least twenty-three provisions in the current tax code[[3]](#footnote-2) violate the widely-accepted Taxpayer Bill of Rights and harm Americans filing from abroad, who face greater complexity, harsher penalties, and more ambiguity. Preparing an average tax return filed from abroad costs from $500 to $1000,[[4]](#footnote-3) often exceeding any taxes owed.

We strongly support the *National Taxpayer Advocate’s 2022 Purple Book* recommendations, which also have the support of the Government Accountability Office and the IRS Taxpayer Advocacy Panel:

**Legislative Recommendation #8**

**Harmonize Reporting Requirements for Taxpayers Subject to Both the Report of Foreign Bank and Financial Accounts [FBAR] and the Foreign Account Tax Compliance Act [FATCA / Form 8938] by Eliminating Duplication and Excluding Accounts Maintained by U.S. Persons in the Countries Where They Are Bona Fide Residents.**

**Legislative Recommendation#14**

**Allow Additional Time for Taxpayers to Request Abatement of a Math Error Assessment Equal to the Additional Time Allowed to Respond to a Notice of Deficiency When the Math Error Notice Is Addressed to a Person Outside the United States.**

**Legislative Recommendation #15**

**Amend IRC § 6212 to Provide That the Assessment of Foreign Information Reporting Penalties Under IRC §§ 6038, 6038A, 6038B, 6038C, and 6038D Is Subject to Deficiency Procedures.**

**Legislative Recommendation #38**

**Modify the Definition of "Willful" for Purposes of Finding Report of Foreign Bank and Financial Accounts Violations and Reduce the Maximum Penalty Amounts.**

These initial recommendations would improve taxpayer rights while respecting the intentions of the tax code. More fundamental reforms will also be necessary to address underlying issues facing Americans abroad, such as:

1. Double taxation — due to misalignment of tax systems – that cannot be mitigated using the Foreign Earned Income Exclusion (FEIE), Foreign Tax Credit (FTC), or existing Tax Treaties.
2. Phantom gains, caused by the requirement to use the U.S. dollar as the functional currency, even for taxpayers who have no financial connection to the United States.
3. Disproportionately high tax-preparation costs and excessive compliance risks associated with information reporting required for financial assets held in a taxpayer’s country of residence harm ordinary taxpayers who are unable to afford sophisticated tax advice or bespoke financial planning.
4. Non-resident taxpayers with a non-U.S. citizen spouse face discriminatory treatment in the tax code and greater difficult in meeting filing obligations due to the lack of a Social Security Number.
5. Corporate tax rules intended to apply to overseas subsidiaries of multinational corporations are applied to small businesses owned by U.S. citizens residing outside the United States, resulting in punitive taxation of undistributed income and unreasonably high compliance costs.
6. Refusal of service by banking and financial services providers, resulting from conflicts between U.S. laws and the laws of the countries that Americans reside in. U.S. based financial institutions routinely refuse service to Americans abroad while local providers also overwhelmingly have “No U.S. Persons” policies that are used to justify account refusals and shutdowns.

Americans residing abroad have been effectively barred from saving for retirement, starting a small business, taking title to real estate, or sharing finances with their spouse, with devastating consequences. This is on top of the inordinate stress, cost, and time involved just in understanding and meeting the complex reporting requirements of the U.S. tax code.

Americans abroad have pleaded for relief for over a decade, with no meaningful response from Congress. Democrats Abroad and virtually every other organization representing Americans abroad agree that implementing the above reforms would:

* Substantially improve the well-being of Americans abroad;
* Improve the administrability of the Internal Revenue Code and facilitate greater tax compliance;
* Reduce strain on an Internal Revenue Service that has expressed that the burden associated with servicing Americans abroad is disproportionate to the miniscule tax revenue raised.

The uniquely American definition of "tax residency" includes the obligation to report worldwide (including non-U.S. source) income even of Americans who are tax residents of other countries. This requires the IRS to do the impossible: to administer both a domestic tax system for U.S. residents (including source taxation for non-resident aliens) and also an extraterritorial system interacting uniquely with the tax codes of other countries.

Problems facing Americans abroad include (1) understanding what is required, (2) complying while also maintaining tax compliance in their country of residence, (3) communicating with the IRS, and (4) paying the IRS when U.S. tax is owed, or receiving refunds from overpayments/credits.

Administering this extraterritorial tax system has become an overwhelming task, both procedurally and substantively. The IRS cannot remotely serve Americans in the more than 100 foreign countries where they live, let alone in the languages they speak. Nor can the IRS know how U.S. laws apply to the local financial services, small business structures, and retirement savings plans that are common in those countries.

The IRS has itself identified “international taxpayers” as an underserved community.[[5]](#footnote-4) Although IRS Publication 54, “Tax Guide for U.S. Citizens and Resident Aliens Abroad,” is helpful, it does not adequately enable non-resident filers to understand their U.S. obligations in the context of the financial system of the country where they live. They often then require professional tax preparers which can be prohibitively expensive even if no tax is actually owed.

