

## Territorial Taxation for Individual (TTFI) Americans Abroad

By Solomon Yue, Vice Chairman and CEO of Republicans Overseas

### *Territorial taxation for individual (TTFI) Americans abroad background*

Before the 2016 RNC National Convention, James Bopp, Jr. (RO lead counsel for the Foreign Account Tax Compliance Act (FATCA) litigation against the IRS) and I sold a senior Trump campaign official our TTFI idea. The Republicans Overseas (RO) TTFI idea was inspired by GOP Presidential candidate Trump who campaigned on territorial taxation for US multinationals, to bring back their foreign earned profits parked overseas and spur domestic job growth and infrastructure building.

By reducing the 40% premium cost to hire Americans working overseas due to both Citizenship Based Taxation (CBT) and FATCA, US multinationals would not only increase their worldwide competitiveness, but their businesses also could field their A teams abroad. By having more Americans working overseas in managerial positions, more American-made goods and services would be used. That translates into stateside export sector job growth.

### *The first TTFI legislative attempt*

On January 6, 2017, RO published a TTFI whitepaper and distributed it to the White House, the GOP House leadership and the GOP Senate leadership. In addition, we also recruited one member of the House Ways and Means Committee Congressman George Holding (R-NC) and one member of the Senate Finance Committee, Senator Dean Heller (R-NV) to advocate our TTFI proposal in their respective committees during the 2017 Tax Cuts and Jobs Act (TCJA) legislative process.

Because the Joint Committee on Taxation (JCT) failed to score our TTFI proposal in time, neither Congressman Holding nor Senator Heller were able to get their respective committee to debate and vote to adopt it. As a result, our first TTFI legislative effort failed. The only saving grace was that as a consolation, House Ways and Means Chairman Kevin Brady gave Congressman Holding five minutes to talk on the House floor about the need for Congress to end double taxation for nine million overseas Americans.

### *The TTFI after-action review*

RO immediately regrouped by conducting a TTFI after-action review. We realized that it was an uphill legislative battle for many reasons. CBT is a 154-year-old law and survived a US Supreme Court challenge (*Cook v. Tait*). Many unjust laws have been added to CBT such as FATCA, TCJA transition and Global Intangible Low/Taxed Income (GILTI) taxes.

Americans abroad have no political leverage because only 12% voted in the 2016 election. The State Department estimated there are nine million Americans living and working overseas. About 4.5 million were eligible to vote but only 550,000 voted in 2016.

Few individual overseas Americans donate to politicians in any party. By comparison, American Chambers of Commerce (AmChams) throughout the world have spent millions in the last 10 years lobbying politicians from both sides of the aisle to push through territorial taxation for US multinationals as part of TCJA in 2017. Individuals cannot match this kind of lobbying power in terms of money and time investment.

Overseas Americans have been under-represented due to the fact they neither vote in a single Congressional or Senatorial district nor vote as a group in Presidential elections. Politicians, therefore, feel no pressure to campaign toward this group. They can't win re-election by campaigning on expat issues.

### *Executing five Ps for the long haul*

RO after-action review helped us realize that defending overseas Americans' rights is a long-haul task and requires a comprehensive and systematic approach, implemented in small steps. We understand this group is frustrated and wants to get everything done in a single TTFI legislation. But that approach not only goes against the political reality in Congress but likely would result in killing our second TTFI legislative attempt. As a result, we developed and are executing "Five Ps" approach: Philosophy, Policy, Politics, Persuasion, and Persistence.

Philosophically speaking, we need to make sure that we are defending one basic constitutional principle: equal treatment under the law. We asked ourselves three fairness questions: How is it fair for overseas Americans to pay double taxation because of CBT while stateside Americans don't? How is it fair that stateside Americans got their tax cut last year while expats didn't? and How is it fair that corporate America got territorial taxation for corporations (TTFC) while individual Americans overseas not only didn't get TTFI but also effectively pay for TTFC?

