



REPUBLICANS OVERSEAS

September 1, 2020

HAND-DELIVERED

Mark R. Meadows
Assistant to the President and Chief of Staff
The White House
1600 Pennsylvania Avenue NW
Washington, DC 20500

RE: Executive Order Tax Regulatory Relief for Overseas Americans

Dear Mark:

At the 2016 Republican National Convention in Cleveland, Ohio, representatives of Republicans Overseas discussed with you the plight of more than 9 million Americans living overseas who are being harmed by the consequences of the Foreign Account Tax Compliance Act (FATCA) implemented during the Obama-Biden Administration. This statute has caused immeasurable harm to loyal American citizens residing abroad, as you learned during the landmark hearings that you organized as Chairman of the House Subcommittee on Government Operations in April 2017. Today, overseas Americans are not only seeing their lives embittered by FATCA, but as an unintended result of the President's Tax Cut and Jobs Act of 2017, they find themselves subject to new taxes and an even more onerous set of compliance obligations.

President Trump recently signed a series of Executive Orders designed to alleviate the burdens imposed by the payroll tax and other federal regulations administered by the Treasury Department and the IRS. Republicans Overseas applauds the President's initiatives given the Democrats' intransigence and political opportunism.

We propose that the President sign Executive Orders to relieve the suffering of overseas Americans in a manner that is fully in line with your *America First* agenda and with the RNC 2016 Platform. The implementation in 2010 of FATCA has made it impossible for many overseas Americans to live a normal life. This has resulted in a 2400% increase in citizenship renunciations in the first half of 2020 as compared to 2008. One of the President's second-term agenda items is to "End Bureaucratic Government Bullying of U.S. Citizens and Small Businesses". This executive order would indeed end the regulatory tyranny currently being imposed on overseas Americans.

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The President could issue Executive Orders in 2020 to investigate and end punitive regulations levied on overseas American citizens and businesses. Specifically, these Orders would:

a. **Exempt overseas American small businesses from having to comply with the Transition Tax and GILTI tax.**

While these taxes were aimed at incentivizing large corporations to repatriate profits accumulated overseas, the TCJA 2017 inadvertently applied these new taxes and regulations to small privately owned businesses causing them to incur huge compliance costs. Exempting small businesses meeting specific criteria (outlined in a draft executive order in Appendix A) would remove a harmful burden from overseas American entrepreneurs.

b. **Create a Commission on Americans Overseas to investigate the burdens caused by citizenship-based taxation and onerous regulation.**

America is one of only two nations that taxes its citizens based on citizenship (the other being Eritrea). This double taxation makes overseas Americans and overseas American businesses much less competitive than their foreign counterparts. Overseas American entrepreneurs face double business taxation due to their citizenship from which corporations are exempt.

In 2018, Representative George Holding (R – NC) introduced bill H.R. 7358 – Tax Fairness For Americans Abroad Act. This bill utilized existing tax law but re-classified tax-compliant overseas Americans as non-resident foreigners for the duration of their overseas stay. Income earned overseas was exempt from US taxation, while income earned in the US was taxed at the usual rates.

FATCA (Foreign Account Tax Compliance Act) has cost businesses hundreds of billions of dollars in compliance fees while also costing everyday overseas Americans access to basic financial services and retirement plans. Enforcing FATCA requires the implementation of intergovernmental agreements with countries to collect financial data from overseas American citizens and transfer it to the IRS. The legislation essentially makes foreign governments extensions of the IRS, even when they are hostile nations such as China or Venezuela.

Moreover, as Senator Rand Paul has testified at your 2017 hearings, FATCA is a blatant infringement of the privacy rights of millions of Americans abroad and at home. The IRS has spent more than \$380 million from 2010 through 2018 in preparing to enforce FATCA but has not recovered any money. Traditional IRS methods for locating tax cheats are more efficient and effective and do not infringe on American citizens' rights to privacy and due process.

Overseas Americans yearn to be freed from the burdens of double taxation and excessive regulation. Suspending FATCA and exempting small businesses from the Transition and GILTI regulations would definitely be putting Americans First.

We can provide further documentation and evidence as required, and we have included specific proposals with regards to the regulations in appendices.

We greatly appreciate your consideration of these issues and hope that you will be able to lift the burden off the shoulders of nine million overseas Americans.

