



Re: “Combatting Inequality: The Tax Code and Racial, Ethnic, and Gender Disparities”

Hearing April 20, 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 April 20, 2021 Senate Finance Committee Hearing: “Combatting Inequality: The Tax Code and Racial, Ethnic, and Gender Disparities.”

The title to this hearing acknowledges that the United States Tax Code has different impacts upon different people based upon race, ethnicity, and gender. This list, however, leaves out at least one additional critical factor. [Senator Crapo himself refers to that factor in his statement](#): **geography**.

Senator Crapo is correct: the tax code (sometimes by accident and sometimes by design) does lead to differing impacts based on where an individual – who is a citizen or resident of the United States – lives. Generally, the United States has one tax system for US citizens who live inside the geographical borders of the United States. The United States operates a separate and more punitive “Extraterritorial Tax System” for US citizens (and Green Card holders) living outside the geographical borders of the United States.

The “Extraterritorial Tax System” is not a secret: it has been explained well by a multitude of observers.<sup>1</sup> This punitive regime affects persons of all races (including African-Americans<sup>2</sup>), genders, and ages. Its sole factor for discrimination is geography – the mere fact of living outside the United States coupled with having income, assets and/or financial accounts outside the United States.

When US citizens move from the United States and become tax residents of another country, they are subject to a US tax regime that is more complex, punitive and penalty laden than are US residents. To compound matters, the taxation of Americans abroad varies depending on where they actually live. For example, US citizens living in Canada are subject to a different set of US tax rules than US citizens living in Israel.

Indeed, the Senate Finance Committee recognized this problem at least as early as 2015. That is when the [Senate Finance Committee Bipartisan Tax Working Group](#) on International Tax concluded their [report](#) 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.

Six years have passed and there is still no movement on overhauling the taxation of individual Americans living overseas, in spite of the clear directive from the International Tax Working Group. In fact, the situation for Americans abroad has gotten far worse. This is due in large part to the enhancements to the Subpart F regime in TCJA.<sup>1</sup> We informed the Senate Finance Committee in that regard in our submission dated April 22, 2021, [available here](#).

As stated above, Senator Crapo was correct in acknowledging that the US tax code leads to differing impacts across geography. Further, he was also correct to point this out together with the other factors of race, gender, and age. This is because Americans living overseas are the victims of prejudice – and the victims of prejudicial taxation policies – in a manner that is closely akin to the prejudice – and prejudicial policies – to which many other Americans are victim as a result of racism, sexism, and ageism. Researchers refer to this prejudice with a variety of names, including “placism,” as well as “prejudice of place,” “blemish of place,” “spatial taint,” “stigma of place,” and “territorial stigmatization.”<sup>2</sup>

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.<sup>3</sup>

This comment, alongside many others expressed by other members of the United States Congress dating back to the Civil War right up to today,<sup>4</sup> 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 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.

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

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<sup>1</sup> *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).

<sup>2</sup> Laura Snyder, *Taxing the American Emigrant*, 74 Tax Law. 299, 313-17 (2021), available at SSRN: <https://ssrn.com/abstract=3795480>.

<sup>3</sup> 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).

<sup>4</sup> Laura Snyder, *Taxing the American Emigrant*, at 317-20.

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.<sup>5</sup>

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>

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<sup>5</sup> 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>.