

On August 2, 2021, a Letter to the Editor¹ (the “Letter”) was published, commenting on the article “Should Overseas Americans Be Required to Buy Their Freedom?”²

The issues surrounding the U.S. extraterritorial tax regime, often referred to as citizenship-based taxation, are pressing. This system results in the U.S. imposing worldwide taxation, according to the Internal Revenue Code, on individuals who are U.S. citizens, who are often tax residents of other countries and who do not live in the United States. There is no other country in the world with a similar tax policy. The Letter’s justification of U.S. citizenship-based taxation (the extraterritorial tax regime) is that U.S. citizens should pay for the benefits of U.S. citizenship. It appears, however, that the Letter’s author does not understand what groups of people are included in the community of U.S. citizens living outside the United States and how U.S. citizens abroad are actually subjected to a separate and more punitive tax system than U.S. residents. Does the Letter’s author understand that U.S. citizens may include individuals who have never lived in the United States, may not even speak English, may not want to be U.S. citizens and may not be able to afford the administrative and tax costs of renunciation? The Letter includes no evidence that its author understands the twin realities of: (i) what is meant by “U.S. citizen” and (ii) how U.S. tax rules apply to U.S. citizens living outside the United States who are tax residents of other countries.

The Letter ignores the principal focus of the article, which is to challenge the idea that any proposal to eliminate U.S. extraterritorial taxation must be revenue neutral. Instead, the Letter takes a step back to argue that U.S. extraterritorial taxation should not be eliminated, presumably regardless of any question of revenue neutrality.

The Letter uses sarcasm to mock and belittle the effects that the U.S. extraterritorial tax system have on overseas Americans. Referring to ending U.S. extraterritorial taxation as an “exemption,” the Letter asserts that most of the benefit “would go to the wealthiest expatriates.” The Letter cites no evidence in support of this claim. For example, it does not refute the findings of SEAT’s recent survey,³ nor the findings of other surveys – such as those of the Association of Americans Resident Overseas (AARO)⁴ and of Democrats Abroad⁵ – documenting both that (i) overseas Americans of all levels of wealth and income suffer as a result of the U.S. extraterritorial tax system, and (ii) few overseas Americans are wealthy.⁶ Instead, the Letter falls into the trap of stigmatizing overseas Americans as wealthy persons seeking to avoid taxation.⁷

The Letter asserts that overseas Americans have an “obligation to pay for the protection the U.S. government provides them.” The Letter fails, however, to cite even one such “protection” that the United States provides to its overseas citizens, much less any such protection it

¹ <https://www.taxnotes.com/featured-analysis/americans-abroad-should-also-pay-benefits-citizenship/2021/07/30/76y8d>.

² https://papers.ssrn.com/sol3/papers.cfm?abstract_id=3893051.

³ Laura Snyder, “[‘Being an American Outside of America Is No Longer Safe’ Survey Report: Effects of the Extraterritorial Application of U.S. Taxation and Banking Policies](#),” Stop Extraterritorial American Taxation, May 4, 2021 (SEAT Survey).

⁴ Association of Americans Resident Overseas (AARO), “[AARO 2020 Advocacy Survey Results](#),” Feb. 24, 2021.

⁵ Democrats Abroad, “[Tax Filing from Abroad: Research on non-resident Americans and U.S. Taxation](#),” March 2019.

⁶ Helen Burggraf, “[SEAT Survey Finds Expats Suffering from Impact of U.S. ‘Extraterritorial Taxation’](#),” *American Expat Financial News Journal*, May 10, 2021.

⁷ Laura Snyder, “[Taxing the American Emigrant](#),” 74 *Tax Law*. 299.

provides that is funded from tax proceeds. The Letter's author appears to simply assume, without verification of any kind, that such protection exists. *In addition, the Letter fails to acknowledge the reality that U.S. citizenship-based taxation (sometimes by accident and sometimes by design) is destroying the ability of American citizens living outside the United States to live normal financial lives.* Setting aside the lesson of Modern Monetary Theory (MMT) that taxes do not pay for federal government spending,⁸ the Letter's author seems unaware that not only does the United States government often refuse to evacuate U.S. citizens from unsafe situations overseas,⁹ but also that, on the rare occasions when it does so, by law the citizens are required to reimburse the costs of the evacuation.¹⁰ The Letter's author also seems unaware that the limited services that U.S. consulates provide to overseas Americans are funded entirely by user fees and not by tax proceeds. (In fact, 13% of the user fees paid to U.S. consulates is given to the U.S. Treasury.¹¹ Further, these fees are notoriously high. For example, the simple notarization of one document costs US\$50,¹² compared to a nominal fee in the United States of \$5 to \$10, if not free of charge). The Letter's author also seems unaware that the United States asserts the right to target and kill U.S. citizens - including teenagers¹³ - located outside the United States, in the absence of any due process.

