Re: Discussion Draft of Taxpayer Assistance and Service Act

Prepared by Stop Extraterritorial American Taxation (SEAT)

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SEAT welcomes the opportunity to comment on the discussion draft of the Taxpayer Assistance and Service Act.

The mission of SEAT is to educate policymakers on the impact of US tax rules on US citizens who reside abroad. These citizens are almost always subject to worldwide taxation under two (often conflicting) sets of tax rules – those of the US and those of the country in which they actually live. No other civilized country imposes the full extent of their tax code on people whose domicile/residence is in another country. The US should have NO tax jurisdiction over citizens who are *bona fide* residents (and often citizens) of other countries.

In annual reports to Congress the Taxpayer Advocate has been addressing the administrative problems facing Americans abroad almost every year since 2002.[1] It is heartening to see the Senate Finance Committee finally taking some of these recommendations seriously.

The real problem here is that, by taxing based on citizenship rather than residence, the US is claiming tax jurisdiction over individuals who may have little or no economic ties to the US. These individuals may have obtained citizenship by birth and moved back to their parents' country of origin as young children or they may have been born to US citizens residing abroad, or they may have emigrated out of the US decades ago. None of these individuals should be

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[1] See NTA Annual Reports to Congress (https://www.taxpayeradvocate.irs.gov/reports/), e.g. 2002 (page 244), 2003 (page 127), 2004 (page 34), 2006 (page 321), 2008 (pages 119, 141-157), 2009 (pages 134-157), 2010 (page 221), 2011 (pages 129-272), 2012 (pages 134-153, 262-280), 2013 (pages 205-248), 2014 (pages 34, 79-93, 331-345), 2015 (pages 72-81, 353-362), 2016 (pages 220-229, 393-397), 2017 (pages 314-324), 2018 (pages 395-404), 2020 (pages 119-131), 2021 (pages 122-125), 2022 (pages 157-173), 2023 (pages 101-115, 116-131), 2024 (pages 29, 109-110, 127-131); and NTA Purple Book, e.g. 2017 (pages 47-48), 2019 (pages 25-26, 29-30), 2020 (pages 26-27, 29-30), 2021 (pages 21-22, 31-32), 2022 (pages 17-18, 31-32, 77-78), 2023 (pages 13-15, 24-25, 75-77), 2024 (pages 15-17, 26-27, 28-29, 79-81), 2025 (pages 16-17, 29-30, 31-32).

subject to US taxation: the US provides them with no public infrastructure, health care or education. Their claim on US government expenditure is the same as any other non-US citizen living where they live. This system of imposing US tax rules on non-resident citizens is a burden on the IRS as well as imposing disproportionate compliance costs on the affected individuals.[2]

Often, when writing tax legislation with US domestic taxpayers in mind Congress neglects to consider the effects of this legislation on those US citizens living abroad. Accordingly, we would like to address the impact of specific sections of this legislation:

Sec. 103 and **Sec. 104** – Online access to IRS is difficult for US citizens who don't live in the US and don't have a US phone number. As we wrote in *Tax Notes* in 2021,[3] and as noted by the National Taxpayer Advocate in 2024,[4] IRS online accounts must be easily accessible to overseas taxpayers. Additionally, in expanding callback technology (as mandated in Sec. 104), Congress must fund the IRS to call back international taxpayers as well as domestic ones.

Sec. 112 and 116 – These two sections address disaster deadline extensions. While it is important that taxpayers affected by disasters are granted extra time that they may need to cope with destruction of records, as well as the impact of natural disaster on their lives, only disasters inside the US are considered under the US tax code. If the US insists on applying the full Internal Revenue Code to citizens living anywhere in the world, then citizens living outside the US should receive the same concessions as domestic taxpayers. Hurricanes, cyclones, earthquakes and other natural disasters occur all over the globe. US citizens residing in a declared disaster zone should be allowed extra time, even if the disaster zone has been declared by a national or state government outside of the US.

Sec. 201 – This section attempts to combine FATCA and FBAR reporting. However, rather than combining the reporting, the provision just moves FBAR on to the tax return. To truly combine reporting, perhaps the IRS should create a single combined form with a tick-box as to whether the account is reportable under FATCA or FBAR (or even better, a classification of account type so that the IRS can determine which legislation applies). Then the IRS can extract the FBAR reportable accounts and transmit the FBAR data to FINCEN.

