REQUEST THAT UNITED STATES ADOPT THE WORLD STANDARD OF RESIDENCE TAXATION FOR NON-RESIDENT U.S. CITIZENS:

A SUBMISSION TO THE SENATE FINANCE COMMITTEE INTERNATIONAL TAX WORKING GROUP

JOHN RICHARDSON and STEPHEN KISH
TORONTO, CANADA
APRIL 15, 2015

This is submission 1 of 7 total submissions and is entitled:

"Richardson Kish Main Citizenship Taxation April 15, 2015 International Tax"

The other submissions are:

(2) "Richardson Kish Video Testimonials of Americans Abroad - April 15, 2015 - International Tax"

(3) "Richardson Kish Comments of Americans Abroad on Citizenship Taxation - April 15, 2015 - International Tax"

(4) "Richardson Kish The S. 877A Exit Tax - April 15, 2015 - International Tax"

(5) "Richardson Kish Revenue Raising Measures - April 15, 2015 - International Tax"

(6) "Richardson Kish Mutual Fund Comparison: Canada vs. United States – April 15, 2015 - International Tax"

(7) "Richardson Kish Complaint to United Nations Re: United States Citizen Taxation – April 15, 2015 – International Tax"

ALL OF THE SUBMISSIONS CAN BE VIEWED HERE:

https://app.box.com/s/yn25x1gketbzrkqp2ghu5sbce7mqoynu

John Richardson
Stephen Kish
Toronto, Canada
citizenshiptaxation@gmail.com

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On April 15, 2015, John Richardson and Stephen Kish sent seven submissions to the Senate Finance Committee.

Although the seven submissions are related, each submission is separate from the others.

Submissions 2-7 are Appendices to the Submission 1 - the "Richardson Kish Main Citizenship Taxation April 15, 2015 International Tax" submission:

1. Richardson Kish Main Citizenship Taxation - April 15, 2015 - International Tax

2. Richardson Kish Video Testimonials of Americans Abroad - April 15,2015 - International Tax

3. Richardson Kish Comments of Americans Abroad Citizenship Taxation - April 15, 2015 - International Tax

4. Richardson Kish The S. 877A Exit Tax - April 15, 2015 - International Tax

5. Richardson Kish Revenue Raising Measures - April 15, 2015 - International Tax

6. Richardson Kish Mutual Fund Comparison: Canada vs. United States – April 15, 2015 - International Tax

7. Richardson Kish Complaint to United Nations Re: United States Citizen Taxation – April 15, 2015 – International Tax

This is Submission #1 with the title "Richardson Kish Main Citizenship Taxation -- April 15 2015 -- International Tax"

ALL OF THE SUBMISSIONS CAN BE VIEWED HERE:

https://app.box.com/s/yn25x1gketbzrkqp2ghu5sbce7mqoynu

EXECUTIVE SUMMARY

PURPOSE

The PURPOSE of this submission is to help the Senate Finance Committee establish whether U.S. citizenship taxation is good policy for the United States.

RECENT ACTIVITY OF SENATE FINANCE AND HOUSE WAYS & MEANS COMMITTEES IN REFORMING TAX POLICY FOR NON-RESIDENT U.S. CITIZENS:

1. **In 2013 a large number of submissions were made to the House Ways & Means Committee detailing the specifics of harm caused by citizenship taxation imposed on non-resident U.S. citizens.** No mention of, or recommendation for, relief was made in the tax reform proposal of the Committee.

2. **On November 19, 2013 Max Baucus, Chair of the Senate Finance Committee, issued a draft discussion on International Business Tax Reform. The report from the Senate Finance Committee included the following text aimed at providing relief to "non-resident U.S. citizens": "**Provide an election to citizens who are long-term nonresident citizens to be taxed as nonresident aliens if they meet certain conditions". However, legislation that might provide relief has yet to be introduced in the Senate.

4. **On January 17, 2014 John Richardson, William Yates, and Professor Stephen Kish sent a submission to the Senate Finance Committee** with detailed analysis and recommendations, not yet enacted, for adoption of residence based taxation. Link: http://citizenshipsolutions.ca/wp-content/uploads/2014/01/RichardsonYatesKishJan232014SFCSubmission.pdf

5. **On January 15, 2015, Senate Finance Committee Chairman Orin Hatch and Ranking Member Ron Wyden launched a bipartisan Finance Committee Tax Working Group** "International Tax Working Group" and invited comments on tax reform.

6. **In February 2016, President Obama, as part of the FY2016 Budget Proposal,** recognized, for the first time, that some non-resident Americans deemed by the United States to be U.S. citizens, but who do not have any meaningful relationship with the United States, should not be subject to taxation. See pages 282-283 in: http://www.treasury.gov/resource-center/tax-policy/Documents/General-Explanations-FY2016.pdf#page=294

5. **On April 9, 2015 John Richardson, Professor Stephen Kish, and Marilyn Ginsburg**, a formerly proud American forced to renounce United States citizenship because of Congressional tax laws, visited with Senate staff members of the Senate Finance Committee to outline some harms caused to non-resident U.S. citizens by

citizenship taxation and to suggest general steps that might be taken to address the harm.

--- The undersigned, John Richardson and Professor Stephen Kish (Toronto, Canada), have prepared this submission as a response to the January 2015 request of the Senate Finance Committee International Tax Working Group for comments on tax reform and as a follow-up to our useful April 9, 2015 meeting with Senate Finance Committee Senate staff members.

[**Acknowledgements.** We acknowledge and thank Patricia Moon who renounced U.S. citizenship as a direct result of the issues discussed in this submission, for her unbelievable generosity, competency, and efficiency in making this and the other submissions possible. This submission would not have been possible without her. It is particularly noteworthy that a "former" U.S. citizen would dedicate herself so strongly to reversing the incredible injustice perpetrated on Americans abroad. On behalf of seven million Americans abroad, we thank you.

In addition, we wish to acknowledge the fact that **U.S. citizenship taxation** has also been the subject of a formal **Human Rights violation complaint filed with the United Nations (August 2014)**.

https://app.box.com/s/w4cbs6skh1xbtrymdu2ajizj9d1euerh

The authors acknowledge the efforts of those who organized the complaint (many of them were also forced to renounce citizenship) and to Professor Allison Christians (McGill University, Montreal Canada), who organized a symposium linking tax policy and human rights.

http://taxpol.blogspot.ca/2014/06/tax-and-human-rights-whats-next-tjhr.html

John Richardson

Stephen Kish

Toronto, Canada

citizenshiptaxation@gmail.com

OUTLINE OF ANALYSIS

Is U.S. citizenship taxation good policy for the United States?

Our **OVERALL FINDINGS**, detailed below, are the following:

A. Citizenship taxation does not respect the integrity of other nations to tax income earned in their nations.

B. Citizenship taxation (when understood and disclosed) provides a disincentive to immigrate to America.

C. Citizenship taxation causes unreasonable and unjustified harm to non-resident U.S. citizens including excessive cost of compliance.

D. Most non-resident U.S. citizens are unable to understand what is required as part of citizenship taxation.

E. The costs of citizenship taxation are not manageable by the IRS.

F. Citizenship taxation provides a disincentive for Americans abroad to carry on business and to be hired by foreign corporations.

G. **Citizenship taxation, as implemented by Congress, is unconstitutional** because it forces innocent Americans to renounce their U.S. citizenship. In the home city (Toronto, Canada) of Mr. Richardson and Professor Kish, a twelve-month wait is now required for the first meeting with U.S. Consulate staff to begin the long and expensive process of renunciation.