As a policy, we need to examine if TTFI (in which everyone pays their taxes to their local tax authority where they make their money) is still a sound legislative vehicle for change. We discussed, debated, and listened publicly via Twitter what should be ideal TTFI legislation that could still meet two requirements: covering as many expats as possible and still score well by JCT. We brought many suggestions back to Congress to create a discussion draft of “Taxation of American Abroad” for JCT to score. In addition, we were mindful about how to use the passage of this TTFI to fix FATCA and TCJA transition and GILTI taxes issues.

Politically speaking, we needed to have TTFI legislation which connects to TTFC, lays a foundation for further legislative actions on FATCA and TCJA transition and GILTI taxes, and creates a minimum disturbance in existing tax codes. We do not want special interest groups to gang up on us to oppose TTFI nor complicated rewrite of tax codes requiring a lot of time.

We also needed to build a conservative coalition which would be led by Grover Norquist of Americans for Tax Reform based on his successful record on the TCJA passage. RO Chairman Bruce Ash and I met with Grover, who not only agreed to reach out to national conservative organizations in support of TTFI, but also offered to host bipartisan TTFI working group luncheons.

In September 2018, 12 national organizations including the National Taxpayers Union, Americans for Tax Reform, Center for a Free Economy, Tea Party Nation, Hispanic Leadership Fund, Center for Freedom and Prosperity, Defense Priorities Initiative, FreedomWorks, Campaign for Liberty, Less Government, Taxpayers Protection alliance, and Free the People jointly wrote to both House Ways and Means Chairman Kevin Brady and Senate Finance Committee Chairman Orrin Hatch in support of our TTFI legislation.

Bruce Ash and I had met with Chairman Brady in March 2018 to find out how RO could be more helpful to our collective TTFI legislative efforts. He advised RO to borrow AmChams’ lobbying power in support of TTFI. As a result, I made multiple AmCham-sponsored TTFI presentations, in Hong Kong in May, Toronto in August, and London, Paris, Frankfurt, and Rome in September 2018. All those TTFI events were bipartisan and well received: TTFI is an American issue, not a Republican, Independent, or Democratic issue. All these AmChams expressed their support for TTFI legislation. They understand the positive effect on their member companies’ competitiveness in the world marketplace when their companies’ American employees abroad no



*Author Solomon Yue and Joe Smallhoover of Democrats Abroad discussing TTFI at the American Chamber of Commerce in Paris*

longer file tax returns and pay US income tax on foreign source income under TTFI.

In London, I told my audience that the 4th P is persuasion. As Prime Minister Thatcher said, “First you win the argument, then you win the vote.” We developed four winning arguments. TTFI leads to export sector job growth for the White House, Congress, and AmChams. For stateside Americans, the winning argument is: since you got your tax cut last year, it is fair for overseas Americans to have their tax cut by ending double taxation and replacing CBT with TTFI. To overseas Americans, TTFI is not the panacea solving all problems because it is only the first step to restore many rights. To pass TTFI, we must unite with one voice and not allow perfection to become the enemy of the good.

I told my audience in Paris that the last P is persistence, with give-and-take to solve problems and develop a discussion draft for “Taxation of Americans Abroad” for JCT to score. The last P also requires patience and time-consuming negotiations. The 3-year tax compliance requirement to be a TTFI qualified non-resident taxpayer is a good example. Initially, it didn’t cover dual citizens and Accidental Americans who may not owe any taxes due to living in high tax rate jurisdictions, but are not in tax compliance and receive FATCA letters from their banks. Their only recourse is to renounce their citizenship.

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RO's solution is to offer dual citizens and Accidental Americans 3-year tax compliance without FATCA and Report of the Foreign Bank and Financial Accounts (FBAR) penalties. In comparison, citizenship renunciation requires 5-year tax, FATCA and FBAR compliance with FATCA and the FBAR penalties, \$2,350 renunciation fee, and exit tax on net worth in excess of \$2 million. Some overseas Americans were not happy with this solution because they want total amnesty. Unfortunately, this is unrealistic.