Sec. 202 – The burdens of complying with US tax laws for non-resident citizens have been surveyed and reported by several organizations.[5] Many of these burdens arise because of the fundamental incompatibility of US tax law with the local tax laws where US citizens live. In Australia, for example, employers are required to create and fund superannuation accounts for each employee. These retirement accounts are taxed under completely different principles than any US retirement account. To add to the confusion, there are several different types of complying superannuation funds that can hold these retirement savings. The IRS has yet to definitively tell US citizens residing in Australia how to report their superannuation on a US tax

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[2] Snyder, Alpert and Richardson, Mission Impossible: Extraterritorial Taxation and the IRS *Tax Notes Federal*, March 22, 2021, (Mission Impossible).
[3] Mission Impossible, p. 1827.
[4] NTA Blog April 2, 2024, https://www.taxpayeradvocate.irs.gov/news/nta-blog/the-dizzying-tax-challenges-for-u-s-citizens-or-residents-living-abroad/2024/04/.
[5] A list of surveys can be found in Laura Snyder, *The Invisibility of the American Emigrant*, 17 DePaul J. for Soc. Just. (2024) Available at: https://via.library.depaul.edu/jsj/vol17/iss2/6 (page 8). See also, A Study of the Consequences of the Foreign Account Tax Compliance Act on Americans Living Overseas: Survey Results and Interpretations, University of Nevada, https://web.archive.org/web/20160122095549/http://www.unr.edu/Documents/business/accounting/FATCASurveyReportFinalDraftDecember2015.pdf.

return, leaving it to the tax compliance industry to make their best guess as to how to report these accounts. For a US citizen who has emigrated to Australia (or who was born in Australia to US parents), why should the US have jurisdiction to tax their Australian retirement savings, accumulated under Australian law under rules that the Australian government has determined are appropriate policy for Australian residents? Clearly the best way to simplify US tax compliance for non-resident citizens is for the US to join the rest of the world and tax based on residence and source only.

Sec. 203 - Simplification of currency exchange rules is long overdue. For long-term emigrants from the US, an even better system would be to allow these individuals to change their functional currency to the currency of the country where they live. They are already reporting to local tax authorities in the local currency. Furthermore, residents of countries where the tax year is not the calendar year should be allowed to change their fiscal year under US tax rules to be the same tax year that they are already using to report to their local tax authority. Of course, all of this burdens the IRS, but that burden could be eliminated by taxing based on residence rather than citizenship.

Sec. 205 – Extension of time to respond to a notice of math error has been requested repeatedly by the Taxpayer Advocate since at least 2016.[6] International mail delays have long been a problem with IRS correspondence to international taxpayers. This issue has been raised by the Taxpayer Advocacy Panel (TAP) as well.[7] These delays are even more of an issue since international taxpayers often have difficulty using online portals or telephone to reach the IRS to resolve tax issues. Again, the problem is inherent in the practice of taxing the residents of other nations.

Sec. 206 – This section appears to expand on the *Relief procedures for certain former citizens* issued by the IRS in September 2019.[8] The proposed legislation will be available to all renunciants (who will generally have a second citizenship before renouncing as the State Department strongly discourages renouncing without another citizenship) who have had "limited connection" to the US for at least 5 years and would have owed minimal US tax over that 5 year period. It is helpful that the proposal prohibits the IRS from requiring reporting of a US income tax liability. This proposal should be a great help to those US citizens who have been unable to open bank accounts due to FATCA. However, what it really amounts to is incentivizing low-income citizens to renounce their US citizenship. While these citizens should be proud of their American heritage and in the past would have been extolling the virtues of being American, FATCA has made them financial pariahs. Rather than making it easier to renounce, the government should be removing the financial shackles of FATCA and citizenship-based taxation.

Overall, the Senate Finance Committee is to be commended for recognizing that US tax law has imposed a great burden on American citizens living outside of the US. These provisions, on balance, will somewhat reduce that burden. However, the best solution for Americans Abroad is for the US to join with the rest of the world and tax based on residence and source. Citizenship should not be weaponized to harm those who live outside of the US.

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[6] NTA 2016 Annual Report to Congress (page 393).
[7] Mission Impossible, page 1834.
[8] https://www.irs.gov/individuals/international-taxpayers/relief-procedures-for-certain-former-citizens

Appendix 1: NTA Reports

This table was compiled by searching all the National Taxpayer Advocate Annual Reports to Congress (ARC) and Purple Books[9] for references to Americans Abroad.

