AMERICAN CITIZENS ABROAD
THE VOICE OF AMERICANS OVERSEAS

R B T

Residence-Based Taxation: A Necessary and Urgent Tax Reform

Working Paper, April 2015, for submission to
The Senate Finance Committee Individual Income Tax and International Working Groups

Executive Summary

In March 2013, American Citizens Abroad, Inc. (ACA) submitted to the International Tax Reform Working Group of the Ways and Means Committee a Working Paper, titled "Residence-Based Taxation: A Necessary and Urgent Tax Reform", recommending adoption of residence-based taxation (RBT). [1] The RBT proposal advocated taxing Americans abroad on the same basis as non-resident aliens: primarily through a system of withholding taxes on passive U.S. source income (dividends, rents, pensions, etc.) and capital gains taxes on U.S. real estate and through filing a 1040NR for normal U.S. income taxation of effectively connected income (ECI) earned in the United States. Americans abroad would remain subject to U.S. estate taxes on U.S. situs assets, including real estate and securities. The RBT proposal also included comprehensive anti-abuse measures.

The Finance Committee December 2014 report, "Comprehensive Tax Reform for 2015 and Beyond", stated on page 283: "The United States needs to rethink its taxing for non-resident U.S. citizens." This statement referenced ACA's March 2013 paper submitted to the House Ways and Means Committee.

Over the last two years, more recent statistics have become available, the tax environment has changed substantially and ACA has undertaken additional research and reflection on RBT. These factors form the base of this updated proposal, which complements the March 2013 proposal.

ACA's principal conclusion remains unchanged, i.e., **RBT is a win-win solution** for the United States Treasury and for Americans resident overseas. The current citizenship-based taxation (CBT) system is an ineffective, costly mode of raising taxes on Americans abroad. RBT should:

- match CBT in tax revenue generation
- reduce the administrative workload and enforcement and costs of the IRS;
- provide for a more efficient, equitable taxation of Americans abroad;
- stimulate the U.S. economy and create better employment opportunities for Americans, both domestically and internationally, through enhanced competitiveness and increased exports;
- align U.S. law with that of all other nations; and
- free overseas citizens from the CBT-FATCA straitjacket which imposes unreasonable compliance burdens and prevents many from accessing required financial services.

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Updated Form 2555 and Form 1116 data

IRS 2011 statistics are in line with the estimates of the ACA 2013 paper, which referenced 2006 IRS data on filings of Form 2555 for the foreign earned income exclusion (FEIE) and housing exclusion, in order to get a profile of the overseas filer community. In 2011, 449,000 Form 2555s were filed, which generated a total of $5 billion in U.S. tax revenue after application of the FEIE and foreign tax credits against worldwide income of $73.4 billion. To put this in perspective, overseas Americans represent about 2% of all Americans and the $5 billion of taxes due to the U.S. represent only 0.17% of the $3 trillion of total U.S. tax revenues collected in 2014.[2] Insignificant!

In addition many Americans abroad file only Form 1116 to claim foreign tax credits (FTC), including all retirees who cannot claim the FEIE and Americans earning income who live in high tax countries. IRS 1116 statistics do not provide information on tax revenue from Americans abroad, as no distinction is made between U.S. residents and overseas residents and no data is provided on the amount of U.S. taxes due. However, the number of Form 1116 filings that report “Other income”, related to foreign salaries and pensions, reflects overseas filings (although this group also includes U.S. residents who earn income abroad). In 2011, 721,000 filings had “Other income”. Nevertheless, little tax revenue is thought to be collected from Americans abroad filing Form 1116, as the vast majority reside in OECD countries with tax rates higher than U.S. rates.[3] The exceptions to this may be high salaries earned in the Middle East where FTC are not available and “carried interest” by hedge fund managers, which may be lightly taxed both abroad and in the U.S.

The combination of Form 2555 fillings and Form 1116 filings, suggest that over 1 million Americans abroad with foreign income are filing U.S taxes. The number of total filings may be more as many Americans abroad with U.S. source income file U.S. taxes through a U.S. tax preparer who apply their address, not the taxpayer’s address to the tax declaration. The number of Americans abroad not filing U.S. taxes is simply not known, either by the IRS or by any other group.