To connect TTFI with TTFC, there is a transition tax for TTFI qualified non-resident taxpayers. We negotiated to increase net worth exemption from initial offer of \$5 million to \$10 million. We successfully argued if a TTFI qualified non-resident taxpayer bought a house 30 years ago in Paris for \$250,000, today the house could be more than \$5 million on paper. We don't want him to sell his house, which can't be replaced, to pay for his TTFI transition tax.

As a result, now we have two triggers for TTFI transition tax exemption: first, a TTFI non-resident taxpayer has the average annual net income tax no greater than \$165,000 for last three years and second, the net worth of the individual as of the date of TTFI introduction is less than \$10 million. This will cover most middle-class Americans abroad.

TTFI also is about allowing American overseas minors to keep their citizenships. In Toronto, I shared my promise to Daniel Kuettel regarding saving his daughter's citizenship. Mr. Kuettel who is a veteran and one of plaintiffs in the FATCA court challenge, already renounced his citizenship in order to get his mortgage refinanced. His teen daughter wants to open a college savings account. The daughter needs Kuettel to co-sign the account. That will subject Kuettel to FATCA reporting and putting a future mortgage renewal in jeopardy again. Many overseas Americans supported naming TTFI as the "Taxation of Americans Abroad to Save Citizenship Act" as it would save families like the Kuettels from feeling obligated to renounce their US citizenship.

### ***TTFI legislation introduction is delayed***

At the present, our progress has been delayed because JCT has been carefully analyzing our TTFI proposal. Acceptance of TTFI will be a big change in the way that Americans abroad are taxed. It is important that we succeed, both for current and future Americans abroad. For current overseas Americans, there are some outstanding issues relating to the transition to TTFI, mainly relating to retirement plans. JCT is currently considering these final issues and we patiently await their scoring of TTFI, which we expect soon. ■

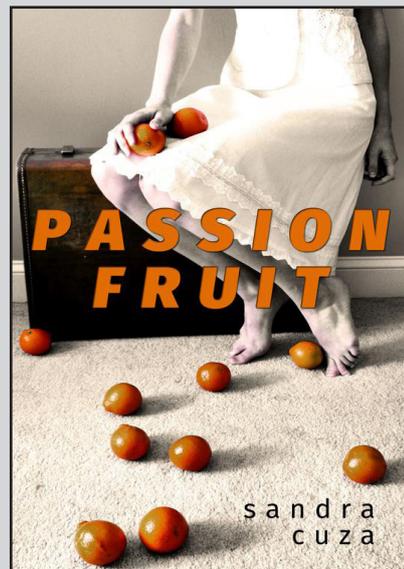
## **Americans Abroad Reading List**

By Victoria Ferauge

Here are a few books to add to your winter reading list. These are titles by or about Americans abroad. If you would like to suggest other titles that might interest AARO members, please send us an email at [vpcommunications@aaro.org](mailto:vpcommunications@aaro.org).

### ***Redefining Japanese-ness: Japanese Americans in the Ancestral Homeland*** by Jane H. Yamashiro (2017)

A study about Americans in Japan who are not "visible minorities" because they are the descendants of Japanese who immigrated to the US. Yamashiro says that a factor in how they are perceived in Japan has to do with where they came from in the US: Hawaii versus the mainland.



### ***Passion Fruit*** by Sandra Cuza (2014)

The American author of this novel lived in Brazil for over 20 years. Cuza draws on that experience to tell the tale of an American family from California expatriated to Sao Paulo for two years.

### ***The Dead Ladies Project: Exiles, Expats, and Ex-Countries*** by Jessa Crispin (2015)

In 2009 Crispin left Chicago for Europe and travelled through nine countries using the works of writers to examine her own expat experiences and personal relationships. ■