Report Year	Overseas Americans Addressed
2000	none
2001	none
2002	additional recommendation - CDP mailed from outside the US should have time extended (p244)
2003	subheading in Topic 9 Navigating the IRS (p127)
2004	subheading in Topic A-3 Remote Interaction (p34)
2005	none
2006	example for math error (p321)
2007	none
2008	MSP 9 "Access to the IRS by Individual Taxpayers Located outside the United States" (pp141-157); International Taxpayers mentioned in MSP 7 "Navigating the IRS" (p119)
2009	MSP 7 "US Taxpayers Located or Conducting Business Abroad Face Compliance Challenges" (pp134-157)
2010	mentioned as part of MSP 16 on Undelivered Mail (p221)
2011	Whole section on International Taxpayers (6 problems pp129-272)) including: MSP 8 " Individual US Taxpayers Working, Living, or Doing Business Abroad Require Expanded Service Targeting their specific needs and preferences" (p121) MSP 11 "US Taxpayers Abroad Face Challenges in Understanding How the IRS will apply penalties to taxpayers who are reasonably trying to comply or return into compliance" (p191) MSP 12 "The IRS's Offshore Voluntary Disclosure Program Bait and Switch may undermine trust in the IRS and future compliance programs" (p206)
2012	MSP 8 "The IRS's Offshore voluntary disclosure programs discourage voluntary compliance by those who inadvertently failed to report foreign accounts" (p134-153) MSP 15 "Challenges Persist for international taxpayers as the IRS moves slowly to address their needs"(p262-280)

[9] Found at https:/www.taxpayeradvocate.irs.gov/reports/

Report Year	Overseas Americans Addressed
2013	Whole section on International Taxpayers (4 problems pp 205-248) including: MSP 20 "International Taxpayer Service"(p205) MSP 22 "Offshore Voluntary Disclosure"(p228) MSP 23 "Reporting Requirements (FATCA)" (p238)
2014	MSP 7 "OVD Programs initially undermined the law and still violate taxpayer rights" (p79-93); Americans abroad mentioned in MSP 3 Geographic Footprint (p34) Legislative Recommendations: • "Improve the proportionality of the civil FBAR penalty" (p334) and • "Reduce the Burden of Foreign Account Reporting" (p343) (all foreign account reporting pp331-345)
2015	MSP7 "International Taxpayer Service" (p72-81) Legislative Recommendation: • "FOREIGN ACCOUNT REPORTING: Eliminate Duplicative Reporting of Certain Foreign Financial Assets and Adopt a Same-Country Exception for Reporting Financial Assets Held in the Country in Which a U.S. Taxpayer Is a *Bona Fide* Resident" (p353-362)
2016	MSP 16 FATCA (p220-229) Legislative Recommendation: • International Due Dates (p393-397)
2017	First Year of Purple Book. **ARC**: Legislative Recommendation: • INTERNATIONAL PENALTIES: Provide Uniformity for the Reasonable Cause Exception to Initial and Continuation Penalties for the Failure to File Information Returns Under IRC §§ 6038, 6038A, 6038D, 6677, and 6679 (pp314-324) **Purple Book**: 26. Provide Additional Time for Taxpayers Outside the United States to Request Abatement of a Math Error Assessment Equal to the Time Extension Allowed in Responding to a Notice of Deficiency (pp47-48)
2018	**ARC**: Legislative Proposals: • INTERGOVERNMENTAL AGREEMENTS (IGAS): Amend Internal Revenue Code § 1474 to Allow a Period of Notice and Comment on New IGAs and to Require That the IRS Notify Taxpayers Before Their Data Is Transferred to a Foreign Jurisdiction Pursuant to These IGAs, Unless Unique and Compelling Circumstances Exist (p395-399) • FOREIGN ACCOUNT REPORTING: Authorize the IRS to Compromise Assessed FBAR Penalties It Administers (p400-404) **2019 Purple Book**: 12. Harmonize Reporting Requirements for Taxpayers Subject to Both FBAR and FATCA By Eliminating Duplication and Excluding Accounts a U.S. Person Maintains in the Country Where He or She Is a *Bona Fide*