Another set of statistics, IRS individual income statistics by state[4] includes an “Other areas” category representing Americans abroad, armed forces stationed overseas and Puerto Rico, yielding total tax

revenue of $5.7 billion in 2012. Military forces abroad and Puerto Ricans are not classified as “bona fide” overseas residents under Section 911 of the Internal Revenue Code, and are therefore not eligible for RBT and remain subject to CBT. Hence the total for Americans abroad would appear to be close to the $5 billion listed in 2555 statistics.

Changes in the tax environment since 2013

A major change has arisen under the IRS Streamlined Foreign Offshore Procedures (SFOP) program introduced in June 2014, which essentially followed the recommendations in ACA’s March 2013 proposal, allowing non-wilful overseas non-filers to enter into compliance without FBAR penalties and with simplified filing. With this IRS program in place, the tax revenue estimates linked to individuals entering into compliance found in the March 2013 submission no longer need to be incorporated in RBT revenue estimates; the IRS is already receiving any additional revenue related to individuals catching up with back taxes.

Second, The Affordable Care Act has created a new situation of pure double taxation and additional reporting requirements for Americans abroad, even though Americans overseas are not eligible for benefits under this Act as they are deemed covered by the health care programs in the country in which they reside and for which they already pay. The Net Investment Income Tax, which adds 3.8% to capital gains tax, cannot be offset by foreign tax credits (FTC) as it comes under Chapter 2 of the Internal Revenue Code and FTC are applicable only against taxes under Chapter 1.

Third, the IRS closed the last three IRS offices overseas in 2015. Since effective telephone assistance is not available, Americans abroad must now rely exclusively on the IRS website, tax preparation software and professional preparers to navigate the extreme complexity of international tax filing.

Last but not least, FATCA has now come into effect. The filing requirement for Form 8938 started in 2014. As of 2015, Foreign Financial Institutions (FFIs) must begin reporting 2014 bank balances of American clients, either directly to the IRS or via their own government under an Intergovernmental Agreement (IGA). FATCA, coupled with the SFOP, has encouraged compliance among overseas taxpayers.

The thicket of regulatory and filing requirements generates manifold hardships for overseas Americans, virtually all of whom must file an additional tax return in their country of residence. Americans are being turned away from many FFIs; mortgages are being cancelled; entrepreneurs are being shut out of foreign business partnerships; American spouses are being removed as signatories on joint bank accounts held with foreign spouses (one-third of the long-term overseas population is married to a foreigner); individuals fear the risk of identity theft and resent the invasion of privacy.[5] Extensive news coverage overseas of FATCA and IRS overseas voluntary disclosure programs have raised awareness of the need to file the FBAR as well; some Americans holding positions with signatory authority on their employer’s accounts are forced to choose between their jobs abroad and their U.S. citizenship.

These recent events have made it all the more urgent and important to include RBT in comprehensive tax reform for individuals. The IRS has recognized that the vast majority of Americans residing overseas

do not owe U.S. taxes. According to the National Taxpayer Advocate, **about 82% of all Americans abroad filing Form 1040 owed no U.S. taxes.**[6] For most Americans abroad, the real hardship of CBT is the cost, time and legal risks involved in compliance. Tax professionals and politicians recognize that all Americans overseas suffer from the excessive complexity of filing U.S. personal income taxes and the resulting unfairness, but what must be understood is that the complexity and cost burden is at least double when filing involves foreign earned income, foreign pensions and foreign trust reporting, foreign passive income and PFIC reporting requirements, foreign earned income exclusion, foreign tax credits, double taxation linked to incompatibilities between U.S. and local tax systems and/or taxation on phantom taxable income due to foreign exchange differences.

RBT anti-abuse measures

The key concern of Congress with regard to introducing RBT is the fear that very wealthy U.S. residents may take advantage of RBT to move abroad to escape the U.S. tax system. Most Americans who move do so for personal, family or professional reasons and not for tax purposes. Nevertheless, one cannot exclude the possibility that a few may be tempted to move overseas strictly for fiscal reasons.

For this reason, ACA's proposal includes anti-abuse measures.