Our **OVERALL RECOMMENDATIONS**, based on our analysis, and detailed below, are the following:

A. **Adopt the world standard system of residence-based taxation.**

B. **Provide, as an interim measure, emergency relief of taxation to persons having no meaningful relationship with United States, along the lines of (but significantly extending) that recommended in President Obama's FY2016 proposal.**

C. **If an "Exit Tax" is required (our position is that there should be no Exit Tax) change the "expatriation tax" to a Canada-style "departure tax". No Exit Tax of any kind will be imposed on long-term residents abroad.**

D. **Refrain from adopting or implementing any legislation that punishes Americans who exercise their right to leave the United States permanently.**

Litigation action to be taken if necessary:

We appreciate the difficulty of enacting tax reform legislation.

However, given the extent of harm caused to U.S. non-resident citizens, should residence based taxation not be enacted in a timely manner, the undersigned will have no choice but to initiate legal proceedings in U.S. Federal Court against those Congressional tax laws that force Americans to abandon their U.S. citizenship and which, in this important respect, violate their constitutional rights.

DISCUSSION, ANALYSIS, AND GENERAL SUBMISSION

Historical origins of U.S. "citizenship taxation":

"The main reason we continue to tax nonresident citizens is history. It's a tradition that is 150 years old, and a significant part of American tax exceptionalism. But just as we joined the rest of the world in adopting corporate/shareholder integration, it is time for us to relinquish this part of our history and update our taxation to fit the globalized world of the 21st century, in which more and more US citizens should be able to move overseas in pursuit of economic opportunity without being incentivized to relinquish their citizenship."

Professor Reuven S. Avi-Yonah – University of Michigan – "The Case Against Taxing Citizens"
http://www.law.umich.edu/centersandprograms/lawandeconomics/abstracts/2010/Documents/10-009aviyonah.pdf

U.S. citizenship taxation has been the "law of the land" since 1861. It began as a mechanism to punish those who left the United States during the Civil War. At that time few people made enough money to meet the monetary threshold to pay tax. Hence, it was largely a symbolic measure.

Although "citizenship taxation" was always the law, it was never enforced. Some U.S. citizens abroad filed their annual U.S. tax returns. Some did not. Although "citizenship taxation" was always the law, it was in practice voluntary. There was never an attempt to "reach out" to or "educate" Americans abroad about their U.S. tax obligations.

The "Foreign Bank Account Report" rules were enacted in 1970. They were virtually unknown to Americans abroad. Anecdotal evidence suggests that of the small percentage of Americans abroad who filed U.S. tax returns, fewer still filed an FBAR.

Because neither U.S. "citizenship taxation" nor FBAR were enforced, there was never a "consideration" of whether "citizenship taxation" was good tax policy. The last major U.S. tax reform was in 1986. There is no evidence that "citizenship taxation" was considered as part of that reform.

Beginning in 2009, the Internal Revenue Service began an unprecedented retroactive tax enforcement campaign on Americans abroad. The enforcement campaign was

"marketed by the media" and administered by the "tax compliance community". (U.S. tax law is NOT enforced by the IRS, but by the "tax compliance community".)

The result was that many Americans abroad who had NOT previously known of their U.S. tax obligations entered the various "Offshore Voluntary Disclosure Programs" and paid massive penalties.

Americans abroad believed and continue to believe that they are and have been "wrongly treated". They are supported in this belief by Nina Olson who is the head of Taxpayer Advocate.

https://americansabroad.org/issues/taxation/tax-advocate-criticizes-irs/

U.S. "citizenship taxation" is now being enforced. FATCA is now being used as a tool to identify "Americans abroad". This has caused great anguish to Americans abroad – a group that has historically been America's best ambassadors of good will.

Although NOT an issue in 1986 tax reform, "citizenship taxation" has become an issue in 2015 U.S. tax reform.

Introduction:

On January 17, 2014, John Richardson, Professor Stephen Kish, and former IRS attorney Willard Yates filed a submission on "citizenship taxation" with the Senate Finance Committee.

It may be found here:

http://citizenshipsolutions.ca/wp-content/uploads/2014/01/RichardsonYatesKishJan232014SFCSubmission.pdf

This submission (along with many others) explained and documented the incredible hardship that "U.S. citizenship taxation" inflicts on U.S. citizens who are bona fide residents, often citizens of other countries and always subject to the taxing jurisdiction of other countries.

One year later, we find ourselves making a second submission.

This submission will NOT repeat and re-document in detail the hardship and the precise ways that "U.S. citizenship taxation" harms U.S. citizens who reside in other countries. Rather, we will assume that the hardship has been documented in both previous and concurrent submissions to the Committee. To be specific, this hardship and unfairness has been documented in:

- many letters from Americans abroad written to the House Ways and Means Committee in 2013
- submissions made to the Senate Finance committee in 2014
- an incredible compilation of comments of Americans abroad which have compiled as part of this submission in 2015
- numerous articles, blog posts, and commentary since 2009

All of the above have been collected at:

http://app.box.com/CitizenshipTaxation

These submissions individually prove that the U.S. rules governing the taxation of U.S. citizens abroad are destroying their lives and FORCING many of them to renounce their U.S. citizenship. The rapid and consistent rise in the number of renunciations of U.S. citizenship is proof of this. Furthermore, the laws governing the renunciation of U.S.

citizenship in general and S. 877A of the Internal Revenue Code in particular, operate so that (for the most part) those renouncing U.S. citizenship are compliant with their U.S. tax obligations. Yet, they are still renouncing U.S. citizenship. They find it impossible to live AS TAX COMPLIANT U.S. CITIZENS ABROAD under the rules that U.S. citizenship taxation impose on them.

It's obvious that Congress must either repeal or modify the rules governing the taxation of U.S. citizens abroad. We agree with Professor Reuven Avi-Yonah.

It's time for the U.S. to enthusiastically relinquish a sad chapter in its history and join the world by embracing "residence taxation".

U.S. citizens living outside the United States should NOT pay tax to the United States on non-U.S. source income. Rather, that tax should be paid to the country where they reside.

About this submission

This submission will focus on WHY the time has come for the United States to adopt the world standard in taxation.

The time has come to stop taxing Americans abroad on income earned outside the United States.

We offer this submission as individuals and as proud American citizens. Our submission is not affiliated with any organization or political party. That said, we do recognize that a number of individuals, groups and political parties do endorse strongly the repeal of "citizenship taxation" along with a move to "residence taxation". These groups include for example "American Citizens Abroad", Republicans Overseas, and the Republican National Committee.

We join them in endorsing the principle that:

U.S. citizens, with a bona fide residence outside of the United States, should NOT be taxed on income and property that is NOT connected to the United States. Nor should they have disclosure and reporting obligations, with respect to their banking arrangements, financial accounts and other assets, that exceed the obligations imposed on homeland Americans.

Finally, this is a submission to the Senate Finance Committee on what should be the U.S. tax policy for "U.S. persons" who do NOT live in the United States. "U.S. persons" include "U.S. citizens" and "Green Card holders". This submission will focus on the U.S. taxation of "U.S. citizens" who do NOT live in the U.S. It will NOT focus directly on the taxation of "Green Card holders" or those who currently meet the "substantial presence" test. (Our focus on "U.S. citizens" does NOT mean that we believe that "Green Card holders" living outside the United States should be subject to U.S. taxation on income that does NOT have a U.S. nexus).

In our 2014 submission we emphasized that **our submission was to the lawmakers** and NOT to the Internal Revenue Service.

The Internal Revenue Service is NOT responsible for the Internal Revenue Code. The evolution of the Internal Revenue Code has made life for "tax compliant" U.S. citizens abroad increasingly difficult.

This 2015 submission is NOT to the Internal Revenue Service but IS to the lawmakers.

Part I – Asking The Right Question

The Senate Finance Committee is in the process of considering the first major tax reform in the United States since 1986. The Committee has undertaken the difficult and courageous task of determining the very best tax policies to guide the United States now and for the "foreseeable future".

Given the difficulty of tax reform, it is likely that "foreseeable future" will mean for at least the next quarter of a century.

