



Re: “Expanding on the Success of the 2017 Tax Relief to Help Hardworking Americans”

Hearing April 11, 2024

Submission on behalf of Stop Extraterritorial American Taxation (SEAT)
info@seatnow.org

Email to: WMSubmission@mail.house.gov
House Committee on Ways & Means

17 April 2024

Please accept this as our submission with respect to the April 11, 2024, House Committee on Ways & Means Hearing: “Expanding on the Success of the 2017 Tax Relief to Help Hardworking Americans.”

The hearing was held to “highlight the benefits of GOP tax reform and discuss the path forward for tax policy ahead of 2025.”¹

The nationality-based U.S. extraterritorial tax system is destroying the lives of Americans who are bona fide residents – and tax residents – of other countries. The issues are not well known or understood, but they are a tremendous burden on millions of ordinary people who happen to live outside the United States.

For decades overseas Americans and others have appealed to Congress to act with respect to the U.S. extraterritorial tax system. The long-standing system discriminates against persons of American nationality living outside the United States, subjecting them to a tax regime that is more burdensome and punitive as compared both to persons residing in the United States (of any nationality) and to persons residing outside the United States who are not American nationals. But their appeals fall on deaf ears.

The 2017 Tax Cuts and Jobs Act (TCJA) brought new devastation for Americans living and operating a small business outside the United States. This is in large part because in the preparation of the Act they were entirely overlooked, and the effect the Act would have on them was ignored. Looking forward, it is imperative that Congress both: (1) hold hearings focused on the difficulties Americans who reside outside the United States face in navigating the increasingly complex extraterritorial tax compliance regime that the United States imposes on them; and (2) adopt policies to alleviate these difficulties.

The best solution to these problems 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.

Americans who are tax residents of other countries would continue to be liable for U.S. federal income tax for any income which is effectively connected with the United States, as all non-resident aliens are, by using Form 1040-NR instead of Form 1040.

¹ [Chairman Smith Announces Hearing on Expanding on the Success of the 2017 Tax Relief to Help Hardworking Americans](#), April 4, 2024.

Contents

I. Devastating Effects of the TCJA	2
A. The MRT Affected More Individuals Than Corporations	3
B. Considerable Differences in Treatment of Individuals as Compared to Corporations.....	4
C. The MRT Was Devastating for Americans Living Outside the United States.....	6
II. Needed Policy Change	7
Conclusion	8
About SEAT – Education to Facilitate Change	8

Discussion

The problems that Americans experience because of the nationality-based U.S. extraterritorial tax system are well documented.² Also well documented are the many appeals to address the problems that have been made to Congress and other policymakers over decades.³ For the most part, the appeals fall on deaf ears.⁴ This is partly because, despite the efforts of many organizations and individuals over decades,⁵ many members of Congress and their staff remain unaware of the issues. This is also partly because some members of Congress and their staff are aware of the issues (or, at least, they consider themselves to be), but nevertheless believe the current system to be justified. They hold this belief even though the multiple rationales offered for the current extraterritorial system have been refuted in detail.⁶

The discussion below explains: (I) The devastating effect of the TCJA for Americans living and operating a small business outside the United States; and (II) the policy change that is needed to alleviate the difficulties faced not only by small business owners but by all Americans living outside the United States.

I. Devastating Effects of the TCJA

The TCJA included the Mandatory Repatriation Tax (MRT, also referred to as the Transition Tax). The MRT was directed towards multinational corporations with dozens of foreign subsidiaries. However, because it applied not only to corporations but also to individuals, and because it did not contain a de minimis exemption, the MRT also ensnared Americans living outside the United States and operating a small business in the country where they live. As a result, they – as *individuals*, not their corporations – found themselves owing thousands of dollars due to a retroactive tax. Because the tax was triggered in the absence of any distribution, many struggled to secure the funds needed to pay the tax. At the same time, because they were individuals rather than corporations, they were not entitled to the benefits offered by the TCJA in counterpart to the MRT. This included, namely, tax free dividends and a significant reduction in tax rate.⁷

² See, e.g., Laura Snyder, [The Unacknowledged Realities of Extraterritorial Taxation](#), 47 S. ILL. UNIV. L. J. 243, 346-74, 285-89 (2023); Laura Snyder, [Extraterritorial Taxation #2: How It Is Experienced](#), SEAT Working Paper Series #2023/2 (June 5, 2023).