Instead of designating tax haven countries as proposed in the March 2013 paper, which implies an arbitrary decision that can have unintended consequences and negative repercussions for the United States, Congress may wish to refer instead to "restricted countries", already defined in U.S. law, as locations where RBT cannot apply.

What would this proposal for RBT entail?

- RBT would be an option available to Americans abroad who have resided three years as bona fide overseas residents under Section 911 of the Internal Revenue Code, who have been U.S. tax compliant and who have an established tax home abroad.
- CBT would remain in force for certain Americans abroad, namely:
    - Americans who have not resided overseas the requisite years required to qualify for RBT;
    - Americans who choose to remain taxed under CBT for reasons of convenience; for example an American who works overseas for short periods, an American who travels frequently to the United States on business or an American who receives U.S.-source income and who resides in a country with no a tax treaty with the United States;
    - U.S. military personnel and U.S. embassy personnel abroad would remain subject to CBT; and
    - Residents of Puerto Rico would remain under CBT.
- Americans opting for RBT would apply to the IRS for the Departure Certificate; IRS would be required to produce the Departure Certificate within a determined period after reception of the application. Taxation under RBT would initiate with the date stated on the Departure Certificate.

The Departure Certificate recognizes that the U.S. citizen is henceforth taxed under RBT rules as a qualified "non-resident American", to be taxed just as non-resident aliens are taxed.[7]

- The Departure Certificate is an official document to be recognized by U.S. withholding agents and foreign financial institutions for the purpose of treating non-resident Americans on the same basis as non-resident aliens for reporting and tax withholding purposes.
- Non-resident Americans would no longer file FATCA Form 8938.[8]
- Non-resident Americans with U.S.-source investment income, Social Security income[9], pension income, rents and royalties would be subject to U.S. withholding tax.
- Non-resident Americans who have Effectively Connected Income (ECI) linked to U.S. trade or business would be required to file the 1040NR.
- Non-resident Americans, including self-employed business persons, would not be required to contribute to U.S. Social Security, but would have the opportunity to voluntarily do so.
- The estate of a deceased non-resident American would be subject to U.S. estate tax law applicable to all non-residents on the condition that deceased individual had a Departure Certificate for at least three years prior to death.[10] If overseas residence is less than three years prior to death, U.S. estate taxes apply.
- Non-resident Americans with a Departure Certificate would be required to file annually by June 30th of the year following the fiscal year a new one page form to be created by the IRS. The form includes a declaration made, under penalty of perjury, that the information provided is accurate: 1) name, SSN, and address and date and/or reference number of their Departure Certificate and 2) confirmation that they remain a bona fide overseas resident with a tax home overseas
- The first year of filing as a non-resident American would very likely be a split year, requiring filing both a 1040 for the period up to the date of the Departure Certificate and the one page annual filing statement under RBT for the remainder of the year.
- Children resident abroad with U.S. passports apply for a Departure Certificate when they reach the age of 18 and still reside abroad. Up to the age of 18, children are covered by their parents' Departure Certificate(s).
- Non-resident Americans must limit their presence in the United States to maintain their non-resident status. The substantial presence test of Section 7701(b) of the tax code currently applicable to non-resident aliens will also apply to Americans abroad with a Departure Certificate. The substantial presence test allows for a maximum of 182 days in the U.S., for any one year, and for a maximum average of 121 days a year over a three year period.[11]
- When a U.S. citizen moves back to the U.S. for more than 183 days in a calendar year, the Departure Certificate automatically expires on the date of assuming residence and the citizen is subject to U.S taxes as a U.S. resident based on the number of days of U.S. residence.[12] The filing would involve a split year. Upon return to the United States, the market value of all assets owned on the date of taking up U.S. residence would become the cost basis for future capital gains determination except for U.S. real estate, U.S.-based pension funds and U.S.-based family company shares, which retain their original U.S. investment cost.[13]

Requiring Americans to be U.S. tax compliant bona fide overseas residents for three years prior to opting for RBT offers a robust response to the concerns Congress may have concerning revenue "leakage". An entrepreneur who moves abroad who receives a big pay-out from a bonus or stock options within the first three years he is overseas will be subject to U.S. income tax as though he were a resident as he would be taxed under CBT; this eliminates the need for special claw-back provisions or other restrictive provisions. The wealthy would not escape a fair imposition of the income tax under RBT.