Therefore, the United States must strive for tax policies that are best for the United States now and as the future unfolds. These deliberations will require the Committee to assess and determine "best policies" for 2015 and onward (as the United States evolves into the future).

The United States exists as an independent sovereign nation but also as part of the community of nations. Therefore, tax reform necessarily requires an assessment of both national and international trends. U.S. tax policy will be reflected in both national policy and in foreign policy. How does the United States wish to interact with the rest of the world? How does the taxation of U.S. citizens living abroad generally affect:
U.S. citizens abroad, the United States of America, the U.S. economy, the economies of other nations, the way in which other nations' governments regard the United States, and the general attitude of those immigrating to the United States?

The "right question" is NOT: whether, "the United States is **justified** in exercising some type of taxing jurisdiction over those citizens." (Professor Michael S. Kirsch, Taxing Citizens in a Global Economy, 82 N.Y.U. LREV 443, 454 (2007)

The "right question" IS: "Is U.S. citizenship taxation good tax policy for the United States of America in the global world of the 21st century?" (Professor Reuven Avi-Yonah, *"The Case Against Taxing Citizens"*
"https://www.law.umich.edu/centersandprograms/lawandeconomics/abstracts/2010/Documents/10-009aviyonah.pdf).

Part II – The theory of "citizenship taxation" vs. the reality of "citizenship taxation"

It is respectfully submitted that:

A proponent of "citizenship taxation" is somebody who thinks about the theory of "citizenship taxation". An opponent of "citizenship taxation" is somebody who understands the reality of "citizenship taxation", largely (but not exclusively) because he has lived under it.

A possible theory justifying "citizenship taxation" is that "We are all citizens". Therefore, we should all be subject to exactly the same rules. Even if one accepts the principle that "all citizens should be subject to the same rules", that does NOT answer the question of whether the rule should be that:

"All U.S. citizens should be taxable on their worldwide income, no matter where they live in the world".

The "reality of citizenship taxation" – How does U.S. "citizenship taxation" affect U.S. citizens living outside the United States?

The Internal Revenue Code and regulations are believed to be composed of almost 70,000 pages. Tax laws and regulations serve the twin purposes of collecting revenue and encouraging or discouraging various behaviors. The Internal Revenue Code has a profound impact on people's "life choices" and affects the way that they live.

All U.S. citizens, regardless of where they live in the world, are subject to exactly the same provisions of the Internal Revenue Code. U.S. tax laws are written from the perspective of "homeland Americans". They reflect the assumptions, values and reality of living in the United States. This means that "U.S. citizens abroad" who live outside the United States must live under a tax regime that requires them to live like a "homeland American". Yet they are subject to the tax laws of their country of residence which often reflect different values and priorities.

Tax compliant "U.S. citizens abroad" are not permitted the attitude:

"When in Rome, live as the Romans do."

Rather U.S. citizens abroad are required to live according to the principle of:

"When in Rome, live as a Homeland American" does, when elsewhere, live as they live elsewhere.

Yet the Internal Revenue Code contains provisions that are punitive in relation to all things "foreign" and in all relation to all things that involve "deferral". The life of a U.S. citizen abroad:

- is completely "foreign" (from a "U.S. perspective");
- is completely "local" from the perspective of the "American abroad";
- like most retirement planning, operates on the principle of tax "deferral".

The effect of living outside the United States and being required to live as a "homeland American" is that:

The Internal Revenue Code imposes "punitive treatment" on the normal retirement planning vehicles of other nations. As the submission from Marilyn Ginsburg (and others indicate), the "punitive treatment" will be in the form of both taxes and expensive reporting requirements.

Some examples include:

- Americans abroad will find it difficult to invest in "non-U.S." mutual funds.
- Americans abroad who participate in "pension plans" in their country of residence may endure punitive tax consequences.

Therefore, these rules ensure that those U.S. citizens abroad who attempt to comply with the laws of the United States of America will live their lives in the "penalty box" with few options for "retirement planning".

I am reminded of the principle that:

"The law in its majestic equality prohibits both the rich and the poor
from sleeping on the park bench."

The U.S. tax rules that punish "all things foreign" and "all things that involve deferral" apply disproportionately to Americans abroad.

Part III – "Citizenship", "Taxation" and "Citizenship taxation"

The concept of "citizenship taxation" includes both the words: "citizenship" and "taxation". Therefore, a consideration of "citizenship taxation" requires a consideration of:

- citizenship in general and U.S. citizenship in particular
- taxation in general and U.S. taxation in particular
- the relationship between "U.S. citizenship" and "taxation"

In recent years (due to a culture of the enforcement of citizenship taxation and FATCA), U.S. "citizenship taxation" has received the attention of: U.S. citizens abroad as individuals, groups representing U.S. citizens abroad and the academic (primarily law school) community.

What is the practical effect of U.S. "citizenship taxation"? To answer this question we must consider two smaller questions:

Who is subject to U.S. taxation outside the United States?

The United States levies taxes on (1) U.S. citizens (and Green Card holders) who do NOT live in the United States on (2) income not earned in the United States and income from property NOT located in the United States.

What the U.S. calls "citizenship taxation" is really "place or circumstance of birth taxation"

In practice, the vast majority of U.S. citizens become U.S. citizens because they were born in the United States or because they were born outside the United States to U.S. citizen parent(s). Although, most U.S. citizens are proud of their U.S. citizenship, **the reality is that U.S. citizenship (in most cases) is a status that is NOT chosen but is conferred.**

Therefore, **"U.S. citizenship taxation" is primarily "place of birth taxation"**. There are believed to be millions of people who were born in the U.S. who do NOT (and in some cases have never) lived in the United States. Although these people meet the "technical definition of "U.S. citizen", they may NOT have any connection or contacts to the United States that could possibly justify being subject to U.S. taxation.

How are U.S. citizens abroad subject to U.S. taxation?

U.S. citizens abroad are subject to taxation according to the same rules in the same Internal Revenue Code as are homeland Americans. Yet they do NOT live in the United States. They live in other countries and are subject to the tax rules of those other countries.

Most U.S. citizens abroad are required to pay higher taxes to their country of residence than they would in the U.S. It is important to recognize that this "higher tax burden" is often the result of a combination of a wide variety of taxes which include (but are not limited to): income taxes, VAT (value added taxes), property taxes, wealth taxes and perhaps more. It is notable that VAT (value added taxes) are not presently part of the U.S. Federal tax system (and cannot therefore be used as a credit against U.S. taxes). Yet, they often constitute a significant tax burden on U.S. citizens abroad.

When considering the question of whether U.S. citizens living abroad should be required to comply with the Internal Revenue Code, the question is NOT:

> "Can the U.S. justify the taxation of U.S. citizens living outside the United States?"

but rather:

> "*Is it good tax policy for the United States to subject to U.S. taxation those U.S. citizens who live outside the United States?"*

There are many instances in which a law can be justified, but is NOT a good law.

Part IV – A History of Citizenship Taxation – The Internal Revenue Code has evolved without consideration of "citizenship taxation"

Legislative:

It is widely agreed that the genesis of U.S. "citizenship taxation" is rooted in the Civil War. "Citizenship taxation" was used as a form of "punishment" for those who went to Europe to avoid their duties of military service. The U.S. Civil War took place between 1861 and 1865. The U.S. policy of "citizenship taxation" has remained intact since that time.

This means that U.S. "citizenship taxation":

- is a policy that existed prior to the existence of the modern day equivalent of either the Democratic or Republican parties (making it clear that "citizenship taxation" is NOT a partisan issue);
- began at a time when "dual citizenship" was for all practical purposes non-existent;
- began before the 14th amendment of the Constitution (which provided a constitutional definition of U.S. citizenship);
- began at a time when the antecedents of the modern day Internal Revenue Code were far simpler than they are today (taxation was about tax);
- began at a time when U.S. tax policies were for the purpose of collecting taxes and NOT about the collection of massive amounts of information;
- began prior to the 1962 Controlled Foreign Corporation (CFC) rules;
- began prior to the 1986 Passive Foreign Investment Company (PFIC) rules;
- began prior to the 1970 Foreign Bank Account Report (FBAR) rules;
- began prior to the 2010 Foreign Account Tax Compliance Act (FATCA) rules

and other laws that were designed to punish "all things foreign" and "all vehicles of deferral".