³ Snyder, *Unacknowledged Realities*, *supra* note 2, at 275-85, 289-96.

⁴ *Id.* at 296-308.

⁵ *Id.* at 275-85, 289-96.

⁶ See, generally, Laura Snyder, [Can Extraterritorial Taxation Be Rationalized?](#), 76 TAX LAW. 535, 575-77 (2023).

⁷ See Karen Alpert et al., [Don't Blame the Victims: Individuals and the MRT](#), 182 TAX NOTES FED. 1617, 1618 (Feb. 26, 2024); [Brief for Stop Extraterritorial Americans Taxation \(SEAT\) and the Association of Americans Resident Overseas \(AARO\)](#) as Amicus Curiae Supporting Petitioners at 14-15, Moore, No. 22-800 (U.S. Sept. 5, 2023).

The MRT: (A) affected more individuals than it did corporations; (B) affected individuals differently and more punitively as compared to corporations; and (C) was devastating for individuals living and operating a small business outside the United States.

A. The MRT Affected More Individuals Than Corporations

The IRS does not publish statistics about how many individual returns include Form 5471, “Information Return of U.S. Persons With Respect to Certain Foreign Corporations.” To get a rough idea of how many individuals living outside the United States were subject to the MRT, we looked at the rate of business formation in the United States and applied this to the returns filed from outside the United States. IRS data show that there were 151.67 million 2017 tax returns filed with U.S. addresses, of which 25.96 million filed Schedule C. The U.S. Small Business Association estimates that there were 29.6 million small businesses in the United States in 2017. If we assume that all small businesses are owned by someone who files a tax return, then 19.5 percent of filers would own small businesses and 17.1 percent filed Schedule C, leaving 2.4 percent of filers with non-Schedule C small businesses.⁸

IRS data indicate that for tax year 2017, a total of 785,930 returns were filed from outside the United States. As discussed below, for American nationals living outside the United States, a corporate business form is often preferred over Schedule C, so the rate of ownership of non-Schedule C small businesses is likely to be higher than on domestic returns. But if we nevertheless assume that 2.4 percent of return filers own a non-Schedule C small business, then we can estimate that approximately 18,900 American nationals living outside the United States were subject to the MRT. While the IRS barely acknowledges that individuals were affected, it has reported that 3,231 U.S. multinationals were affected by the MRT. This is just one-sixth of our estimate of the number of individual American nationals living outside the United States affected by the MRT.⁹

During oral argument before the Supreme Court in *Moore v. United States*, Solicitor General Elizabeth Prelogar (counsel for the respondent, the U.S. government) made the following statement in response to a question by Justice Samuel Alito:

The overwhelming majority of taxpayers subject to [the MRT] are domestic corporations.¹⁰

Of course, as our estimate demonstrates, this is not the case. Prelogar evidently recognized her error because later in the session she corrected herself, saying:

As I had mentioned in an earlier response, one of the important things for the Court to keep in mind is that *99 percent of the tax owed* under the MRT is owed by domestic corporation shareholders, large U.S. companies, for example, that have these foreign subsidiaries where they have been holding money overseas for a number of years. And this would be a tax on the privilege of doing business with those corporate relationships and in that corporate form.¹¹
[Emphasis added.]

⁸ See Alpert et al., *supra* note 7, at 1621.

⁹ *Id.*

¹⁰ *Id.*, citing [Transcript of Oral Argument](#) at 98, *Moore*, No. 22-800 (U.S. Dec. 5, 2023).

¹¹ Alpert et al., *supra* note 7, at 1621, citing [Transcript of Oral Argument](#), *supra* note 10, at 135-136.