Reducing the annual filing requirement for non-resident Americans under RBT to just one page with no calculations addresses the principal complaint of long-term Americans resident overseas who face highly complex, costly filing issues under CBT and yet owe no or very little U.S. tax. RBT also eliminates many instances of unfair double taxation which persist under CBT despite the availability of foreign tax credits, due to incompatibilities between U.S. and foreign tax systems.

Moreover, RBT will simplify IRS administration. It will lead to automatic compliance for the vast majority of non-resident Americans through withholding taxes on U.S. source income.

Additional Tax Reforms Needed for Fairness under CBT

Since some overseas Americans would remain subject to CBT taxation even after RBT becomes law, certain corrective measures to CBT are also necessary for comprehensive reform. ACA has prepared one-page position papers on four specific reforms needed:

Adapt functional currency to economic reality overseas: Modify the current text on functional currency to read: "The dollar shall be the functional currency of a taxpayer resident overseas that is not a qualified business unit (e.g., an individual) except for the purpose of computing capital gains and losses for which the currency of country of residence shall be the functional currency."
https://americansabroad.org/files/7314/2352/3573/us-tax-code-functional-currency.pdf

Eliminate deficiencies of the Social Security System: Contributions to U.S. Social Security should be voluntary for all Americans working abroad, irrespective of whether they are self-employed or earning wages as an employee of a U.S. or a foreign company. More Totalization Agreements should be put in place. The U.S. should accept that foreign government unemployment, invalidity and social welfare payments to handicapped and disadvantaged Americans overseas be taxed only by the country of residence making the payments. WEP legislation should apply only to individuals receiving domestic U.S. government pensions, not Americans receiving foreign social security payments on account of salaries earned abroad.
https://americansabroad.org/files/8514/2352/3584/us-tax-code-social-security-taxes.pdf

Recognize foreign pension funds: Recognize contributions to foreign pension funds as well as to foreign government sponsored retirement savings plans made in accordance with local law to be "equivalent" to U.S. qualified pension funds and U.S. government sponsored retirement savings plans.
https://americansabroad.org/files/6914/2352/3561/us-tax-code-foreign-pensions.pdf

Stop double taxation created by the Net Investment Income Tax: Section 901 should be amended to read: "The credit shall be allowed for any tax imposed by Chapter 1 under Section 26(b) and by Chapter 2a under Section 1411 of the Internal Revenue Code."
https://americansabroad.org/files/9614/2352/3598/us-tax-code-niit-3-point-8.pdf

Departure Tax Revisited

A Departure Tax based on mark-to-market valuation of unrealized capital gains at the time of departure has been mentioned as a condition imposed by Congress in legislating for RBT. ACA argues against a Departure Tax on the grounds that it would work against the objectives of fairness, mobility and national economic interest. Furthermore, since many countries have capital gains tax rates equivalent to or higher than those of the U.S., the United States has already effectively renounced taxation of most capital gains realized by Americans abroad, as foreign tax credits offset the U.S. tax liability.

If Congress includes a Departure Tax in RBT legislation, ACA's position is that:

- a "grandfather" clause is essential to shield Americans who meet certain overseas residency minima; Americans who have established residence abroad three years or more prior to the RBT law becoming effective and who are compliant in their U.S. tax filing prior to the new RBT law would not be subject to the Departure Tax.[14]
- the Departure Tax should not be applicable to Americans born with dual nationality and who return to the country of their other nationality, once they have resided in the country of their other nationality at least three years,[15] nor to Americans born abroad who have lived essentially all their lives overseas.
- high asset exclusion thresholds for Americans moving overseas after RBT is law, and measures to help holders of illiquid assets meet their tax obligations are necessary to maintain international mobility of Americans;
- U.S. real estate, U.S.-based retirement plans and pension funds, closely held U.S. family companies as well as a primary residence abroad and foreign-based retirement plans or pension funds should be excluded from the threshold calculation and should not be subject to the Departure Tax.