To put it another way, the growth and evolution of the Internal Revenue Code did NOT take into account the reality of "citizenship taxation" and the fact that approximately 7 million U.S. citizens:

- live outside the United States;
- may very well be Citizens of other countries (dual citizens);
- already pay substantial taxes in their country of residence;
- cannot comply with the rules of two different tax systems.

Judicial:

In 1924, the Supreme Court of the United States, per Justice McKenna, ruled in Cook v. Tait that U.S. "citizenship taxation" was constitutional. Cook v. Tait has been cited to justify the constitutionality, although not necessarily the propriety, of "citizenship taxation".

It's important to note that the question of:

Is "citizenship taxation constitutional"? (Is it allowed under the constitution?) is a different question from:

Is "citizenship taxation" good policy (should those who live outside the U.S. be subject to U.S. taxation?)

"**Citizenship taxation" is about BOTH "citizenship" and "taxation".**

"Citizenship taxation" contains both the words "citizenship" and "taxation". As a result, Justice McKenna's decision in Cook v. Tait, along with the 1924 equivalent of the Internal Revenue Code, may tell us a great deal about what "taxation" and "citizenship" meant in 1924.

A trip down memory lane – Cook v. Tait 1924 – Justice McKenna's decision

Cook v. Tait was argued on April 15, 1924 and decided on May 5, 1924 (those were the days). The taxpayer plaintiff "Cook" was described by Justice McKenna as:

"a native citizen of the United States, and was such when he took up his residence and became domiciled in the city of Mexico."

Note that there is no evidence that Cook had become a naturalized citizen of Mexico or that he had taken an oath of allegiance to Mexico. (The relevance of this will be clear later.)

In holding that Cook was a taxable U.S. citizen, Justice McKenna ruled:
"The contention was rejected that a citizen's property without the limits of the United States derives no benefit from the United States. The contention, it was said, came from the confusion of thought in 'mistaking the scope and extent of the sovereign power of the United States as a nation and its relations to its citizens and their relation to it.' And

that power in its scope and extent, it was decided, is based on the presumption that government by its very nature benefits the citizen and his property wherever found, and that opposition to it holds on to citizenship while it 'belittles and destroys its advantages and blessings by denying the possession by government of an essential power required to make citizenship completely beneficial.'

In other words, the principle was declared that the government, by its very nature, benefits the citizen and his property wherever found*, and therefore has the power to make the benefit complete.*

Or, to express it another way, the basis of the power to tax was not and cannot be made dependent upon the situs of the property in all cases, it being in or out of the United States, nor was not and cannot be made dependent upon the domicile of the citizen, that being in or out of the United States, but upon his relation as citizen to the United States and the relation of the latter to him as citizen*.*

The consequence of the relations is that the native citizen who is taxed may have domicile, and the property from which his income is derived may have situs, in a foreign country and the tax be legal—the government having power to impose the tax.

We have bolded parts of the ruling that are of significance.

Cook v. Tait is now almost 100 years old. The case was decided in the context of the world as it was in 1924. The world has changed and changed a great deal. The concepts of both "taxation" and "citizenship" have evolved.

Furthermore, It is respectfully submitted, that at the present time:

"U.S. citizens abroad benefit the Government of the United States wherever they may be."

It is respectfully submitted that U.S. "citizenship taxation" exists today because it has always existed.

There is no evidence anywhere that "citizenship taxation" ever was or is the result of an objective consideration of whether it is good tax policy. The time has come to consider whether "citizenship taxation" is sound tax policy.

Part V – The evolution of taxation, citizenship and "citizenship taxation": Taxation Edition

As Charles Adams argued in his classic book, *"For Good and Evil: The Impact of Taxes On The Course Of Civilization"* as go the taxing practices of a nation, so goes the nation. Given that taxes are a certainty, tax laws are a certainty, and those laws speak volumes about the "state of the nation" and the "values of the nation". Tax laws evolve on an almost daily basis. The changes in tax laws reflect changes in societal values.

How "taxation" has evolved since the Revenue Act of 1921

Cook v. Tait was decided under the Revenue Act of 1921. You will be amazed to see how much simpler taxation was in the 1920s.

The Revenue Act of 1921 was relatively simple. One can read it here.

For those who want a PDF version for your library of "Great Books": Revenue Act 1921

The general highlights of the Revenue Act of 1921 include:

- it is only 238 pages in total with the Act itself composed of 205 pages (Could it be read in a morning?)
- it is divided into 14 Titles
- "Income Tax" is in Title 2
- Title II is only 87 pages
- Title XIII contains the "General Administrative Provisions" which are only 24 pages and include: a requirement of compliance with "regulations in S. 1300, Penalty provisions (there is mention of a $10,000 penalty even then), the creation of a "Tax Simplification Board" in S. 1357 and more.
- Title XIV contains the "General Provisions" which seem to be only two pages. The "General Provisions" include
- There is an Appendix on page 203 describing individual tax rates which range from and are found **here**.

Title II of the Revenue Act of 1921deals with the "Taxation of Individuals"
S. 210 specifically reads:

'That, in lieu of the tax imposed by section 210 of the Revenue Act of 1918, there shall be levied, collected, and paid for each taxable year upon the net income of every

individual a normal tax of 8 per centum of the amount of the net income in excess of the credits provided in section 216: Provided, that in the case of a citizen or resident of the United States the rate upon the first $4,000 of such excess amount shall be 4 per centum.'

Note that $4,000 was an enormous amount of money in 1924. This means that most people did NOT pay Federal Income Tax anyway. (Of course, today many don't pay Federal Income Tax either.)

S. 210 of the Revenue Act does not specifically say that a citizen abroad is subject to taxation. Taxation of U.S. citizens abroad is found in Regulation 62 from the IRS Commissioner which provides in section 3 that:

*3: 'Citizens of the United States except those entitled to the benefits of section 262, * * * wherever resident, are liable to the tax. It makes no difference that they may own no assets within the United States and may receive no income from sources within the United States. Every resident alien individual is liable to the tax, even though his income is wholly from sources outside the United States. Every nonresident alien individual is liable to the tax on his income from sources within the United States.'*

Clearly U.S. citizens were taxable under the Revenue Act of 1921. But, (some things never change), what is a citizen?

"Citizens" are defined in S. 4 of Regulation 62.

*4. A citizen is defined as follows: "An individual born in the United States subject to its jurisdiction, of either citizen or alien parents, who has long since moved to a different country and established a domicile there, **but who has neither been naturalized in or taken an oath of allegiance to that or any other foreign country**, is still a citizen of the United States."*

This means that if Cook HAD become a naturalized citizen of Mexico OR taken an oath of allegiance to Mexico, that he would NOT have been considered to be a "citizen" for the purposes of taxation. This appears to mean that (contrary to conventional wisdom) Cook v. Tait CANNOT be used to justify the taxation of U.S. citizens abroad who have become citizens of or taken an oath of allegiance to another country. (More on this later.)

Academic reaction to the decision in Cook v. Tait

In an extensive and excellent scholarly article written in 1925, Professor Albert Levitt concluded that:

The decisions of the United States Supreme Court is fully supported by reason and authority. The writer is glad that this is so. There was, and is, entirely too strong a tendency on behalf of selfish citizens of the United States to call loudly for their rights to protection when abroad and at the same time to seek by legal and illegal means to evade their responsibilities and duties as citizens. ***A citizen who demands protection from his government should be compelled to pay*** *for the maintenance of that protection.*
Albert Levitt – Washington and Lee Law School – June 1925
http://www.jstor.org/discover/10.2307/1065765

(Sound familiar? Some things never change.)

