



Re: “Closing the Tax Gap: Lost Revenue from Noncompliance and the Role of Offshore Tax Evasion”

Hearing May 11, 2021

Submission on behalf of Stop Extraterritorial American Taxation (SEAT)

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Senate Committee on Finance

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Please accept this as our submission with respect to the subject of the May 11, 2021 Senate Finance Committee Hearing: “Closing the Tax Gap: Lost Revenue from Noncompliance and the Role of Offshore Tax Evasion.”

Part A – SEAT’s Fifth Submission to The Senate Finance Committee

This is the fifth in a series of submissions from SEAT which have addressed issues raised in the Senate Finance Committee hearings since March 25, 2021. <http://seatnow.org/seat-home/seat-submissions/>

Each of SEAT’s previous submissions has invited the Senate Finance to consider the fact that US citizens living outside the United States are profoundly (and in many cases negatively) impacted by the Committee’s assumptions and proposals. To date, there has not been one single instance or witness which has acknowledged or considered that changes in US tax law do impact Americans abroad. This omission continues to be in flagrant disregard of the fact that the United States imposes a separate and more punitive tax system on US citizens living outside the United States than on US citizens living in the United States.

Indeed, the Senate Finance Committee recognized the problem of the extraterritorial tax regime, at least as early as 2015. That is when the [Senate Finance Committee Bipartisan Tax Working Group](#)¹ on International Tax concluded their [report](#)² with the following paragraphs:

According to working group submissions, there are currently 7.6 million American citizens living outside of the United States. Of the 347 submissions made to the international working group, nearly three-quarters dealt with the international taxation of individuals, mainly focusing on citizenship-based taxation, the Foreign Account Tax Compliance Act (FATCA), and the Report of Foreign Bank and Financial Accounts (FBAR).

While the co-chairs were not able to produce a comprehensive plan to overhaul the taxation of individual Americans living overseas within the time-constraints placed on the working group, the co-chairs urge the Chairman and Ranking Member to carefully consider the concerns articulated in the submissions moving forward.

¹ <https://www.finance.senate.gov/chairmans-news/finance-committee-bipartisan-tax-working-group-reports>

² <http://www.finance.senate.gov/download/?id=E1FA3F08-B00C-4AA8-BFC9-7901BD68A30D>

In other words, in 2015 the Senate Finance Committee recommended that that the negative effects of the extraterritorial tax regime be specifically considered.

Six years have passed and there is still no movement on overhauling the taxation of individual US citizens living overseas, in spite of the clear directive from the International Tax Working Group. In fact, the situation for US citizens abroad has gotten far worse. This is due in large part to the enhancements to the Subpart F regime in TCJA.³ We informed the Senate Finance Committee in that regard in our submission dated April 22, 2021, [available here](#).⁴

Part B – Recent Comments at The Senate Finance Hearings About FATCA and Citizenship-based Taxation

Furthermore, both FATCA and Citizenship Taxation continue to exacerbate the problems for Americans abroad. Both the April 27 and May 11 hearings contained comments and assumptions that reveal a level of ignorance of how the tax code impacts Americans abroad. There is a fine line between ignorance and malice.

With Respect To FATCA:

Senator Whitehouse concluded the May 11, 2021 hearing with following words:

“... we need to continue to work on FATCA compliance. It’s too bad that we couldn’t put an extra “T” on it. Then it would say FATCAT which would be such an appropriate acronym for it.”

Such an indescribably ignorant and appalling comment about the impact of FATCA on Americans abroad!

With Respect to Citizenship Taxation:

At the April 27, 2021 hearing Professor Gamage made the following comments about citizenship-based in the context of using citizenship-based taxation as the tool to enforce a wealth tax:

What follows is a transcript of part of Professor Gamage’s testimony at the April 27, 2021 hearing:

1:15:10 – Second exchange between Senator Cassidy and David Gamage

Cassidy: Do you favor a worldwide wealth tax because that doesn’t seem practical to me but that seems like people can move and they do. And capital can move, and it does. One example for example: I understand that China has an incredible capital flight and if there’s any country that’s done its best to surveille everything about every one of its citizens it’s China and yet they have significant capital flight. So, would you recommend a global wealth tax?