The Departure Tax should be viewed as an anti-abuse measure aimed at wealthy individuals who might consider leaving the U.S. for tax reasons, not as a source of U.S. tax revenue.

The Departure Tax would be applicable to an individual only if both of the following thresholds are met:

1. total assets exceed $5 million, indexed to inflation, (excluding U.S. real estate, closely held family corporate stock, U.S.-based and foreign-based pension funds and retirement savings accounts and primary residence overseas) **or** average income tax over the last five years exceeds $160,000, indexed to inflation, and
2. unrealized capital gains on the taxable assets exceed $700,000, indexed to inflation.

While this approach is modelled on that of Section 877A which applies to individuals renouncing U.S. citizenship or green card status,[16] the Departure Procedure for RBT should be set forth in a separate section of the Code. The thresholds are higher for those applying for an RBT Departure Certificate to ensure mobility of U.S. citizens. Certain punitive provisions of the law applicable to individuals under Section 877A will in no way apply to non-resident Americans who obtain a Departure Certificate under RBT.[17] Non-resident Americans retain their full rights of citizenship.

U.S. real estate is excluded from the threshold because U.S.-source income (rent) continues to be subject to U.S. taxation under RBT, U.S. real estate taxes must be paid and capital gains on the sale of U.S. real estate are subject to FIRPTA (Foreign Investment in Real Property Tax Act).[18]

U.S. pension funds are excluded from the threshold because the income flow will be subject to U.S. withholding tax when they convert to a revenue stream upon retirement. Furthermore, pension fund assets cannot be liquidated at the time of Departure to cover a Departure Tax.

Closely held U.S. family businesses are excluded as they are difficult to evaluate, are illiquid investments and remain subject to U.S. taxation. A Departure Tax would severely constrain the expansion of U.S. family businesses worldwide by preventing the transfer of a family member to manage overseas operations.

Foreign pension funds and retirement savings accounts as well as a foreign residence are illiquid assets and represent life-time savings accumulated overseas, not in the United States.

Proof of tax compliance during overseas residence and payment of any Departure Tax due are requirements for obtaining the Departure Certificate.

Estate taxes for deceased non-resident Americans under RBT

Non-resident Americans who have a Departure Certificate under RBT and who die overseas will be subject to the rules presently applicable to deceased non-resident aliens owning U.S. assets under Code Section 2012 (b)(1), provided that overseas residence was established more than three years prior to death. These rules provide for all U.S. situs assets, including real estate, securities, trusts, partnerships, etc., with a value in excess of $60,000 to be subject to U.S. estate tax. Estate taxes paid in the country of residence of the deceased on account of U.S. assets would be creditable against U.S estate taxes.

The estate and gift tax exclusion for non-resident aliens under Section 2012(b)(1) was set at $60,000 by the Miscellaneous Revenue Act of 1988. The low limit is contrary to U.S. interests as it would encourage many non-resident Americans under RBT to divest their U.S. investments; the U.S. would forego future withholding tax on those U.S. investments. It is all the more penalizing if a Departure Tax is imposed on Americans when they adopt RBT. This low limit already discourages foreign investment in U.S. markets and the law collects insignificant tax revenue, only $42.9 million in 2013.[19] The $60,000 limit should be substantially increased to reflect the current estate exclusion of U.S. residents; modifying Code Section

2012 (b)(1) to include non-resident Americans and to adopt this new threshold would extend the higher limit to non-resident aliens as well.

Implementing RBT

Though implementing RBT requires numerous changes in the U.S. tax code, the process is quite straightforward, since the withholding tax rules are already defined as they apply to non-resident aliens, and a robust, proven withholding tax collection system is already in place, which easily tracks income flows by residence and nationality. RBT provides for a system with automatic tax collection carried out by the financial sector on behalf of the IRS in contrast with the highly complex and costly CBT system. A list of implementation measures was included in Exhibit 2 of ACA's March 2013 submission.[20]

RBT and tax revenue neutrality.