Sincerely,

Solomon Yue
CEO & VP Republicans Overseas

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Republicans Overseas VP and General Counsel
Republicans Overseas Chair - Israel

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Republicans Overseas Chair – France

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Republicans Overseas Chair - Sweden

Tony Rodriguez
Republicans Overseas Chair – Thailand

Joe Beydoun
Republicans Overseas Chair – United Arab
Emirates

Vincent Kobler
Republicans Overseas Chair - Vietnam

APPENDIX A – DRAFT EXECUTIVE ORDER

DRAFT EXECUTIVE ORDER ON PROMOTING THE AMERICAN ECONOMY ABROAD AND GRANTING RELIEF TO OVERSEAS AMERICANS.

SUBJECT: Promoting the American Economy Overseas

By the authority vested in me as President by the Constitution and the laws of the United States of America, it is hereby ordered as follows:

Section 1. Policy. An estimated 9,000,000 patriotic Americans residing overseas are invaluable cultural and economic ambassadors for the United States. For too long, the value of Americans overseas has not been duly recognized or utilized. Indeed, for decades, Americans overseas have suffered from wave after wave of federal laws and regulations that have disrupted their basic financial and banking lives, creating endless and needless obstacles for their daily existence. Our goal must be to leverage this great asset for the benefit of our country. To that end, today I direct the Secretary of the Treasury and the Small Business Administration to carry out the following actions.

Section 2. Transition Tax and GILTI. The Secretary of the Treasury is hereby directed to use his authority pursuant to 26 U.S.C. §965(o), 26 U.S.C. §7805(a) and 5 U.S.C. §604 to exempt small businesses, as defined in the Small Business Act, from the Transition Tax (IRC 965) and GILTI (IRC 951A), effective retroactively December 22, 2017.

Section 3. Commission on Americans Overseas (“Commission”). The Secretary of the Treasury is hereby directed to establish a bipartisan Commission to examine the difficulties faced by Americans overseas with regard to the Internal Revenue Code and Foreign Accounting Tax Compliance Act (FATCA). The Commission consist of nine (9) members and shall include no less than two (2) members selected from the community of Americans overseas. The Commission shall carefully balance the legitimate goals of the U.S. Government, on the one hand, with unnecessary harm that many Americans overseas may be suffering as a result of these laws and regulations. The Commission shall publicly report its findings, together with concrete recommendations as to how laws, rules and regulations can be enforced to achieve their legitimate goals without causing undue harm to Americans overseas.

Sec. 4. Export of American Goods and Services. The export of American goods and services abroad is of vital importance to the U.S. economy. American small business owners abroad can and should be utilized to promote US-based exports. Accordingly, both the Secretary of the Treasury and Small Business Administration shall convene an advisory working group together with select American business representatives in the U.S. and abroad to consider and implement cost-effective streamlined tools that can increase American exports.

This Executive Order is not intended to, and does not, create any right or benefit, substantive or procedural, enforceable at law or in equity by any party against the United States, its departments, agencies, or entities, its officers or employees.

APPENDIX B – ENDING CITIZENSHIP-BASED TAXATION THROUGH TREASURY REGULATIONS

Treasury has the authority to exempt Americans abroad from taxation on their non-U.S. income.

The basis for taxation of US expats is Section 1 of the 1913 Internal Revenue Code (“IRC”) which imposes taxation on every “individual”.

Treasury can through regulation under Section 1 of the IRC “exclude” certain classes of people from the definition of “individual”.

The word “individual” is extremely broad.

<https://www.law.cornell.edu/uscode/text/26/1>

Treasury in its regulations for Section 1 restricts the definition of “individual” to “citizen or resident”. Specifically, the regulation reads in part:

<https://www.law.cornell.edu/cfr/text/26/1.1-1>

(1) Section 1 of the Code imposes an income tax on the income of every individual who is a citizen or resident of the United States

Notably U.S. “nationals” are excluded from this definition. By excluding “nationals”, Treasury has demonstrated a willingness to define “individual” in a way that excludes certain kinds of “individuals” from U.S. worldwide taxation. It is submitted that Treasury has the power to exclude Americans abroad, who meet the residence requirements for the Section 911 Foreign Earned Income exclusion, from worldwide taxation.

Our suspicion is that at the time this regulation was enacted that, for all practical purposes:

1. Citizen was equivalent to resident; and
2. The word “resident” was included to ensure that noncitizens who had a sufficient connection to the United States were treated for tax purposes as citizen/residents. To put it another way: The original intent of the regulation may have envisioned “residence-based taxation”.

Therefore, to end citizenship-based taxation, "individual" in Section 1 of the 1913 Internal Revenue Code shall be defined by the IRS as a legal resident of the United States, and therefore, only individuals who are legally resident in the US shall be subject to taxation under the IRC. This potential change would not impact on taxation of income generated in the US by non-resident citizens or aliens.