The failure – the outright refusal – of the United States to protect its overseas citizens is underscored most recently by its rejection of calls to arrange for Covid-19 vaccinations for overseas Americans living in countries with limited access to the vaccines,¹⁴ even though the U.S. federal government is funding the vaccination of U.S. residents, regardless of their citizenship status. Finally, many overseas Americans are dual citizens. A dual U.S.-Canadian citizen, for example, not only does not need U.S. consular support in her dealings with the Canadian government, but under international law she cannot access such support. If the Letter's author is aware of any one or more specific "protections" that the United States does provide to its overseas citizens – and notably "protections" that are funded from tax proceeds – the author should explain with specificity what those protections are so that overseas Americans can claim and finally begin to benefit from them.

The Letter suggests that overseas Americans think it is "unfair" for them "to have to pay taxes on their foreign income while multinational corporations are able to avoid paying them." Again, the Letter cites no evidence that any overseas American, let alone many, think they should not be subject to U.S. taxation on their foreign income merely because multinational

⁸ See, e.g., John Christensen and Nicholas Shaxson, "[‘The Magic Money Tree:’ From Modern Monetary Theory to Modern Tax Theory](#)," Tax Justice Network, Mar. 5, 2019.

⁹ See, e.g., Al Jazeera, "[US Among 26 Countries Asking India to Help Citizens Escape Yemen](#)," Apr. 7, 2015. See also Jon Johnson, "[U.S. Urges Citizens to Exit Afghanistan in Week's Second Security Alert as Taliban Advance](#)," *Newsweek*, Aug. 12, 2021. See also Ella Lee, "[Fact Check: State Department Backtracked on Charging \\$2,000 for Flights Out of Afghanistan](#)," *USA Today*, Aug. 25, 2021, explaining that it was only in response to public backlash that the United States backtracked from its initial announcement that Americans would be required to pay \$2000 for evacuation flights from Afghanistan.

¹⁰ As explained on the State Department website at <https://travel.state.gov/content/travel/en/international-travel/emergencies/for-evacuated-citizens.html>.

¹¹ See, e.g., the discussion of fees at <https://www.aaro.org/events/event-reports/798-consular-services-for-americans>.

¹² U.S. Department of State, "Notarial and Authentication Services of U.S. Consular Officers Abroad," <https://travel.state.gov/content/travel/en/records-and-authentications/authenticate-your-document/Notarial-Authentication-Services-Consular.html>.

¹³ Glenn Greenwald, "[Chilling Legal Memo from Obama DOJ Justifies Assassination of U.S. Citizens](#)," *The Guardian*, Feb. 13, 2013.

¹⁴ Helen Burggraf, "[State Dept. Reiterates U.S. Policy Not 'to Distribute Covid Vaccines to Americans Overseas'](#)," *American Expat Financial News Journal*, Aug. 1, 2021.

corporations have been so successful in avoiding U.S. taxation. The Letter again stigmatizes overseas Americans by painting them with the same brush as multinational corporations. Further, the Letter's suggestion implies that the non-U.S. income of overseas Americans would not be subject to taxation at all if it were not taxed by the United States. Nothing could be further from the truth: Overseas Americans are subject to income taxation together with all other forms of taxation in the countries where they live, in the same manner as all other residents of those countries. What overseas Americans actually object to is being subject simultaneously to two different and incompatible tax systems,¹⁵ and how this makes it impossible for them to live normal lives in the places where they live.¹⁶ These problems disproportionately affect those with enough income to save for their retirement, but insufficient wealth to hire expensive financial advisers to help them navigate the acronym-laden jungle of PFICs, MiFID II, and FATCA that plague cross-border retirement planning. The index funds and ETFs used by so many U.S. residents in their 401(k)s are not available to their overseas American counterparts.

Compounding these problems is the failure of the IRS to administer the U.S. extraterritorial tax system, leaving overseas Americans to fend for themselves, subject to draconian penalties for even inadvertent errors.¹⁷ The Letter makes no mention of this.

The Letter states that the claim that U.S. extraterritorial taxation is "unfair" is "a losing argument because we have finally realized that encouraging the export of jobs and profits through the tax code is bad public policy." While roundabout, this appears to be a suggestion that U.S. extraterritorial taxation is necessary in order to discourage Americans from living overseas. On this point the Letter is correct. Or, at least, it is on to something. The U.S. extraterritorial tax system does make it difficult for Americans to live overseas.¹⁸ And, for many, it makes it impossible - this is evidenced in the high numbers of persons renouncing U.S. citizenship in the past decade.¹⁹ For these persons, the only way to be able to live overseas is to stop being American.

