

Dear Sen. Debbie Stabenow and members of the Individual Income Tax working group,

Regarding the request for public input to tax reform, I would state that the U.S. tax code needs to be changed to better accommodate Americans living abroad. The current code places burdens on American expatriates that Americans residing in the U.S. do not have to bear. Double-taxation is one obvious such burden, and below are some others, followed by suggestions for changes.

Issues:

- *Retirement accounts and pensions:* Saving for retirement in our countries of residence is impossible, as is any kind of investing. Foreign mutual funds, regardless of whether they are in a retirement account or not, are considered to be Passive Foreign Investment Companies (PFICs), which the IRS taxes heavily (upwards of 60-70%). Pensions paid to Americans abroad by foreign companies may also fall into the PFIC category – though the regulations are too arcane for the average person to understand – leading to similarly heavy taxation. The result is that expats have few options in terms of saving for retirement while living abroad.
- *FBAR:* The FBAR fails to distinguish between American expats (who are living abroad and have foreign accounts by necessity) and U.S. residents attempting to hide undeclared funds offshore (tax cheats). As a result, expats are swept up in the same net as tax evaders, forced to prove themselves innocent through the same regulations used to track the latter. The problem with that, besides the added expense, time, and effort of filing, is that the FBAR is both ambiguous and complex enough to create a great deal of uncertainty and stress regarding whether or not one is in compliance. And unfortunately, the penalties for non-compliance or even simple error are devastating — e.g., a penalty of 50% of one's foreign account for whatever the IRS deems willful violations, and \$10,000 for non-willful ones (e.g., mistakes). With all of our money tied up in foreign accounts, such penalties can ruin expats, and they are far more severe than tax penalties faced by U.S. residents.
- *FATCA:* FATCA also fails to distinguish between expats and U.S.-resident tax cheats. However, FATCA is much more harmful, because the cost of compliance is causing foreign banks to turn away American clients — and a bank account in one's country of residence is necessary for daily life. Here are some news articles describing the situation:
 - <http://www.theguardian.com/money/2014/sep/24/americans-chased-by-irs-give-up-citizenship-after-being-forced-out-of-bank-accounts>
 - <http://money.cnn.com/2013/09/15/news/banks-americans-lockout/index.html>
 - <http://www.wsj.com/articles/expats-left-frustrated-as-banks-cut-services-abroad-1410465182>
 - http://www.huffingtonpost.com/wendy-n-powell/around-the-world-americas_b_6957176.html

Suggestions:

The ideal solution to all of the above would be to switch from citizen-based taxation to residency-based taxation. Of course, such a change would take time to implement, during which expats would still be suffering. However, two simpler and intermediate actions could alleviate that in the meantime.

- First, implement a 'same-country exemption' clause, which would exempt American residents of other countries from FBAR and FATCA reporting on bank accounts within that country. Hopefully, it would also exempt them from taxation on retirement accounts and pensions in that country.
- Second, consider changing the definition of a U.S. person in section 7701(a)(30) of the federal tax code. If one meets the bona fide residence test or physical presence test for a certain number of consecutive tax years, then one can stop being considered a U.S. person for federal income tax and reporting purposes. That change should be possible without legislative action and would provide a lot of relief to overseas Americans.

Thank you for your attention, and kind regards.

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