Gamage: The United States tax system – the current income tax is citizenship-based and taxes all worldwide income for citizens and always has. This is a key difference between the US tax system and the French tax system. You can’t escape the US taxation without revoking your citizenship and paying a substantial exit tax. That’s current law and it works quite well.

³ *An Act to provide for reconciliation pursuant to titles II and V of the concurrent resolution on the budget for fiscal year 2018*, Pub Law 115-97. Known colloquially as *The Tax Cuts and Jobs Act (TCJA)*.

⁴ <http://seatnow.org/wp-content/uploads/2021/04/SEAT-Submission-Overhauling-International-Taxation.pdf>

Cassidy: And so the idea that somebody would give up their citizenship – I think one of the partners that made a lot of money from selling – some big Silicon Valley going public, renounced his citizenship and moved to Singapore, if I remember correctly. I’m gathering from you you feel as if that problem would be minimal.

Gamage: It historically has been minimal and you pay a big exit tax...

Cassidy: Historically we haven’t had a wealth tax so I’m not sure we can use past history to predict future actions to kind of paraphrase the financial commercial.

Gamage: Again, you pay a substantial exit tax under current law by revoking citizenship. Not many people do it. Some do. If they don’t value the protections and services provided to citizens of the United States then fine. But the protections and services provided to extreme wealth are huge and most ultra-wealthy benefit tremendously from being United States citizens and having those protections and services, and it’s fair to have them pay a reasonable amount of tax on that which they currently are not.

It's not clear what part(s) of the current extraterritorial tax system Professor Gamage thinks work “quite well”, but from the perspective of Americans actually living outside of the US, the system is inherently dysfunctional. Numerous surveys⁵ have been conducted which provide ample evidence that the US tax laws (including the FATCA enforcement system) have resulted in handicapping Americans abroad whose financial lives are necessarily foreign to the US. These Americans have difficulty keeping bank accounts, saving for retirement, and running small businesses. Furthermore, while high net worth individuals might pay a substantial exit tax to renounce their US citizenship, the threshold for this tax has been set at such a low level that middle-class Americans with retirement savings are often subject to this tax that was initially aimed at billionaires.

Part C: The Senate Finance Committee Continues A Long History of Misunderstanding and Prejudice Toward US Citizens Abroad

Former Senator Max Baucus – one of Senator Wyden’s predecessors as Chair of the Senate Finance Committee – was not immune to this prejudice. In 1995, he stated:

[Americans] are going to great lengths, thousands of miles to other countries, to avoid paying their fair share. In a metaphorical sense, burning the flag, giving up what should be their most sacred possession, their American citizenship, to find a tax loophole. . . . These are precisely the sort of greedy, unpatriotic people that FDR called malefactors of great wealth. . . . Let us not allow more of these rich freeloaders to get away.⁶

This profoundly ignorant comment from Senator Baucus, alongside many others expressed by other members of the United States Congress dating back to the Civil War right up to today,⁷ expose longstanding and deep-seated prejudices against Americans who live outside the United States. Is it any wonder that these prejudices have been translated into extraterritorial taxation and banking policies that are highly damaging to Americans and green card holders living outside the United States? It appears

⁵ See, for example, “Survey Report: Effects of the Extraterritorial Application of U.S. Taxation and Banking Policies” (2021) at http://seatnow.org/survey_report_intro_page/; “I Feel Threatened by My Very Identity: US Taxation and FATCA Survey” (2019) at <http://citizenshipsolutions.ca/2019/10/27/recently-released-survey-report-dispels-myth-of-the-wealthy-american-abroad-and-demonstrates-why-middle-class-americans-abroad-are-forced-to-renounce-us-citizenship/>.

