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Thomas Murphy
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March 26, 2015

International Task Force
United States Senate Finance Committee
Washington, D.C.

Dear Sirs:

My name is Thomas Murphy. A U.S. citizen, I have been a permanent resident of Brazil since 1977.

I am writing because recent developments have left me troubled and angry about the way Americans living abroad are taxed. This is an old problem about to be aggravated by implementation of the Foreign Account Tax Compliance Act (FATCA).

FATCA's original aim was to unearth accounts held by Americans in overseas tax havens and to properly tax them.

However, as often happens with sweeping legislation, the actual effect is quite different. In practice, FATCA will make life more difficult for the seven million Americans who live overseas, most of us in countries, such as Brazil, which are decidedly *not* tax havens. It will pile on additional layers of paperwork and expose us to more double-taxation traps.

Meanwhile, banks in some countries are already closing accounts held by U.S.-citizen residents because of the onerous reporting obligations they face under FATCA. Note that this has *nothing whatever to do with hidden accounts in tax havens.* All it does is create exasperating problems in the day-to-day lives of millions of Americans overseas. Imagine living and working in a community and not being able to open a simple bank account, apply for a credit card or obtain a mortgage?

In Brazil, FATCA is due to be implemented via an Inter-Governmental Agreement (IGA). The IGA provides for the automated exchange of massive amounts of highly detailed, and personal, banking and investment information. This will occur despite Article 5, Section XII of the Brazilian Constitution which specifically prohibits violation of individual banking privacy (*sigilo bancário*). Many in Brazil expect the IGA to be struck down by the Supreme Court. However, a court decision may not come for years.

Meanwhile, Americans in Brazil—and Brazilians in the U.S.—are going to have to cope with a massive, intrusive and systematic government sweep of personal banking information. And again, please note, Brazil is not a tax haven! Brazil taxes income and investments just as the U.S. does and, because of high value-added and sales levies, it taxes goods at rates *much* higher than in the U.S. Incredibly, the text of the IGA

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guarantees that the agreement will "ensure that information shall remain confidential." Come again? Two governments are unfolding the world's biggest fishing net and they are *not* violating anybody's privacy? The IGA gets this year's double-speak award.

I urge FATCA's immediate repeal.

However, FATCA is merely the current symbol of a larger problem.

The United States is one of the few countries to tax its citizens on their global income no matter where they live, creating not only an awful tangle of compliance, disclosure, translation and interpretation every year at tax-filing time but also, for Americans living overseas, a series of traps that seem diabolically loaded and then hidden from view as a way to punish the unwary. For example, I recently read that the "unwillful failure" to disclose even a small overseas checking account results in a $10,000 fine!

In defense of this approach, some apologists for the U.S. tax regime claim that, because of exemptions and tax credits, there is little or no double taxation for Americans living abroad. These are people who, obviously, never lived abroad.

There *is* double taxation and plenty of it. The reason is that tax codes in the U.S. and elsewhere have become extremely complex. They are also *incompatible*. In other words, there are asset classes, forms of income and methods of taxation in one country that often don't even *exist* in the U.S., and vice versa. Different countries tax assets, goods and incomes at different rates and in different ways.

How are these incompatibilities treated? Let me state Murphy's First Law of Taxation for Americans Living Overseas—*"In case of doubt, tax it!"*

Whenever there is an incompatibility of any kind, we get taxed! If a particular type of income is taxed in Brazil at 30% and in the U.S. at 35%, you can be *certain* we're going to end up paying 35%. If some form of income is tax exempt in one country (municipal bonds, for example) but not in the other, you can be *certain* we're going to pay the tax. If a certain asset in Brazil fails to fit any known category under U.S. tax law (Brazil's individual unemployment insurance fund, for example), you can be *certain* the IRS will interpret it as taxable. Meanwhile, do we get a credit from the U.S. for the fact that motor vehicle prices here include average taxation of 35% versus 6% in the U.S.? Of course not! These are what I call reverse-loopholes. If either government can dig up a reason to tax you, even when the other government doesn't, it will tax you. This is what happened recently to Mayor Boris Johnson of London, who holds both U.S. and UK passports. He sold his home in London. A capital gain from the sale was not taxable in the UK. As for the U.S., guess what? *When in doubt, tax it!*

Obviously, double taxation is not linear. It's not a case of paying 30% to one country and then finding the other country demanding its 30%. It's more like paying 30% to one country and then finding the other country demanding another 5% or 10% *over that*. What that 5% or 10% actually signifies is a *surtax,* a tribute levied on the unwary and a punishment for those who try to maintain ties to more than one country.

There are also other hidden costs. If I were a middle class professional living in my native state of New Jersey, I would file only one U.S. tax return every year. I would probably be able to use the short form. In case of uncertainties, I might pay H. &

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R. Block $350 to do my taxes. Instead, I'm a middle class professional living in São Paulo, Brazil. Not only do I have to file tax returns to both the U.S. and Brazil but both returns are devilishly complex because of the translations, interpretations and incompatibilities mentioned above. I no longer trust myself to do my own tax work. For one thing, I might make a mistake and get fined $10,000! But there's no H. & R. Block neighborhood storefront for this kind of thing. Americans living abroad often pay literally *thousands of dollars* every year to keep tax matters straight. That, *in itself*, is a tax. For a semi-retired person, such as myself, it's a tax that can run to 3% or 4% of gross annual income!

I urge the immediate abandonment of the U.S. practice of taxing global income of American citizens who are *bona fide* overseas residents. This is not a radical proposition. It would simply put the U.S. into conformity with practices of virtually all other countries.

Let me briefly address the obvious philosophical issue. Taxation is not a *right* held by governments. It's a compact among citizens. We agree to pay certain amounts of money in exchange for services provided by public agents. I live and work in *Brazil*, paying taxes to *Brazil* in Brazilian currency in exchange for the health, safety and welfare services provided by Brazil's government. I am physically present in Brazil at least 11 months of each year. When I go to the United States for 30 days or less each year, I go as a tourist; I spend money as a tourist and I pay taxes as a tourist because, in essence, I *am* a tourist, bringing dollars into the U.S. economy from overseas. For me to pay 5% or 10% *more* each year in taxes than a U.S. resident with the same income is, in itself, absurd. For me to pay that amount to the U.S. and to receive, in exchange, *absolutely nothing* in terms of U.S. services is doubly absurd. A good example is medicare. Over my 38 years in Brazil, I worked 26 of them for U.S. companies on U.S.-based payrolls, paying FICA. I also paid FICA for seven years in the U.S. before moving to Brazil. That's a total of 33 years. But if I have a heart attack in São Paulo, where I live and where I am, by definition, physically present 11 months of the year, I will not be covered by Medicare!

Finally, let me add one last philosophical reflection. Having Americans living and working overseas is *a good thing* for America. We are a store of knowledge and experience. We are a pillar of globalization. The free flow of goods, investment and, above all, ideas lying behind the concept of globalization is implemented and enhanced by people like me. We are the overseas champions of the American vision of globalization. We don't deserve to be threatened by the dry, bureaucratic language of IRS decrees. We shouldn't be burdened by the demands of mysterious, overwhelming tax documentation. And we don't deserve to be subjected to the money-grab represented by the many forms of double taxation we confront.

I remain,

Yours,
Thomas Murphy