What is NOT in the Revenue Act of 1921

It's clear that taxation was much simpler in 1924. It's also clear that it was about taxation and NOT about the gathering of information. I see no section of the 1921 Revenue Act that mandates the collection of information under threat of penalties. To be clear, Cook v. Tait was decided in a context where the Revenue Act was much simpler, was not specifically designed to impose "punitive measures" on investment vehicles outside the United States, and was NOT about "Information Returns".

Significantly, many of the provisions which have been so destructive to U.S. citizens abroad were enacted later, gradually and often as a small "add on" to a seemingly unrelated piece of legislation.

The metamorphosis of the Revenue Act of 1921 to modern day (but archaic and antiquated Internal Revenue Code of the United States)

This submission will highlight a small number of very significant changes. I suspect that Charles Adams would view these changes as significant events in the history of the United States.

The 1962 CFC (Controlled FOREIGN Corporation) Rules

At the risk of oversimplification, the Controlled Corporation Rules:

- imposed massive and expensive reporting requirements on any U.S. citizen who had any connection to a non-U.S. corporation
- created a new class of "Deemed Income" (Subpart F) which forced the inclusion of income earned at the corporate level in the incomes of U.S. citizen shareholders. These rules exist today and are the reason why Canadians who are also U.S. citizens should NOT carry on business through a Canadian Controlled Private Corporation
- are designed (this is what Subpart F is about) to punish "TAX DEFERRAL".

Sir John Templeton, the famous international investor (Templeton Growth Fund) renounced his U.S. citizenship in 1964. We suspect (but don't know) that his renunciation of U.S. citizenship was a direct result of the 1962 CFC rules.
Relevant Penalty Laden Form: 5471 (American's deadliest form)

The 1970 FBAR ("FOREIGN Bank Account Report") Rules – Title 31 – Bank Secrecy Act

When these rules were enacted nobody imagined that, 39 years later, the IRS Commissioner would discover these rules and impose them on U.S. citizens abroad.

The PFIC Rules of 1986 – ("Passive FOREIGN Investment Companies")

Everybody has heard of PFICs. Few people understand PFICs. A large segment of the tax community takes the position that Canadian mutual funds are PFICs and are therefore subject to incredibly punitive taxation and reporting requirements.

The PFIC rules are designed in large part to punish investment vehicles that allow for "TAX DEFERRAL".
Relevant Form: 8621

The "FOREIGN Trust" Rules of 1976 – Internal Revenue Code S. 679 (as changed in 1996)

These are the rules that are the authority for Forms 3520 and 3520A. They are also the rules that deem many non-U.S. pension plans to be "Foreign Trusts". Consider the Canadian Registered Education Savings Plan (RESP), Registered Disability Savings Plan (RDSP), etc.

Relevant Penalty Laden Forms: 3520 and 3520A

FATCA 2010 – ("FOREIGN Account Tax Compliance Act")

FATCA is the vehicle to enforce "citizenship taxation". Whether by accident or design, FATCA is responsible for the increasingly large number of U.S. citizens abroad renouncing U.S. citizenship. The key point is that U.S. citizens feel FORCED (and we agree with them) to renounce U.S. citizenship.
Relevant penalty laden form: 8938
(See also Form W-8-BEN-E which is the "Crown Jewel" of FATCA related forms.)

It is about the punishment of things "FOREIGN" and that involve "TAX DEFERRAL".

Clearly, the U.S. tax laws since Cook v. Tait have evolved in a way that have imposed both punitive taxation and reporting requirements on both anything FOREIGN and investment vehicles that involve "TAX DEFERRAL".

- The lives of U.S. citizens abroad are "FOREIGN".
- The retirement plans of U.S. citizens abroad are based on "TAX DEFERRAL".

Conclusion – Evolution of taxation

The whole concept of taxation has changed since 1921. Since 1921, the tax laws of the United States have evolved to the point that what used to be the "reality of citizenship taxation" has become (for Americans abroad) the "fiscal prison of citizenship taxation".

Part VI – Who is a "citizen"? – The Internal Revenue Code has evolved without consideration of the fact that anybody born on U.S. soil is a U.S. citizen and that there are no more "citizenship retention" requirements.

Prologue – U.S. Citizenship 2015

Stanstead, Quebec is a small Canadian town near the U.S. border. It is primarily a French speaking town. During the 1960s the closest hospital was in Newport, Vermont. As a result approximately 25% of the residents of Stanstead were born in the U.S. (making them U.S. citizens). The purpose of FATCA is to identify those with a U.S. place of birth. On March 30, 2015, CBC Radio ran a show talking about the relationship between a U.S. place of birth and U.S. taxation. The show implied that large numbers of people had no idea that they might be U.S. taxpayers.
http://citizenshipsolutions.ca/2015/03/30/cbc-fatca-interview-susancbcquebec-and-alibrunet-adcsovereignty-lawsuit-mention/

One might ask:

How could a mere "U.S. place of birth" (and nothing more) make one liable to taxation in another country?

The law of U.S. citizenship is complicated and has evolved over time. The fact of birth (children of diplomats excepted) in the U.S., without more, confers U.S. citizenship on the person. Although there are other ways of becoming U.S. citizens (naturalization, birth abroad to a U.S. citizen, and possibly more), the vast majority of U.S. citizens acquired U.S. citizenship by being born on U.S. soil. They may also have been born "citizens of other countries".

Objective descriptive categories of those born in the U.S.

Those who acquired U.S. citizenship because they were born in the U.S. fall into one of (at least) four categories:

A. **Homeland Americans:** They continue to live in the U.S. and are subject to U.S. taxation and they may or may not actually pay U.S. tax.
B. **Accidental Americans:** They moved from the U.S. before the age of majority because their parents moved from the U.S. and they are subject to U.S. taxation. They are also subject to taxation in their country of residence.

C. **Temporary Expats by Choice:** They made a conscious choice as adults to move temporarily from the U.S., live outside the U.S., and they are subject to U.S. taxation. They are also subject to taxation in their country of residence.

D. **Permanent Immigrants/Emigrants from America:** They made a conscious choice as adults to move permanently from the U.S. They are or became citizens of another country, and they are subject to U.S. taxation. They are also subject to taxation in their country of residence.

Those "born in the U.S." have a wide range of contacts with the U.S. The contacts range from "it's my home" to "I don't consider myself to be a U.S. citizen and I am shocked that the U.S. would try to claim me as a "tax subject just because I was born there".

Subjective descriptive categories of those born in the U.S. – How they see themselves

When it comes to those who were born in the U.S., live outside the U.S., and acknowledge that they were born in the U.S.:

- some do NOT consider themselves to be U.S. citizens and have no ties to the U.S.
- some do consider themselves to be U.S. citizens but do NOT believe they have sufficient contacts to the U.S. that would justify U.S. taxation
- some do consider themselves to be U.S. citizens and believe that they have sufficient connection to the U.S. so that the U.S. COULD tax them, but do NOT believe that taxation is justified
- some do consider themselves to be U.S. citizens, believe that they have sufficient connection to the U.S. that would justify taxation, and believe that they should be subjected to U.S. taxation.

The attitude of various people tends to be a function of the nature of their connections to the U.S. In this context, it's interesting to acknowledge the 2016 Obama Budget Proposal.

The 2016 Obama Budget Proposal

The 2016 Obama Budget proposal included a provision that acknowledged that **some people born in the U.S. (and are therefore technically U.S. citizens), should not be subject to U.S. taxation because they had only "minimal contacts" to the U.S.**

The proposal can be found on pages 282-283 in:

http://www.treasury.gov/resource-center/tax-policy/Documents/General-Explanations-FY2016.pdf#page=294

To put it another way:

The Obama budget proposal recognized that **there are circumstances under which "citizenship conferred by birth" does NOT justify U.S. taxation.**

This suggests that:

Whether or not "citizenship taxation" is good general tax policy, taxation based solely on the fact of a U.S. birthplace, does NOT establish the minimal contacts to the U.S. that are necessary to justify U.S. taxation.