CBT appears to raise around $5 billion of tax revenue a year. ACA is of the considered opinion that adopting RBT could be revenue neutral given the potential for continued revenue as listed below and overseas Americans continued economic connections to US markets and investments. A recent academic study of Americans abroad highlighting their important economic links with the U.S.: 44% of Americans overseas have investments in the U.S., 37% have done business with someone in the United States, 18% own property in the United States. 37% donate to U.S. charities, 39% contribute to U.S. political parties or political action committees (PACs) and 26% remit money back to family in the U.S.[21]

The sources of on-going tax revenue under RBT are listed below.

- Non-resident Americans filing under CBT
- 1040NR tax revenue on U.S. source ECI
- Tax Revenue on interests in US partnerships
- Withholding tax on U.S. source investment income
- Withholding tax on U.S. Social Security and pensions
- Tax on capital gains on U.S. real estate
- Elimination of Child and Other Tax refunds
- Departure tax on wealthy Americans moving abroad

As stated at the outset of this paper, no projections would be included for the tax revenue to be collected by Americans abroad entering into compliance, as the IRS now has instituted the Streamlined Foreign Offshore Procedures to encourage compliance.

Similarly, IRS costs to be saved owing to reduced IRS workload expected with the significant decrease in the number of tax filings are not included. Resources freed up, probably costing in the range of a few hundred million dollars, could be much better deployed elsewhere by the IRS.

Nor is there a proposed estimate for the impact that RBT would have on the U.S. economy, although this should be included in dynamic scoring. The positive impact on U.S. GDP resulting from enhanced competitiveness would be substantial in terms of enhanced job creation and tax revenue. U.S. companies are sending fewer Americans overseas today and for shorter periods in part due to the increased tax cost associated with overseas postings. RBT will encourage U.S. companies, particularly small and medium-sized with the best job creation prospects, to deploy American staff abroad to penetrate foreign markets. Higher exports create new U.S. jobs and reduce unemployment compensation expense. Every $1 billion of American manufactured goods exported is estimated to generate 7,000 to 10,000 domestic jobs. Just $100 billion of additional exports resulting from adopting RBT, a mere 4% increase of exports[22], will generate $17.5 billion every year in new federal tax revenue, three times the current tax revenue under CBT from Americans abroad.[23]

The potential increase in the number of Americans who would move abroad for employment opportunities and assignments would in part be compensated by Americans returning to the United States post-assignment or for retirement. With a three-year period required under CBT for Americans moving abroad, it is difficult to envision a significant change in transient patterns due to RBT.

Conclusion

ACA recommends that Congress adopt RBT as an option available to bona fide overseas residents. This proposal resolves the multitude of filing issues for more than 90% of Americans abroad and meets the concern of Congress about the very wealthy escaping U.S. taxation. Taxation with an RBT should be tax revenue neutral at a minimum.

Adopting RBT is not a matter of paying, or not paying, U.S. taxes. RBT means paying U.S. taxes under a different model which is fairer and more efficient than the current CBT paradigm.

RBT would be economically advantageous to the United States because it:

- Broadens the tax base of the American overseas community and ensures compliance through automatic tax collection at source, thereby increasing tax collection efficiency and reducing IRS administrative and enforcement costs;
- Allows Americans abroad to be competitive overseas and to have unencumbered access to foreign financial institutions and investments;
- Aligns United States tax practices with norms and standards in effect internationally;
- Favors creation of U.S. domestic jobs, GDP and U.S. tax revenue; and
- Significantly improves the U.S. image in the world, invigorating the partnership between U.S. businesses and Americans abroad, who are the nation's unofficial ambassadors, representing the economic, political and cultural interests of the United States.

ACA thanks the Senate Finance Committee for its initiative granting this opportunity to submit our analysis and recommendations for tax reform concerning American citizens resident abroad. We remain

available to answer any questions the Committee may have and would be honoured to be able to participate in any hearings which may be organized on the taxation of Americans abroad. Please address any inquiries to **Marylouise Serrato** at info@americansabroad.org or by telephone at 202 322 8441.

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ACA is a U.S. tax-exempt organization operating under section 501(c)(4) of the Internal Revenue Code. American Citizens Abroad Foundation operates alongside it as a publicly-supported charity under Section 501(c)(3).