The cynical disregard for the individual taxpayer reflected in this correction merits comment. First, the fact of the correction is an admission by Prelogar that the number of individuals affected by the MRT is greater than the number of multinational corporations affected by it. Despite this — and even though the Moores themselves are individuals — Prelogar barely acknowledged the considerable differences between corporations and individuals regarding the MRT, let alone acknowledged its particularly penalizing effects for individuals of American nationality living outside the United States.¹²

In addition, the correction communicates that the revenue owed by individuals under the MRT was not needed to achieve any revenue collection purpose of the MRT, given it was only 1 percent of the total owed by multinational corporations and individuals combined.

Finally, the correction is an admission by Prelogar that the purpose of the MRT had nothing to do with individual shareholders and even less to do with small business owners living outside the United States. Given that they live in the same country as their small businesses, their businesses do not “hold money overseas.” The idea that any money their businesses do hold was destined to be “repatriated” to the United States — where, again, the small business owner does not live — is nonsensical. Further, individual small business owners living outside the United States are not engaging in the “privilege” of “doing business” with “those corporate relationships” or “in that corporate form” as Prelogar asserts about multinational corporations. They are simply seeking to earn a living in the country where they live, using the structures most appropriate for that country — structures also used by the other small business owners of that country.

And yet, apparently, the damages the MRT inflicted on individual shareholders (discussed further below) were necessary and justified?¹³

B. Considerable Differences in Treatment of Individuals as Compared to Corporations

The considerable differences in tax treatment between corporations, U.S. resident individuals, and individuals (Americans) living outside the United States are summarized in the table that follows.

¹²See [Brief](#) for the United States in Opposition, *Moore*, No. 22-800 (U.S. May 16, 2023); [Brief](#) for the United States, *Moore*, No. 22-800 (U.S. Oct. 16, 2023); Transcript of Oral Argument, *supra* note 10.

¹³ To further understand some of the damage inflicted by the MRT, *see, generally*, [Brief of Individual Taxpayers](#) as Amicus Curiae in Support of Petitioners, *Moore*, No. 22-800 (U.S. Sept. 6, 2023); Brief for SEAT and AARO, *supra* note 7, at 8-10.

Consequences of the MRT for Differently Situated Taxpayers

Consequence	Corporation	Individual: U.S. Resident (Regardless of Nationality)	Individual: American National Living Outside United States
Tax rate on mandatory deemed repatriation	8% or 15.5%, depending on whether “repatriated” earnings and profits were held in cash. ^a	<i>Without section 962 election:</i> Up to 17.54% or 9.05% tax rate, depending on marginal individual tax rate and how “repatriated” E&P is held. ^b	<i>Without section 962 election:</i> Up to 17.54% or 9.05% tax rate, depending on marginal individual tax rate and how “repatriated” E&P is held. ^b
		<i>With section 962 election:</i> Corporate rates apply. ^c	<i>With section 962 election:</i> Corporate rates apply. ^c
Foreign tax credit for taxes paid by CFC	Automatic under section 960. ^d	Only if section 962 election is made. ^e	Only if section 962 election is made. ^e
U.S. tax when E&P from deemed repatriation is actually distributed	None. ^f	None unless section 962 election is made to compute MRT. ^g If section 962 election is made, then any distribution exceeding actual tax paid on deemed repatriation is taxable. ^h	None unless section 962 election is made to compute MRT. ^g If section 962 election is made, then any distribution exceeding actual tax paid on deemed repatriation is taxable. ^h
Distribution taxed by host country when actually distributed	Depending on tax treaty, often 5% for dividends to parent. ⁱ	Depends on tax treaty; often 15%. ⁱ	Fully taxed as a dividend; treaty benefits not available. ^j
Future U.S. tax rates	21% ^k reduced from 35%. ^l	Top rate 37% reduced from 39.6% through 2025. ^m	Top rate 37% reduced from 39.6% through 2025. ^m
U.S. tax on future distributions/dividends	Zero. ^f	Taxed as a dividend with credit for host country tax (likely reduced by treaty). ⁿ	Taxed as a dividend with credit for host country tax (no treaty benefits). ^o

^a Under section 965, the percentage of post-1986 accumulated E&P that was taxable was defined by section 965(c)(2) as the percentage that, when taxed at the applicable corporate tax rate, would generate a net 15.5 percent tax on E&P held in cash, and 8 percent on the remaining balance. *See also* IRS, “[Tax Cuts and Jobs Act: A Comparison for Large Businesses and International Taxpayers](#)” (last updated Dec. 11, 2023).