It wasn't always true that a "U.S. place of birth" would result in U.S. taxation abroad. There was a time when "minimal contacts" to the U.S. were required to retain U.S. citizenship.

"U.S. citizenship" – the evolution of "minimal contacts" since 1924

The evolution of "citizenship", since 1924, has been partly the result of changes in the world and partly the result of changes in the law.

Changes in the world

It is obvious that "citizenship" is less relevant and less important in a global world. There is no part of the world that cannot be reached in one day. That was not true in 1924. Furthermore, "dual citizenship" is now a practical reality. The United States grants citizenship based on birth in the United States. Therefore, there are many people with U.S. citizenship and the citizenship of at least one other nation.

It is therefore important to remember that U.S. "citizenship taxation" necessarily operates to impose U.S. taxes on:

- citizens of other nations
- who are residents of those other nations

Furthermore, as the recent Boris Johnson case illuminates, U.S. "citizenship taxation" operates to extract capital out of other nations and bring it to the United States. To put it another way:

U.S. "citizenship taxation" is a tax on any nation that has a U.S. citizen living in it.

U.S. "citizenship taxation" is an assault on the fiscal sovereignty of all nations.

Why are there so many U.S. citizens around the world?

There are at least three reasons:

- **First**, the U.S. is one of the few countries that grants citizenship based on birth on U.S. soil.
- **Second**, in the past the U.S. law has had "retention requirements" to retain U.S. citizenship. There is NOT a single legislative requirement remaining to retain U.S. citizenship.
- **Third**, the U.S. has very "liberal" laws for passing on "derivative citizenship". It is relatively easy for a U.S. citizen abroad to pass U.S. citizenship on to a child born outside the U.S. At one time there were laws that required that child born outside the U.S. to acquire a residential tie to the U.S. That is no longer the case.

These changes have resulted from a combination of the Supreme Court decisions in Afroyim v. Rusk and Vance v. Terrazas and changes in the law induced by lobbying. In any case, it is clear that there are few (if any) requirements to retain U.S. citizenship. Once a U.S. citizen, then always a U.S. citizen. This was NOT the case in 1924.

To repeat my point about "retention requirements" for U.S. citizenship:

Retention requirements for those born in the U.S.

In the past, U.S. nationality law has included provisions which resulted in the automatic loss of U.S. citizenship for those born in the U.S., and find themselves in the circumstances described in Categories A and B above (born in the U.S.). This was reflected in the old S. 350 of the Immigration and Nationality Act (which has been

repealed) and pre-1986 S. 349 of the Immigration and Nationality Act. The general principle was that children who:
acquired U.S. citizenship as children; and

- subsequently left the U.S., and
- did nothing to assert a VOLUNTARY connection to the U.S.,

would lose their U.S. citizenship. This was a clear recognition that "citizenship" was more than a "legal status" and **required a "voluntary affirmation of citizenship" and/or "connection" to the community**.

Automatic Loss of Citizenship For Those Naturalized in the U.S

Interestingly the old S. 352 of the Immigration and Nationality Act mandated the loss of U.S. citizenship (in some circumstances) for naturalized U.S. citizens who left the U.S. after becoming U.S. citizens.

To use an analogy to contract law, there were "conditions subsequent" for 14th Amendment citizens to retain their U.S. citizenship.

Conditions Precedent to Citizenship – Inability To Gain Citizenship For Those Born Outside The U.S.

American Citizens Abroad was a pioneer in fighting for the rights of "American Citizens Abroad". Much of their early work was aimed at ensuring that children born outside the United States to Americans abroad would become U.S. citizens. At one time the U.S. had laws which required those born abroad to U.S. parents to establish residence in the U.S. or lose their U.S. citizenship. As Phyillis Michaux, author of *The Unknown Ambassadors,* notes:

> *It all started back in 1961, when Phyllis Michaux, an American woman married to a Frenchman and living in France since 1946, found a friend in a similar situation. They began talking about the future of their children, their American and French citizenship and wondered whether there were other women "out there" in a similar position.*
>
> *They had a question and an idea. The question was, "How many people are affected by the citizenship law 301(b)?" At the time under section 301(b) of the Immigration and Nationality Act of 1960, children born overseas of one American parent would lose their American citizenship unless they lived five consecutive years in the United*

> *States between the ages of fourteen and twenty-eight. Essentially, the children would have to move to the United States sometime before their twenty-third birthday to retain their American citizenship. The idea was to find out how many families were affected. This they did. And they did a lot more along the way.*

For this reason, we submit that the problems of Americans abroad, may be more rooted in the laws of citizenship than in the law of tax.

Once again, we see that the problem is largely the “law of citizenship”. U.S. citizenship law no longer based on the assumption that “citizenship” requires a voluntary connection to the community.

To the extent taxation is tied to citizenship, this means that the U.S. claims the right to tax large numbers of people with no connection to the U.S.

Significance of U.S. citizenship law of the past …

There was a time when a voluntary affirmation and connection to the U.S. were required to retain U.S. citizenship. One would lose U.S. citizenship without the voluntary affirmation – an “citizenship opt in”. This ensured that those without a connection to the U.S., would NOT be subjected to U.S. taxation.

The repeal of Sections *350*, *352*, *301(b)* (of the 1960 law) and the 1986 amendment of S. 349 of the Immigration and Nationality Act, mean that, it is NO longer a requirement that people affirm a connection to the U.S. in order to retain U.S. citizenship. Absent a “relinquishing act”, the circumstances of birth will be sufficient to establish (under U.S. law) citizenship and a lifetime of tax obligations.

U.S. citizenship law of the present.

A relinquishing act is now required to terminate U.S. citizenship – a “citizenship opt out” (with all the horror of the Exit Tax that can entail).

One person opined:

> “For those who had no choice of where or to whom they were born, **surely there should be an “opt-into” US citizenship** if the facts permit rather than an “opt-out” of U.S. (or any other country’s) citizenship. **Anything else is ENTRAPMENT.** I find that very punitive.”

For those with the "legal status" of U.S. citizens abroad, the evolution from the "opt in model" to the "opt out model" reflects a principle that citizenship is defined more in terms of a "legal status" (conferred by birth) than a "voluntary acceptance" of citizenship or a connection to the United States. This is neither desirable nor consistent with a world of increased mobility and multiple citizenships.

Summary:

The problems of U.S. citizenship have been exacerbated by the twin principles that:

1. U.S. citizenship has become less and less dependent on the existence of a "voluntary" connection to the U.S.; and

2. U.S. citizenship is now a status **imposed** on the individual, rather than a status **chosen** by the individual. (Although the 14th Amendment may have been motivated by a desire to "end slavery" it is now being used as a mechanism to "create tax slavery".)

To put it another way:

U.S. citizenship has become less "something that one chooses to voluntarily connect to" and more something "one is through an accident of birth, chosen for". This is of huge significance because the U.S. (under the guise of citizenship taxation) attempts, under the "guise" of taxation, to control the lives of its citizens living abroad.

Conclusion – Evolution of Citizenship

As a practical matter dual citizenship is common in 2015. It was NOT common in 1924. Therefore U.S. "citizenship taxation" is much more likely to impose taxation on "citizens of other nations" at a direct cost to the treasuries of other nations.

As a practical matter any "citizenship retention rules" that existed in 1924 do NOT exist today. Therefore, there are large numbers of people who are "technically" U.S. citizens who have almost NO contact with the United States.

Part VII – The U.S. and Eritrea – Not all "citizenship taxation" is the same.

If you google "citizenship taxation" you will learn that only the United States of America and the African nation of Eritrea practice "citizenship taxation".