Report Year	Overseas Americans Addressed
	Resident (p25-26) 14. Provide Additional Time for Taxpayers Outside the United States to Request Abatement of a Math Error Assessment Equal to the Time Extension Allowed in Responding to a Notice of Deficiency (pp29-30)
2019	**ARC**: none. **2020 Purple Book**: 11. Harmonize Reporting Requirements for Taxpayers Subject to Both the Report of Foreign Bank and Financial Accounts and the Foreign Account Tax Compliance Act by Eliminating Duplication and Excluding Accounts a U.S. Person Maintains in the Country Where He or She Is a Bona Fide Resident (p26-27) 14. Provide Additional Time for Taxpayers Outside the United States to Request Abatement of a Math Error Assessment Equal to the Time Extension Allowed in Responding to a Notice of Deficiency (p33-34)
2020	**ARC**: MSP 8. INTERNATIONAL: The IRS's Assessment of International Penalties Under IRC §§ 6038 and 6038A Is Not Supported by Statute, and Systemic Assessments Burden Both Taxpayers and the IRS (p119-131) **2021 Purple Book**: 9. Harmonize Reporting Requirements for Taxpayers Subject to Both the Report of Foreign Bank and Financial Accounts and the Foreign Account Tax Compliance Act by Eliminating Duplication and Excluding Accounts a U.S. Person Maintains in the Country Where He or She Is a Bona Fide Resident (p21-22) 13. Allow Additional Time for Taxpayers to Request Abatement of a Math Error Assessment Equal to the Additional Time Allowed to Respond to a Notice of Deficiency When the Math Error Notice Is Addressed to a Person Outside the United States (p31-32)
2021	**ARC**: Taxpayers living abroad mentioned in MSP 7 Digital Communications (p122&124) and heading "Challenges Remain for International Taxpayers and Holders of Individual Taxpayer Identification Numbers Who Need Access to Digital Communication Services" (p125) **2022 Purple Book**: 8. Harmonize Reporting Requirements for Taxpayers Subject to Both the Report of Foreign Bank and Financial Accounts and the Foreign Account Tax Compliance Act by Eliminating Duplication and Excluding Accounts Maintained by U.S. Persons in the Countries Where They Are Bona Fide Residents (p17- 18) 14. Allow Additional Time for Taxpayers to Request Abatement of a Math Error Assessment Equal to the Additional Time Allowed to Respond to a Notice of Deficiency When the Math Error Notice Is Addressed to a Person Outside the United States (p31-32) 38. Modify the Definition of "Willful" for Purposes of Finding Report of Foreign

Report Year	Overseas Americans Addressed
	Bank and Financial Accounts Violations and Reduce the Maximum Penalty Amounts (p77-78)
2022	**ARC**: MSP 10 OVERSEAS TAXPAYERS Taxpayers Outside of the United States Face Significant Barriers to Meeting Their U.S. Tax Obligations (p157-173) In **2023 Purple Book**: 6. Eliminate Duplicative Reporting Requirements Imposed by the Bank Secrecy Act and the Foreign Account Tax Compliance Act (p13-15) 10. Allow Additional Time for Taxpayers to Request Abatement of a Math Error Assessment Equal to the Additional Time Allowed to Respond to a Notice of Deficiency When the Math Error Notice Is Addressed to a Person Outside the United States (p24-25) 34. Modify the Definition of "Willful" for Purposes of Finding Report of Foreign Bank and Financial Accounts Violations and Reduce the Maximum Penalty Amounts (p75-77)
2023	**ARC**: MSP 8. INTERNATIONAL: The IRS's Approach to International Information Return Penalties Is Draconian and Inefficient (p101-115) MSP 9. COMPLIANCE CHALLENGES FOR TAXPAYERS ABROAD: Taxpayers Abroad Continue to Be Underserved and Face Significant Challenges in Meeting Their U.S. Tax Obligations (p116-131) **2024 Purple Book**: 7. Eliminate Duplicative Reporting Requirements Imposed by the Bank Secrecy Act and the Foreign Account Tax Compliance Act (p15-17) 11. Give Taxpayers Abroad Additional Time to Request Abatement of a Math Error Assessment (p26-27) 12. Give Taxpayers Abroad Additional Time to Request a Collection Due Process Hearing and to File a Petition Challenging a Notice of Determination in the U.S. Tax Court (p28-29) 35. Modify the Definition of "Willful" for Purposes of Determining Report of Foreign Bank and Financial Accounts Violations and Reduce the Maximum Penalty Amounts (p79-81)
2024	**ARC**: Heading "The IRS Must Expand Access to the Where's My Amended Return? Tool for Overseas Taxpayers" (p29) in MSP 2: Return Processing; Heading "Example of Costs and Burdens on Taxpayers Living Abroad to Comply" in MSP 8: Tax and Financial Literacy (p109-110); Heading "The IRS's Automatic Assessment of International Information Return Penalties Causes Undue Hardship, Creates Unnecessary Work, and Discourages Compliance" in MSP 9: Civil Penalty Administration (127-131) **2025 Purple Book:**

Report Year	Overseas Americans Addressed
	7. Eliminate Duplicative Reporting Requirements Imposed by the Bank Secrecy Act and the Foreign Account Tax Compliance Act (p16-17) 12. Give Taxpayers Abroad Additional Time to Request Abatement of a Math Error Assessment (p29-30) 13. Give Taxpayers Abroad Additional Time to Request a Collection Due Process Hearing and to File a Petition Challenging a Notice of Determination in the Tax Court (p31-32)

Note: Purple Books started in 2017. They are issued on 31 December each year and dated for the *following* year (except 2017) while the Annual Report to Congress issued on the same date is dated for the prior year. On 31 Dec 2024 ARC 2024 and Purple Book 2025 were issued.