^b When the taxpayer’s marginal tax rate differed from the corporate tax rate, the effective rate of the MRT changed. The rates quoted are computed using the maximum 2017 individual tax rate of 39.6 percent.

^c Section 962. *See also* IRS, “[How to Calculate Section 965 Amounts and Elections Available to Taxpayers](#),” IRS Pub. 5292, at 3 (Apr. 6, 2018).

^d Section 960; *see also* IRS Pub. 5292, at 9.

^e Section 962; *see also* IRS Pub. 5292, at 9.

^f Section 245A. *See also* IRS, “Tax Cuts and Jobs Act: A Comparison.”

^g Section 959. In the absence of a section 962 election, the full amount of the post-1986 E&P included in income under section 965(a) is considered previously taxed E&P (subject to allocation of deficits under section 965(b)).

^h Section 962(d); [T.D. 9846](#).

ⁱ *See, e.g.*, [2016 U.S. model income tax convention](#), article 10 (providing for 5 percent tax on dividends paid to a company owning at least 10 percent of the company paying dividends, and 15 percent otherwise). *See also* tax treaties available on the IRS website, [United States Income Tax Treaties — A to Z](#) (last updated Oct. 27, 2023).

^j The tax treaty would not apply, as both the company targeted by the MRT and the American-national shareholder are residents of the same country (the country in which the company has been organized). *See, e.g.*, U.S. model tax convention, article 1(4).

^k Section 11.

^l Government Accountability Office, “[Corporate Income Tax: Effective Rates Before and After 2017 Law Change](#)” (Dec. 14, 2022).

^m Section 1(j). *See, e.g.*, Tax Foundation, “[Tax Cuts and Jobs Act \(TCJA\)](#),” TaxEDU (last accessed April 16, 2024).

ⁿ *See, e.g.*, Raymond M. Polantz, “[Passthrough-Entity Treatment of Foreign Subsidiary Income](#),” *Tax Adviser* (Aug. 1, 2023). *See also* U.S. model income tax convention, article 10.

^o *See, e.g.*, Polantz, “Passthrough-Entity Treatment.” Treaty benefits would not be available because of the saving clause. U.S. model income tax convention, article 1(4). *See also* Snyder, “[The Unacknowledged Realities of Extraterritorial Taxation](#),” 47 *S. Ill. U. L.J.* 243, 299-301 (2023).

C. The MRT Was Devastating for Americans Living Outside the United States

Examples of the small businesses in question include:

- a film production company;
- a doctor’s office;
- a family winery;
- IT services;
- real estate investment; and
- consulting.¹⁴

The MRT had devastating effects for Americans living outside the United States.¹⁵ They reported, as examples:

I own a small business and it has been horribly affected by the [MRT] and will be going forward by the GILTI - so much so that I am having to figure out how I can pass ownership of it to my spouse. I will soon own nothing on my own due to the bullying US tax system.¹⁶

I could not believe the recent [MRT] that retroactively taxed properly filed and taxed earnings across multiple decades. This tax has put the very survival of our family's business in jeopardy, and as the means of payment is still unclear, it makes me worry that we will be liable for prison time for, again, simply building and running a business. The reality of the situation remains almost inconceivable, and it has been the source of no end of worry, stress and even conflict within our family.¹⁷

¹⁴ Brief for SEAT and AARO, *supra* note 7, at 8-9.

¹⁵ For a discussion, see, e.g., Laura Snyder, [The Criminalization of the American Emigrant](#), 167 TAX NOTES FED. 2279, 2281 (2020).

¹⁶ Brief for SEAT and AARO, *supra* note 7, at 9.