This submission to the Senate Finance Committee Personal Taxation and International Taxation Working Group, as well as the March 2013 submission to the House Ways and Means Committee can be found on the ACA website at https://americansabroad.org/issues/taxation/

End Notes

[1] ACA's March 2013 proposal can be found at: https://americansabroad.org/files/6513/6370/3681/finalsubrbtmarch2013.pdf

[2] Source: http://www.treasury.gov/press-center/press-releases/Pages/jl2664.aspx. In 2014, the U.S. Treasury collected $3,021 billion in total revenues.

[3] National Taxpayer Advocate 2011 Report to Congress: (http://www.irs.gov/pub/tas/2011_arc_internationalmsps.pdf) It reported that in tax year 2009, "…88% of all taxpayers claiming the foreign earned income exclusion (FEIE) did not have U.S. tax liability after applying the exclusion. When Foreign Tax Credit was also claimed, only about nine per cent of these taxpayers had a U.S. tax liability." p. 155.

[4] Under individual income taxes (form 1040), http://www.irs.gov/uac/SOI-Tax-Stats-Historic-Table-2

[5] A Democrats Abroad survey with 6,552 responses from Americans abroad showed the profound impact of FATCA on Americans abroad. It found that one in six had been affected by bank account closing situations. Relationships with non-American spouses are being strained by FATCA. Some Americans are being denied promotion or business partnerships because of the reporting requirements of FATCA. https://www.democratsabroad.org/sites/default/files/Executive%20Summary%20-%20Democrats%20Abroad%202014%20FATCA%20Research%20Report_1.pdf

[6] http://www.taxpayeradvocate.irs.gov/2012-Annual-Report/FY-2012-Annual-Report-To-Congress-Full-Report.html
The National Taxpayer Advocate 2012 Annual Report to Congress cites the 2012 WIRA Research Study 23-24 as its source.

[7] Overseas residents who have received the Departure Certificate from the IRS are no longer required to file Form 1040, related schedules and all other forms related to investments overseas. The following list is indicative, and by no means exhaustive, of IRS and Treasury forms which are no longer required to be filed by non-resident Americans:

- 1040, U.S. Income Tax Return
- 1041, U.S. Income Tax Return for Estates and Trusts

- 3520, Annual return to Report Transaction with Foreign Trusts and Receipt of Certain Foreign Gifts (except in the case of death of a Bona fide resident overseas, in which case the return must be filed)
- 3520-A, Annual Information Return of a Foreign Trust with a U.S. Owner
- 5471, Information Return of U.S. Persons with Respect to Certain Foreign Corporations
- 8621, Return by a Shareholder of a Passive Foreign Investment Company or a Qualified Electing Fund
- 8814, Parent's Election to Report Child's Interest and Dividends (if your dependent child is also a bona fide overseas resident)
- 8865, Return of U.S. Persons with Respect to Certain Foreign Partnerships
- 8938, Statement of Specified Foreign Financial Assets (FATCA)

[8] Non-resident Americans would show the IRS "Departure Certificate" to foreign financial institutions and U.S. withholding agents, sign a W8 and cancel any formerly signed W9, so as to be taxed by the U.S. as a non-resident alien. U.S. withholding agents are required to collect withholding taxes and report income paid and taxes withheld on Form 1042-S information return.

[9] If RBT is introduced and there is a withholding tax on U.S. source Social Security payments, the provisions of the Windfall Elimination Provision (WEP) which affect Americans abroad should be revised in the course of tax reform so as not to penalize Americans who have had careers split between the United States and overseas. Under WEP, if an American receives social security income from a foreign government, the amount of U.S. Social Security paid is substantially reduced (by up to 50%) from the normal amount due, yet foreign social security revenues are pro rata to the period of contribution. WEP regulations should not apply to Americans residing abroad who receive foreign social security revenues, particularly if a U.S. withholding tax is applied to U.S. social security payments.

[10] The current definition of a non-resident alien for estate, generation-skipping, and gift tax purposes is a non-U.S. citizen not domiciled in the United States. This would have to be changed to include American citizens who reside overseas.

[11] http://www.irs.gov/pub/irs-pdf/p519.pdf U.S. Tax Guide for Aliens, Publication 519, p. 4.