They are the only nations that practice "citizenship taxation". Yet, they have very different ideas of what "citizenship taxation" is and how it should work.

Eritrea:
The basic principle is that a fixed percentage of the income of an Eritrean citizen living abroad is payable as tax to Eritrea. This is easy to calculate. Expensive accountants are NOT required.

United States:
The principle is that U.S. citizens abroad are subject to the same provisions of the Internal Revenue Code as homeland Americans.

The difficulty is that the provisions of the Internal Revenue Code are designed to treat "foreign" income and investments in a very punitive manner (in terms of both taxation and reporting requirements). "Foreign" is defined in relation to the United States.

Therefore, the incomes, property, investments, retirement plans, brokerage accounts, bank accounts and NON-U.S. SPOUSES are treated in a punitive manner by the Internal Revenue Code. U.S. laws are written for U.S. residents without consideration of their impact on the lives of U.S. citizens abroad.

It is difficult for Americans abroad to KNOW what is required of them. Furthermore, expensive accountants are a necessity.

Part VIII – Discrimination against Americans abroad – Five categories

To put it simply: U.S. citizens abroad are subjected to terrible discrimination under the Internal Revenue Code. This is largely (but not entirely) the result of every aspect of their lives in their country of residence being deemed to be "foreign" and therefore subject to punitive taxes and reporting requirements.

To be specific, U.S. citizens abroad are subjected to AT LEAST five categories of discrimination:

Category 1 – General discrimination based on NOT living in the United States

- Homeland Americans are not required to report every aspect of their financial lives to the IRS every year. The bank accounts maintained by Americans abroad are NOT "foreign to them". Why should the fact that an American lives outside the United States mean that all of his financial information be reported to the IRS every year?

- Americans abroad who are married to a non-U.S. citizen spouse are far more likely to file under the "married filing separately status". The result of this is that they are more likely as a group to be subjected to the AMT (Alternative Minimum Tax) and the 3.8% Obamacare surtax (which is to be used to pay for health care for Homeland Americans). They will also be subject to lower "reporting thresholds" on IRS information returns including FATCA Form 8938.

- Americans abroad are even subject to discrimination if they renounce U.S. citizenship. Obviously an American abroad is more likely to have a "foreign" pension plan and a homeland American is likely to have a U.S. pension. If both people renounce U.S. citizenship, and are "covered expatriates", the American abroad will be required to pay a share of his pension to the U.S. Government. The homeland American will be able to retain his full pension.

- The ability of Americans abroad to invest in retirement plans in their country of residence is impaired by various U.S. tax rules that apply to investments that the U.S. considers to be "foreign". The most notorious of these rules are the "Passive Foreign Investment Company" (PFIC) rules, which impose severe penalties for investing in many non-U.S. investments. This includes "non-U.S." mutual funds. For a detailed explanation of how the PFIC rules are intended to work and the rate of "taxation" see the following submission by Mr. Richardson and Professor Kish to the Senate Finance committee. http://citizenshipsolutions.ca/wp-content/uploads/2014/02/PFICs-

______________________________. See also the following article "opinion piece" by David Kuenzi which appeared in the New York Times in July of 2014. http://www.wsj.com/articles/kuenzi-american-expats-tax-nightmare-1404924705

- The ability of Americans abroad to enter into business arrangements in general and self-employment in particular is burdened by the information returns (that require the disclosure of non-U.S. business information to the IRS and the "Controlled Foreign Corporation" (CFC) rules that disadvantage them relative to non-U.S. citizens in their country of residence.

Category 2 – General discrimination based on which country they reside in

U.S. law does NOT treat a U.S. citizen living in Canada the same way that it treats a U.S. citizen living in Australia.

For Americans abroad, the extent of double taxation depends on what country you live in.

How can this be? The answer lies in the fact that all Americans abroad are subject to exactly the same tax system. That tax system provides certain benefits for living in some countries at the expense of others.

An example may be found in U.S. "Social Security and self-employment" taxes. All countries have "social security" type taxes. The point is that without some "treaty-type relief", Americans abroad would be forced to pay "self-employment" taxes in both countries. As a result, the U.S. has entered into what are called "Totalization Agreements" with various countries. Part of the purpose of "Totalization Agreements" is to avoid "double taxation" on the same income and to avoid the payment of social security taxes in both the U.S. and the taxpayer's country of residence.

The U.S. has a "Totalization Agreement" with Canada. The U.S. does NOT have a "Totalization Agreement" with Australia. Therefore, a "self-employed" U.S. citizen in Canada would NOT pay U.S. "self-employment tax". A U.S. citizen in Australia is required to pay the U.S. "self-employment" tax. The U.S. "self-employment" tax, on Australian earnings is currently 15.34% and cannot be used as a credit to offset the payment of other taxes.

Therefore:
The amount of FEDERAL taxes paid by Americans abroad is dependent on the country where they reside.

Category 3 – General discrimination based on whether one was born a "dual citizen" or ONLY a U.S. citizen

Since June 16, 2008, the United States has been a member of the club of nations that imposes "Exit Taxes" when one leaves the tax system. In general Exit Taxes impose a tax on a person leaving the tax system. The tax is analogous to the tax paid if one sold all one's assets before death. (Note that this is a very general description.)

With the exception of the United States, one leaves the tax system of a country by ceasing to be a resident of that country. This is the direct result of a tax system that is "residence based taxation". For example, Canada imposes a "Departure Tax" when one moves from Canada.

In the United States one leaves the U.S. tax system by ceasing to be a U.S. citizen. Since June 16, 2008, the U.S. has imposed an "Exit Tax" on those relinquishing U.S. citizenship.

It is possible that a U.S. citizen who was a dual citizen could escape the application of the U.S. Exit Tax because he was born a dual citizen. This clearly discriminates against a class of U.S. citizens based on who their parents were.

Category 4 – Intentional discrimination in the legislative process

Two of the most recent and significant examples of Congressional legislation affecting Americans abroad are the "HEART Act" of 2008 (which imposed the "Exit Tax") and "HIRE Act" of 2010 (which created FATCA).

Significantly, both the "Exit Tax" and FATCA were:

- small provisions that were contextually unrelated to the broader purposes of the "HEART Act" and the "HIRE Act"; and
- appeared as "offset revenue measures". This means that "The Exit Tax" and FATCA were measures that were being specifically used to pay for other initiatives.

To put it simply:

1. Congress introduced the "Exit Tax" for the purpose of paying for the broader provisions of the HEART Act; and

2. Congress introduced FATCA for the purpose of paying for the broader provisions of the HIRE Act.

3. Congress introduced the American Jobs Creation Act which defined special expatriate tax provisions (including a new category of US Citizen - "Tax Citizen") to produce revenue for the creation of jobs for US citizens resident in America.

It is respectfully submitted that Congress is imposing "revenue raising measures" on Americans abroad.

Why would they do this? **The answer is that "Americans abroad" is a politically powerless group.**

In other words, Congress is using and abusing Americans abroad – a "politically powerless group" – to pay for laws that benefit homeland Americans.

As President Clinton once said:

> "To do something just because you can, is the least morally defensible reason for doing it."

Category 5 – General discrimination based on marriage to an "alien" spouse

Michael deSombre, President, Republicans Overseas (submission to Senate Finance Committee):

"FATCA and FBAR reporting requirements cause significant damage to American citizen spouses of non-US citizens. Non-U.S. citizens do not wish their financial information to be shares with the United States IRS. As a result, many non-U.S. citizens are removing their American citizen spouses as joint account holders of bank accounts. In some circumstances, non-U.S. citizens have given ultimatums to their American

citizen spouse that either the spouse need to be removed from all bank accounts or they will need to get a divorce.