The Letter portrays this difficulty – this impossibility – as a positive result of U.S. extraterritorial taxation. That is, the Letter defends the extraterritorial tax system as it applies to individuals as a means to keep "jobs and profits" - with the additional result of *keeping U.S. citizens themselves - in the United States*. This is one of the most objectionable elements of the Letter. Its author appears either unaware of or indifferent to Article 13(2) of the Universal Declaration of Human Rights, (UDHR)²⁰ which states: "Everyone has the right to leave any country, including his own, and to return to his country." The right to leave one's country, as well as to return to it, is also found in other international human rights instruments that the United States has signed and ratified: (1) Article 12 of the International Covenant on Civil and Political Rights (ICCPR),²¹ and (2) Article 5(d)(ii) of the International Convention on the Elimination of All Forms of Racial Discrimination (ICEAFRD).²² In defending the U.S.

¹⁵ Laura Snyder, "[The Criminalization of the American Emigrant](#)," Tax Notes Federal, June 29, 2020, p. 2279.

¹⁶ SEAT Survey, *supra* note 3.

¹⁷ Laura Snyder, Karen Alpert and John Richardson, "[Mission Impossible: Extraterritorial Taxation and the IRS](#)," Tax Notes Federal, March 22, 2021, p. 1827.

¹⁸ SEAT Survey, *supra* note 3.

¹⁹ Helen Burggraf, "[Q2 Renunciation Numbers Appear To Rise, Even As Appointments To Begin The Process Remain Elusive](#)," *American Expat Financial News Journal*, Aug. 2, 2021.

²⁰ G.A. Res. 217 (III)A, "[Universal Declaration of Human Rights](#)" (UDHR), (Dec. 10, 1948).

²¹ G.A. Res. 2200A (XXI), "[International Covenant on Civil and Political Rights](#)" (ICCPR), (Dec. 16, 1966).

²² G.A. Res. 2106 (XX) "[International Convention on the Elimination of All Forms of Racial Discrimination](#)" (ICEAFRD), (Dec. 21, 1965).

extraterritorial tax system as a means to keep "jobs and profits" – and thus also people – in the United States, the Letter's author is (presumably unwittingly) acknowledging that the system violates multiple human rights instruments.²³

The Letter concludes with this summary statement:

In short, Americans living abroad who want the rights and privileges of citizenship should be willing to help pay for the government that provides them.

Presumably the Letter is not advancing the proposition that U.S. citizens should be required to pay a fee for the rights guaranteed to them by the U.S. Constitution and various international human rights instruments. Such a proposition is absurd on its face. *Should Americans be required to pay for other human rights?* Given the fundamental importance of citizenship both as a human right itself and as a necessary precondition for the existence of all other human rights,²⁴ the Letter's author would then need to explain: how much should Americans pay for the human right of citizenship? What is the right price?

Therefore, the author must mean that U.S. citizens (wherever they may be located) should be required to pay for the government that exists to facilitate their constitutional rights. Perhaps the author is guided by Justice McKenna's decision in the 1924 decision of *Cook v. Tait*²⁵ which opined that:

the principle was declared that the government, by its very nature, benefits the citizen and his property wherever found.

Cook v. Tait was decided almost 100 years ago, at a time when the nature of citizenship (at that time citizenship was mostly equivalent to residence) and taxation were entirely different than they are today (minimal reporting, no Subpart F, no PFIC, no phantom gains, etc).

Today, almost 100 years later, survey after survey demonstrates that the U.S. government is providing no benefits to Americans abroad. Furthermore, it clearly legislates and regulates without any regard (or even awareness) for Americans abroad. In fact, it's the exact opposite. The U.S. government through the extraterritorial tax regime is destroying the lives of millions of U.S. citizens living outside the United States. The only way these individuals can escape the "benefits" of U.S. citizenship is to renounce U.S. citizenship and stop funding the "benefits" that are destroying their lives.

The time has come for the United States to end the uniquely American extraterritorial tax regime and join the modern world.

²³ Karen Alpert, Laura Snyder, and John Richardson, "[The Implications of Tax Residence for Human Rights](#)," Accounting & Finance Association of Australia and New Zealand 2020 Annual Conference 1, 8 (July 5-7, 2020).

²⁴ Leila Faghfour Azar, "[Hannah Arendt: The Right to Have Rights](#)," *Critical Legal Thinking*, July 12, 2019.

²⁵ *Cook v. Tait*, 265 U.S. 47 (1924).