Re: "The IRS, the President's Fiscal Year 2023 Budget, and the 2022 Filing Season"

Hearing April 7, 2022

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 second submission with respect to the subject of the April 7, 2022 Senate Finance Committee Hearing: "The IRS, the President's Fiscal Year 2023 Budget, and the 2022 Filing Season."

The United States is the only developed nation to impose its tax code on all citizens, regardless of where they live, using the same rules for both domestic and international taxpayers. Most other countries assert the right to tax the worldwide income of residents, but not of non-resident citizens. The US taxes the worldwide income of *both* residents (regardless of citizenship) *and* non-resident citizens. Because the Internal Revenue Code has many special and punitive rules for "foreign" income, assets, and investments, this means that US tax rules have a very different impact on overseas Americans than on their US-resident counterparts. Compliance issues are particularly difficult for those with no access to IRS in-person assistance while facing complex international information reporting requirements. While SEAT strongly advocates for a move to taxation based on ***residence only*** (as widely practiced in the rest of the world) rather than including citizenship as a criterion for taxing worldwide income, if citizenship-based taxation is to continue, it is incumbent on Congress to carefully consider the impact of new legislation on this subset of American citizens.

In this submission we would like to focus on four aspects of Commissioner Rettig's testimony at the hearing:

1. Customer Service Backlog and Paper Returns
2. Identity verification and Online accounts
3. In person assistance
4. Disaster Relief and Advance Child Tax Credits

Many of the points made are not new. We refer the committee to "Mission Impossible: Extraterritorial Taxation and the IRS," by Laura Snyder, Karen Alpert, and John Richardson (*Tax Notes Federal*, Volume 170, March 22, 2021).

1. Customer Service Backlog and Paper Returns

Americans abroad are much more likely to file paper returns rather than e-filing. One of the main drivers of this trend is that Americans abroad are more likely to be married to non-resident aliens, and most tax preparation software does not deal well with the situation where an NRA spouse does not have a US Social Security number. The IRS should ensure that all free-file providers will allow e-filing of a Married Filing Separate return where the spouse is an NRA without a social security number.

When an American abroad has an issue with their tax return, they often have difficulty getting appropriate assistance from the IRS. Most IRS service agents are not trained in the issues that frequently arise on an international return, such as non-US retirement savings, non-US business or trust structures, and the treatment of non-US government assistance or welfare payments. When contacting overseas taxpayers, the IRS uses postal mail, which has recently experienced severe delays due to the pandemic. Even before the pandemic, taxpayers were reporting that they were receiving IRS correspondence months after it had been mailed. Add to that the abysmal record of the IRS in answering taxpayer phone enquiries, and the service level experienced by Americans abroad is well below the poor level of service experienced domestically.

Finally, the persistence of the IRS in sending paper checks for refunds to overseas taxpayers is causing particular difficulty. For those without a US bank account, cashing a US check can be prohibitively expensive, if it is even possible. Much of the rest of the world has discontinued the use of paper checks, and in some countries, individuals report that they are unable to find a bank that is willing to accept a US check at all.

2. Identity verification and online accounts

Many Americans abroad report difficulty in accessing their IRS accounts online, often due to the requirement of using a US phone number for verification. If the IRS is to be expected to administer a truly international tax system to provide the minimum level of service for Americans abroad, they must find a way to verify identity that does not rely on having a US presence.

3. In person assistance

In his testimony, Commissioner Rettig noted that the IRS provides many opportunities for taxpayers to receive free in-person assistance at IRS Taxpayer Assistance Centers or through the Volunteer Income Tax Assistance program. All of these programs are available only to taxpayers currently living inside the US. If the US is to continue its practice of taxing non-resident citizens, those US taxpayers residing outside of the US deserve the same level of taxpayer support. In the 1980s the IRS had 15 overseas posts in consulates around the world. These were progressively closed until the last four closed in 2014 and 2015. The only way for international taxpayers to access in-person support in an accessible location is to pay for assistance from a US tax professional. This fee is incurred regardless of whether any US tax is owed (and about 55 percent of returns filed from overseas show no tax owed). Americans overseas are not the wealthy tax dodgers of popular myth. They include people from all walks of life, homemakers, minimum wage workers, and middle-class families in addition to a small number of high net worth individuals. For some, the compliance cost of meeting their US tax obligations is excessively expensive, especially when compared with their minimal (or zero) US tax liability.

4. Disaster Relief

While the last three point dealt with IRS service issues, this final issue addresses inequities in the tax code that would require Congressional action to correct. By basing jurisdiction to tax on both citizenship and residence, the US has taxpayers who live in all countries of the world. When tax breaks or relief is based on physical presence in the US, those US taxpayers residing outside of the US are specifically denied the tax breaks or relief allowed to similarly situated taxpayers resident inside the US. How can such a tax system be "fair and just"?[1]

Currently, any taxpayer affected by a federally declared natural disaster is eligible for extensions to file or pay taxes and the ability to claim disaster-related casualty losses. By definition, this applies only to disasters that occur inside the United States. However, US taxpayers residing outside of the US may be

[1] The right to a "fair and just tax system" is included in the Taxpayer Bill of Rights in IRC §7803(a)(3)(J).

affected by disasters that are just as terrible as those eligible for US tax relief. By limiting disaster losses to losses incurred in a federally declared disaster zone, Congress is effectively saying that the Australian Black Summer bushfires in 2019-20 are less worthy of relief than the California wildfires in 2017 and 2018; and that the victims of the earthquake that hit Haiti in January 2010 are less worthy of relief than victims of Hurricane Katrina. While there will be fewer US taxpayers affected by non-US disasters, their pain and financial suffering is no less. Equal treatment requires that non-resident taxpayers be afforded similar treatment when faced with surviving a natural disaster.

Similarly, the Advance Child Tax Credits available in 2021 were available only for children residing inside the US. There were American citizen children living outside the US who were just as severely impacted by the pandemic and resulting economic disruption. These children, however, were generally forced to wait until their parents were able to file their 2021 tax return before receiving the Child Credits provided by Congress.

Administering an extraterritorial tax system has become an overwhelming task, both procedurally and substantively. The IRS cannot remotely serve US tax residents in the more than 100 countries in the world where they live, let alone in the languages that they speak. Nor can the IRS know how US laws apply to the local financial services, small business structures, and retirement savings plans that are common in all those other countries.

The IRS should take immediate steps to address the many valid concerns that have been raised by Americans abroad. **If the IRS is unwilling or unable to administer a system of extraterritorial taxation, then it is time for Congress to take action to cease the imposition of tax on the non-US source income of non-residents.** The cost-benefit analysis of the impact of a transition from citizenship-based taxation to a residence-based system of taxation should include an assessment of the investments which would be required to enhance the capabilities of the IRS to provide fair and equitable support to non-resident taxpayers under the current system.

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.

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