[12] Under RBT, Americans with a Departure Certificate who return to the U.S. should have foreign pension accounts automatically considered "tax qualified" by the IRS; they would be subject to U.S. income tax only at the time distributions start in retirement. They should not be subject to PFIC rules. Otherwise, the treatment of foreign pensions may discourage Americans from returning to the United States.

[13] Note that this provision would imply changing the current rules for valuing assets of non-resident aliens who immigrate to the United States. It is unfair tax policy that the United States not mark to market the value of assets when foreigners arrive in the United States.

[14] Long-term Americans resident abroad prior to enactment of RBT should not be subject to the Departure Tax for several reasons:

- They did not leave the country for tax reasons, but for personal and professional reasons.
- They have been subject to and complied with unfair double tax filing and sometimes double taxation under CBT.
- Most have resided overseas for more than 10 years, many for most of their lives.
- If the Departure Tax were applicable, life-time savings, earned and accumulated abroad, would be unfairly taxed on exaggerated long-term unrealized capital gains as the U.S. dollar is the required functional currency for determining capital gains calculations. Such gains would be artificially increased by the devaluation of the U.S. dollar against most foreign currencies over the past forty years since the United States left the gold standard. It would largely amount to a tax on the devaluation of the U.S. dollar.

[15] A provision exempting dual citizens who return to the country of their other nationality of the tax on unrealized capital gains is already present in Section 877A.

[16] In Section 877A of the tax code, the asset threshold is $2,000,000, not indexed to inflation, while the 2014 threshold for average income tax paid over the five prior years, indexed to inflation, was $157,000 and the excluded amount of unrealized capital gains not subject to the tax, indexed to inflation, was $680,000. The RBT reform proposal has increased the asset threshold to $5 million so that the law would not penalize U.S. citizens who may be sent abroad by their U.S. employer to represent company interests and would allow average Americans full international mobility. On page 7 of the RBT proposal, the two amounts indexed to inflation have been adopted, but rounded respectively to $160,000 and $700,000. http://www.irs.gov/Individuals/International-Taxpayers/Expatriation-Tax

[17] The punitive measures of Section 877A relating to those Americans who renounce citizenship not to be applied:

- Section 2801, an estate penalizing measure (no estate exemption granted) against U.S. persons who inherit money from individuals who have renounced their citizenship or green card;
- Section 6039G(d) which requires the Secretary of the Treasury to publish names of individuals who renounce their citizenship or green card;
- The Reed Amendment of 2011 to the Immigration and Nationality Act, which denies re-entry into the United States if the U.S. Attorney General determines that a former citizen renounced his or her citizenship to avoid U.S. taxes.

[18] In addition to tax considerations, excluding real estate in the mark-to-market calculation will avoid pressuring Americans to sell their U.S. real estate at what could be an unfavorable moment when moving overseas; investments in real estate are not as liquid as those in securities. Maintaining a prior U.S. residence also eases the return to the United States after completion of overseas assignments.

[19] Proof of the inappropriateness of this $60,000 exemption limit is that the total amount of tax collected under this law in 2013 was only $42.9 million. Source:
http://www.irs.gov/uac/SOI-Tax-Stats---Nonresident-Alien-Estate-Tax-Returns-with-Non-Treaty-Status.2011 data show 154 returns filed and $26.8 million of estate tax collected.
http://www.irs.gov/uac/SOI-Tax-Stats---Nonresident-Alien-Estate-Tax-Returns-with-Treaty-Status. 2011 data show 141 returns and just $16.1 million of estate tax collected.

[20] https://americansabroad.org/files/6513/6370/3681/finalsubrbtmarch2013.pdf. Exhibit 2, page 24

[21] Amanda Klekowski von Koppenfels, *Migrants or Expatriates?*, Palgrave Macmillan, 2014, ISBN 9780230296961.
http://www.palgrave.com/page/detail/migrants-or-expatriates-amanda-klekowski-von-koppenfels/?K=9780230296961

[22] This number is based on the federal tax revenue as a percentage of GDP in 2014 – 17.5%
Source: http://www.taxpolicycenter.org/taxfacts/displayafact.cfm?Docid=205

[23] $100 billion of additional exports represents an increase of 4% of total exports, based on 2013 data when total US. Exports totaled $2.32.