¹⁷ *Id.*

I have run a small business in the UK for 15 years. Over that time I have worked very hard and managed to save up a bit of money from which I was hoping to retire in the near future. My job is extremely stressful and not good for my mental well-being - I had been looking forward to finally being able to stop. Unfortunately the [MRT] blew my plans to bits. With no forewarning I suddenly found myself owing \$170,000 retroactively to a new tax that had just been dreamt up out of the blue. [...] To suddenly lose what had taken me years to save without any forewarning has caused me enormous stress and sleepless nights. [My retirement has] now been put off indefinitely. How can I possibly retire when I don't know whether or not they'll invent another new tax out of the blue that will decimate what's left of my savings?¹⁸

In sum, considerably more individuals were affected by the MRT as compared to corporations, those individuals were affected in ways that were different from and considerably more punitive as compared to corporations, and, for those individuals, the effects were devastating. **For Americans seeking to operate a small business outside the United States, the TCJA was *not* a success. On the contrary, it jeopardized their families, their livelihoods, and their retirement.**

II. Needed Policy Change

Many countries tax the worldwide income of their residents, regardless of citizenship status. They do not, however, tax the worldwide income of persons who do not reside in the country, regardless of their citizenship status. The United States is unique in how it taxes not just its residents but also its citizens living outside the United States based on their worldwide income.¹⁹

U.S. tax policies assume that all non-U.S. assets are “foreign” and that the only reason to own a non-U.S. asset is to avoid paying U.S. tax. The rules impose penalizing taxation and other punishing measures on anything “foreign.” Even in the absence of the MRT, it was and continues to be difficult for an American to have a normal life outside the United States. This is because nearly every economic step they take in the country where they live is considered “foreign,” and is therefore penalized. The MRT, adopted under the 2017 TCJA, is just one of many examples.

As a result of the policies, Americans living outside the United States are cut off from essential economic activities in the places where they live. They have difficulties not only owning a small business, but also planning for retirement and investing, holding title to their home and other family assets, and maintaining bank and other financial accounts. They are shut out from certain jobs and opportunities for community service. These obstacles prevent them from fully integrating in their communities and their own families.

Each year, the policies drive thousands of Americans living outside the United States to take the drastic and irreversible step of renouncing U.S. citizenship. They do so not because they want to but because they feel they have no choice. They have come to understand that the only way an American can live a normal life outside the United States is to stop being an American.

¹⁸ *Id.* at 10.

¹⁹ Three other countries—Eritrea, Myanmar, and Hungary—tax the foreign income of their non-resident citizens on an ongoing basis. These countries do so in manners that are different and considerably more limited as compared to the United States. For more information, see Snyder, *Unacknowledged Realities*, *supra* note 2, at 246 n.11.

Conclusion

For Americans living and operating a small business outside the United States, the TCJA was *not* a success. On the contrary, it was devastating for them and can only be described as a resounding failure.

We call upon the House Ways & Means Committee to hold hearings focused on the difficulties Americans who reside outside the United States face in navigating the increasingly complex extraterritorial tax compliance regime that the United States imposes on them.

We also call upon Congress to come into alignment with every other developed nation on the planet and move to a residence-based taxation system for individuals.²⁰ American nationals who are tax residents of other countries would continue to be liable for U.S. federal income tax for any income that is effectively connected with the United States, as all non-resident aliens are, by using Form 1040-NR instead of Form 1040.

Thank you for your attention to this matter.

Respectfully submitted by:

Stop Extraterritorial American Taxation (SEAT) Board Members (info@seatnow.org):

Dr. Laura Snyder (President)

Dr. Karen Alpert

John Richardson

Suzanne Herman

Keith Redmond

David Johnstone

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 U.S. 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>

²⁰ Other countries offer examples of how the United States can end its tax policies that discriminate against Americans while also protecting against tax abuses by wealthy persons. See Laura Snyder, *Extraterritorial Taxation #15: Taxing in Respect of Rights*, SEAT Working Paper Series #2023/15, at 7-11 (June 5, 2023).