The level of service currently provided by the IRS to Americans inside and outside the country is highly unequal. For those abroad, IRS agents are insufficiently trained to respond to the common issues faced. In addition, there is no in-person assistance; toll-free telephone services are not available; access to online portals is severely limited; postal mail delivery is often delayed; and there is limited documentation in languages other than English. Moreover, it is often time-consuming, complicated, and costly for non-residents to make payments to the IRS, and it can be difficult to deposit any refund or stimulus check received from the IRS.

The IRS’s inability to provide non-resident filers with essential services violates several aspects of the Taxpayer Bill of Rights,[[6]](#footnote-5) including:

* the right to be clearly informed about tax laws, including knowing how to comply;
* the right to prompt quality service, including clear and easily understandable communications from the IRS;
* the right to pay no more than the correct amount of tax, including having the IRS properly apply all tax payments; and
* the right to a fair and just tax system, including consideration of facts and circumstances that affect filers’ liabilities and ability to provide timely information

Despite an increase in the number of Americans abroad, the IRS has significantly reduced its targeted taxpayer services while continuing to impose filing obligations. Services have been strained by the termination of tax help at consulates and online. There were over a dozen IRS offices abroad in 1993, but now none, and the Electronic Tax Law Assistance Program has also been terminated, as has R-mail, which allowed customer service representatives to refer questions to employees with specific expertise.

Telephone and correspondence service for filers abroad is also inadequate. Self-service options cannot fully replace personal service, whether by phone, face-to-face, or online chat. Callers from abroad may face significant expense, then not be able to reach an IRS representative.

We also ask the committee to ensure that as the IRS transitions away from using third-party identity verification services, that Americans abroad receive continued access and sign-up availability for online IRS accounts.

It is time for Congress to cease the imposition of filing requirements for non-U.S.-source income of non-residents. Cost/benefit analysis of such a transition from citizenship-based to residence-based taxation should include consideration of what would be required for the IRS to provide fair and equitable support to non-resident filers under the current system.

**We urge the Senate Finance Committee to hold an additional hearing to specifically consider the tax-filing and financial-access problems faced by Americans abroad as a result of the current system of extraterritorial taxation of non-resident U.S. citizens.** We would also welcome engagement with individual Members of the Senate Finance Committee to discuss opportunities to introduce such reforms.

Democrats Abroad plans to release updated research on Americans abroad and their tax situations this summer. We will share our results and analysis with the Committee and encourage you to review it then.

Thank you for the opportunity to provide this testimony.

Please do not hesitate to contact Rebecca Lammers of our Taxation Task Force on [taxadvocacy@democratsabroad.org](mailto:taxadvocacy@democratsabroad.org) with any questions about the information and recommendations provided.

Sincerely,

| Candice Kerestan  International Chair  Democrats Abroad  [chair@democratsabroad.org](mailto:chair@democratsabroad.org) | Rebecca Lammers  Chair, Taxation Task Force  Democrats Abroad  [taxadvocacy@democratsabroad.org](mailto:taxadvocacy@democratsabroad.org) |
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CC:

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1. The U.S. Department of State’s Bureau of Consular Affairs. (2020, January). Consular Affairs By The Numbers. Retrieved February 6, 2022, from <https://travel.state.gov/content/dam/travel/CA-By-the-Number-2020.pdf> [↑](#footnote-ref-0)
2. Democrats Abroad. (2019, March 1). *Tax filing from abroad - 2019 Research on Non-Residents and US Taxation*. Page 4. Retrieved February 7, 2022, from <https://democratsabroad.atlassian.net/wiki/download/attachments/4257416635/Tax%20filing%20from%20abroad%20-%202019%20Research%20on%20Non-Residents%20and%20US%20Taxation.pdf?api=v2> [↑](#footnote-ref-1)
3. Democrats Abroad. (2020, May 27). *How to fix 23 tax problems for Americans abroad with three solutions*. Retrieved February 16, 2022, from <https://democratsabroad.atlassian.net/wiki/download/attachments/4271082033/23%20Problems%203%20Solutions%202020.pdf?version=1&modificationDate=1590588973000&cacheVersion=1&api=v2&download=true> [↑](#footnote-ref-2)
4. Ibid. [↑](#footnote-ref-3)
5. IRS. (2021, January). Taxpayer First Act Report to Congress. Retrieved February 16, 2022, from [https://www.irs.gov/pub/irs-pdf/p5426.pdf?mc\_cid=95523e3176&mc\_eid=[942e2d2064](https://www.irs.gov/pub/irs-pdf/p5426.pdf?mc_cid=95523e3176&mc_eid=%5B942e2d2064)] [↑](#footnote-ref-4)
6. IRS. (2021, December 21). Taxpayer Bill of Rights. Retrieved February 16, 2022, from <https://www.irs.gov/taxpayer-bill-of-rights> [↑](#footnote-ref-5)