⁶ 3 S. COMM. ON FIN., TAX TREATMENT OF EXPATRIATED CITIZENS: HEARING ON S. 453, S. 700, H.R. 831, H.R. 981, H.R. 1535 & H.R. 1812, 104th Cong. 2 (July 11, 1995), <https://www.finance.senate.gov/imo/media/doc/Hrg104-795.pdf> [<https://perma.cc/7LDH-XW26>] (statement of Sen. Max Baucus). See also <https://www.c-span.org/video/?66084-1/tax-treatment-expatriates>

⁷ Laura Snyder, “Taxing the American Emigrant,” 74(2) Tax Lawyer 299 (2021), Available at SSRN: <https://ssrn.com/abstract=3795480>, at 317-20.

that Senator Warren’s wealth tax is premised on many of the same profoundly ignorant assumptions about US citizens living outside the United States.

Part D: The Senate Finance Committee Must Include Witnesses with Knowledge Of How FATCA and Citizenship Taxation Impact Americans Abroad

The Internal Revenue Code establishes three distinct US tax regimes:

1. **Non-resident Alien Tax Regime:** Taxation on US source income only
2. **Tax Regime for US Residents:** Taxation of US residents on worldwide income (regardless of citizenship)
3. **Extraterritorial Tax Regime:** Taxation of the worldwide income, mostly non-US source income of individuals who are US citizens, who do not live in the United States and are tax residents of other countries. This is a [separate and more punitive tax regime](#)⁸ than that imposed on US citizens living inside the United States. To put it simply: The extraterritorial tax regime is based on citizenship regardless of economic or physical connection to the United States. Some – including the Committee witness Professor Gamage - refer to the extraterritorial tax regime as “citizenship-based taxation”.

Every Senate Finance Committee Hearing has focused ONLY on the US Tax Regime for US Residents! The simple fact is that the United States is also operating an Extraterritorial tax regime which is applied to Americans abroad. The impact of tax reform on individuals subject to that Extraterritorial tax regime must be considered. **SEAT respectfully requests that:**

1. **There be a special Senate Finance Hearing for the sole purpose of providing evidence of how tax reform would impact Americans abroad; and**
2. **SEAT should be included as participants in that hearing**

Part E: The Solution: Ending the US Extraterritorial AKA Citizenship-Based Tax Regime

The best solution to this problem is for the United States to come into alignment with every other developed nation on the planet and **move to a residence-based taxation system for individuals.** Taxing non-resident citizens is “Mission Impossible,” as it is impossible to fairly administer an extraterritorial tax system and afford non-resident US citizens the rights guaranteed by the Taxpayer Bill of Rights (IRC §7803(a)(3)), by multiple human rights instruments and by the US Constitution.⁹

⁸ <https://www.taxconnections.com/taxblog/the-united-states-imposes-a-separate-and-much-more-punitive-tax-on-u-s-citizens-who-are-residents-of-other-countries/>

⁹ Laura Snyder, Karen Alpert, and John Richardson, *Mission Impossible: Extraterritorial Taxation and the IRS*, 170 Tax Notes Federal 1827 (March 22, 2021), Available at SSRN: <https://ssrn.com/abstract=3828673>.

It is well past the time that the Senate Finance Committee act upon the call of the 2015 Senate Finance Committee Bipartisan Tax Working Group on International Tax, and finally accord to Americans living outside the United States the full attention, concern, and respect to which they are entitled as US citizens. It is also well past time to put an end to the taxation and banking policies that penalize them so severely.

Thank you for your attention to these matters.

Respectfully submitted by:

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About SEAT – Education to Facilitate Change

Stop Extraterritorial American Taxation (SEAT) is an independent, nonpartisan organization with no affiliation with the tax compliance industry. The mission of SEAT is to provide an educational platform for individuals, policymakers, governments, academics, and professionals about the terrible effects of US extraterritorial taxation. The imposition of US taxation on the residents of other countries damages the lives of the affected individuals and siphons capital from the economies of other nations while eroding their sovereignty.

While [SEAT](#) is created under the laws of France (Law of 1901), it is an international organization.

<http://www.seatnow.org>