Email to: internationaltax@finance.senate.gov
Senate Committee on Finance

22 April 2021

RE: Overhauling International Taxation

SEAT (Stop Extraterritorial American Taxation) would like to provide comments on the document "Overhauling International Taxation" posted on the Committee's website. Unfortunately, this document and the international tax policies put forward by Congress and the current administration are a continuation of Congress' callous neglect of American citizens living outside of the United States. The best solution to this problem is for the US to come into alignment with every other developed nation on the planet and **move to a residence-based taxation system for individuals**. It is imperative that Congress work to minimize the unintended consequences of changes to the international tax system by carefully targeting these provisions at US-headquartered multinational corporations so that individuals and entrepreneurs living outside the US are not treated as "mini-multinationals" and burdened with excessive compliance and double taxation.

A Brief History

In 2015 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).
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> 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. Most of the damage has been as a direct result of the enhancements to the Subpart F regime in TCJA.[1] Without consideration of individuals generally, and Americans abroad in particular, the Internal Revenue Code was amended to impose both the §165 Transition Tax and the §151A tax on Global Intangible Low-Taxed Income (GILTI) in a way that, in its plain language, includes Americans abroad running small businesses where they live, work, and pay tax. There is no evidence whatsoever that the application of these provisions to Americans abroad was given any consideration. This is true even though the number of individual Americans abroad impacted by the legislation is far greater than the number of US multinationals impacted by this legislation. Although the changes enacted as part of TCJA were generally beneficial

[1] *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).

to US multinationals, they were devastating to US persons abroad, especially those whose retirement savings was the equity in their small business.[2]

Is History Repeating Itself?

Now, in 2021, the Senate Finance Committee and other branches of the US government are intending to make further changes to the GILTI rules. In none of the hearings or reports has there been a single mention of the impact of these changes on individuals, including Americans abroad. In other words, the Senate Finance Committee is proposing legislation that will be interpreted to impact individuals who are simply given no consideration whatsoever.

The rationale for the proposed changes is to prevent large US corporations from transferring profits that should be sourced in the United States outside of the United States to be taxed at lower rates. This rationale does not and cannot have any application at all to US citizens running yoga studios, dentist offices, or convenience stores inside their country of residence. These individuals are not, by trying to make an income in their country of residence, diverting profits that should have been made inside the US to a tax haven jurisdiction.

A Proposed Solution

The time has come for the Senate Finance Committee to start considering the individuals affected by their proposed legislation and give them the concern and respect that they are entitled to as individual US citizens. The obvious solution is for the United States to join the rest of the developed world and tax based on residence rather than citizenship. Taxing non-resident citizens is “Mission Impossible,” as it is impossible to fairly administer an extraterritorial tax system and afford non-resident US citizens the rights guaranteed by the Taxpayer Bill of Rights (IRC §7803(a)(3)).[3]

Given that there is not currently a Residence Based Taxation proposal before Congress, it is imperative that international tax rules be closely targeted to avoid unintended consequences. In addition to the suggestion in the “Overhauling International Taxation” that all high tax jurisdictions be ignored in computing GILTI, we suggest two ways that taxation of multinational corporations could be better targeted.

1. The subpart F regime in general (including GILTI) should not apply to a controlled foreign corporation that, when aggregated with related businesses, meets the size standards for small businesses set out by the Small Business Administration. This should have minimal revenue impact as the Treasury believes that “the ownership of sufficient stock in a CFC in order to be a U.S. shareholder generally entails significant resources and investment.”[4]
2. Alternatively, the subpart F rules should not apply to any individual who meets the §911 residence requirements and is a US shareholder of a foreign corporation organised in their

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[2] For more detail on the impact of TCJA on Americans Abroad, see Alpert, Karen (2019)"Callous Neglect: The impact of United States tax reform on nonresident citizens", presented at the Australasian Tax Teachers Association, and “GILTI as Charged,” a series of videos by John Richardson and Karen Alpert explaining the consequences of GILTI to American entrepreneurs living outside of the US.

[3] Snyder, Laura and Alpert, Karen and Richardson, John, Mission Impossible: Extraterritorial Taxation and the IRS (March 22, 2021). 170 Tax Notes Federal 1827 (2021), Available at SSRN: https://ssrn.com/abstract=3828673.

[4] “Guidance Under Sections 951A and 954 Regarding Income Subject to a High Rate of Foreign Tax” (https://www.federalregister.gov/d/2020-15351/p-164). This statement clearly doesn’t consider the position of Americans abroad who own small businesses where they live.

country of residence. For these individuals, the “foreign” corporation that they control is not foreign to them – it is in the same country where they live, work and pay taxes.

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