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United Kingdom

12 April 2015

International Tax Working Group
and
Individual Income Tax Working Group
US Senate

Dear Madams / Sirs,

I am an American citizen who has now lived in the United Kingdom for the last 36 years. I have always prepared and filed my US tax returns. I have been able to do this only because I was a lawyer practising some US tax law.

I want to share with you my concerns about the US tax and reporting requirements that in recent years I have found so burdensome (time and cost) and frustratingly unfair that I am considering giving up my American citizenship. A number of things have contributed to this, but the tipping point has been FACTA. My "foreign" financial accounts are almost all in my home country - the United Kingdom - and are the result of ordinary activities of living here: bank accounts, investment accounts, pension and life insurance policies. The "foreign" accounts I have outside the UK and the U.S. are for holding foreign currencies for vacations.

The three points that most annoy me FACTA are the following:

1. FACTA reporting requires me to trawl through all of these non-US accounts to find the point in the year on which I had the largest sum in each. Frustratingly, some of this financial information is not tax-relevant to the US: total value does not mean income, or my US income tax is offset by the greater UK tax I pay. I do not currently draw income from my UK pension, but when I do, that income cannot be taxed by the US under the US-UK Tax Treaty.
2. The personal and financial details required for FACTA and FBAR reporting are intrusive and put my financial accounts at risk. Each is a thief's charter for trying to defraud me of my money. What level of privacy protection does the IRA and Treasury give to this information? Also, having to provide all this information about sources of income make me feel like a criminal. I am just doing ordinary things, except in a country that is not the US and filing my 1040 every year, reporting my income whether or not the IRS would "know" about it.
3. The counter-part FACTA reporting requirements for non-US financial institutions also cost me money every year. When I moved my UK pension three years ago, I searched for a low-cost pension administrator. The best one I found refused me as a customer because I am an American. Since then, I calculate that I pay about \$100 extra each year due to my FACTA-based rejection by the cheaper financial institution. And again

- as explained above - my UK pension income will be exempt from US taxation in any event.

I would also like to take this opportunity to point out the following specific inequities of US tax rules.

1. Capital gains must be reported in dollars (fair enough), but the computations must be in dollars too. This introduces phantom income due to currency exchange movements between purchase and sale dates. The most egregious I know of example of this occurred a number of years ago to a tax return client of mine whose functional currency was sterling. He had to sell and buy homes in the UK in so short a period that he could not use the sale of a personal residence exemption. The value of sterling had changed dramatically between these transactions so that when these prices were converted to US dollars - as required by US law - my client was liable to a US tax on a \$20,000 gain that was totally phantom income to him because the sale and purchase prices were the same in sterling!
2. The potential PFIC tax consequences effectively bar me from investing in UK investment trusts (equivalent to American mutual funds) and other collective investments that diversify and spread risk. Of course, I could invest in American mutual funds, but I live in sterling and do not use dollars.

Proposals

A. All of my concerns described above would disappear if the US taxed - and required financial reporting by - American citizens (or failing that, American citizens resident abroad, or failing that, American citizens resident abroad long-term) not on their citizenship but only on their income arising in the United States. The US's citizen-based tax system is the startling exception among major countries. I fully support American Citizens Abroad's "residence-based tax" proposal.

B. Failing that, it would be helpful if US tax law recognised the concept of functional currency for tax calculations for individual taxpayers, just as it does for American corporations. I fully support American Citizens Abroad's "functional currency" proposal.

C. I fully support American Citizens Abroad's proposal for a "same country" exception for FACTA and FBAR reporting.

Thank you for your consideration of these matters.

Sincerely yours,

Scott M. James

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