In situations where an American spouse has not pursued a career and thus is dependent on the non-U.S. citizen spouse this situation can be truly horrific".

https://www.facebook.com/republicansoverseas/posts/371670443016757

It is our submission that the U.S. government has no right to interfere in who U.S. citizens choose as marriage partners. Consider the following additional comments.

The U.S. tax code treats a marriage between a U.S. citizen (AKA U.S. property) and a non-U.S. citizen (not U.S. property) as a form of potential tax evasion.

If you marry a U.S. person: "You will have a lifetime of involvement with the IRS and the emotional and financial cost that it entails".

A comment on a recent article in the WSJ Expat blog demonstrates the numerous ways that marriage to an "alien" proves to be challenging in unique ways.

http://blogs.wsj.com/expat/2014/11/16/ask-an-expert-tax-tips-for-expats-with-alien-spouses/tab/comments/%20comment-208/

"Great article.

There was a time when, if a U.S. citizen woman married a "non-citizen", she would automatically lose her U.S. citizenship. Yes, it's true. This was the law in the 1920s. This law may have been repealed but the vicious, punitive and inappropriate treatment of U.S. citizens who marry "non-citizens" continues.

This article does a good job of describing some of the problems of a U.S. citizen who marries a "non-citizen". Under these circumstances, U.S. tax compliance is more difficult, more expensive and has the potential to subject you to more penalties. Some marriages end in divorce because of the rules alluded to in the article. Divorce can (and likely will) be much more expensive for a U.S. citizen married to a "non-citizen" spouse.

No question: Under U.S. tax law, "non-citizenship" puts a strain on the marriage.

This situation is particularly common for U.S. citizens abroad. A very high percentage of them have non-citizen (AKA "alien spouses"). This article describes how the rules of the Internal Revenue Code specifically and deliberately discriminate on the basis of the citizenship of one spouse.

Another aspect that should be highlighted is the "filing status". Most Americans abroad with an "alien spouse" will NOT file "married filing jointly". They will file (to protect the "alien") "married filing separately". The "married filing separately" (the most punitive category) imposes a hidden additional tax on Americans abroad. Why? Those who file "married filing separately" will find that they:

- reach higher tax brackets at lower levels of income

- will be subject to various "reporting requirements" at a lower level of income

- will be disproportionately affected by the AMT and the 3.8% Obamacare surtax (think of it the Obamacare surtax having a disproportionate effect on Americans abroad).

In addition, the U.S. "Reporting Requirements" (FBAR, 8938, etc.) are very disruptive to the "marital unit". Unless the non-citizen spouse doesn't mind his/her financial information reported to the IRS, the U.S. citizen spouse will have to keep his/her financial accounts separated from the non-citizen spouse. This is a major issue in some marriages. Think about it - not being able to have "family bank accounts". (This can put a major strain on a marriage.) It also makes "family retirement planning" more difficult.

Clearly the U.S. tax code in both intent and effect discriminates against U.S. citizens who do NOT marry other U.S. citizens.

All of this suggests two practical conclusions:

1. U.S. citizens should understand these rules before marrying an "alien".

2. The "alien" should understand these rules before marrying a U.S. citizen.

After all, it's a big world out there ...

All of this is very sad but very true."

To put it another way, these comments appeared in a study conducted by Dr. Amanda Klekowski von Koppenfels:

*"Hated being treated **like a criminal** and filing FBARs on money earned solely by my **UK- only husband."***

"FATCA treats families like mine as suspected criminals until proven otherwise all because one family member is American who dared to marry abroad."

(Executive Summary: Survey of Citizenship Renunciation Intentions Among US Citizens Abroad; 11 February 2015, http://www.kent.ac.uk/brussels/documents/kvksurveyresults.pdf)

It is even more apparent if divorce is the unfortunate result of the stress of dealing with the above-mentioned issues of discrimination. From Phil Hodgen, the author of the article in the WSJ |Expat Blog:

http://blogs.wsj.com/expat/index.php?s=Phil+Hodgen

"Even divorces become complicated. When divorcing couples divide up their assets, one spouse will get all of one asset and the other will get sole ownership of another

asset. You get the house worth $1,000,000, and I get stocks and bonds worth $1,000,000. We end up equal.

When both spouses are citizens, this is not taxable. If one spouse is a non-citizen, however, this is treated ***as a pair of sales***: I sold you my half of the house (and I will pay capital gains tax), while you sold me your half of the stocks and bonds (and you will pay capital gains tax). We might not end up equal, and we are both poorer than we were before—we shared the property settlement with Uncle Sam."

This clearly demonstrates that US citizens abroad are NOT taxed the same as those US citizens resident in the US. Punitive measures are applied to Americans abroad that Homelanders simply don't have to deal with.

Part IX- Consequences, unintended consequences, and intolerable consequences – The Terrible Reality of U.S. taxation on those U.S. citizens abroad who are "tax compliant"

Congress has NOT considered the impact of "citizenship taxation" on the very people it affects most – namely U.S. citizens living outside the U.S.

All aspects of the life of a U.S. citizen living outside the United States are considered to be "foreign". The Internal Revenue Code of the United States is punitive with respect to U.S. citizens who have lives with a "foreign" component – meaning the totality of their lives.

Let's take the example of a U.S. citizen living in Canada. Imagine that the person has a Canadian job, a Canadian business (partnership or small business corporation), a Canadian pension, a self directed Canadian retirement account, a Canadian bank account, and a Canadian spouse. This particular U.S. citizen living in Canada will be subjected to compliance filing and reporting requirements (which can typically be in the thousands of dollars per year). In addition to the cost of compliance this person will find himself in a position of:

- U.S. taxation where no Canadian taxation exists (i.e., sale of a principal residence)
- Double taxation (the 3.8% Obamacare surtax subjects investment income to double taxation)
- U.S. taxation where the U.S. allows a PARTIAL credit for SOME Canadian taxes paid (there is no foreign tax credit for Canadian VAT taxes)

Here are some examples (selected from many) of the "consequences":

Examples of U.S. Taxation where Canadian taxation does not exist:

- Capital gains tax payable on sale of principal residence

- Taxable phantom capital gains on Mortgage discharges

- Subpart F income (attribution of corporate income to individual shareholder) making the use of Canadian Controlled Private Corporations difficult

- TFSA (Tax Free Savings Account)

- RESP (Registered Education Savings Plan)

- RDSP (Registered Disability Savings Plan)

- $800,000 Tax free capital gain on certain Canadian small business shares

- Contributions to RRSP (this is not a tax deduction under U.S. law)

- Contributions to certain pension plans

Examples of Double Taxation:

- 3.8% Obamacare surtax

- Self-employment tax self-employment income in countries without a totalization agreement (Canada does have a totalization agreement but Australia does not)

- possible U.S. Exit Tax payable on relinquishment or renunciation

**Examples of Taxes payable in Canada that cannot be offset under the U.S. foreign tax
credit rules:**

- 13% Canadian VAT and VAT taxes in European countries

Examples of deliberately punitive U.S. taxation which is designed to specifically punish Canadians who invest in Canadian retirement planning products instead of U.S. products:

- PFIC (Passive Foreign Investment Company) rules as applied to Canadian mutual funds

Example of U.S. punitive treatment of U.S. citizens who have a non-U.S. citizen Spouse:

- no "tax free" rollover of the estate from the U.S. citizen spouse to the non-U.S. citizen spouse

--- We ask the Senate Finance Committee to consider that the only investments for U.S. citizens in Canada and abroad that do NOT come with punitive tax consequences or with expensive reporting/compliance requirements are: interest (as long as it is not a PFIC money market fund), individual shares, and rental real estate.

Any other form of investment will create a U.S. tax or reporting/compliance problem.

Part X – Consequences, unintended consequences, and intolerable consequences – The Effect of U.S. taxation on those U.S. citizens abroad who are "tax compliant"

As President John F. Kennedy once said:

> "The great enemy of the *truth* is very often not the lie, deliberate, contrived and dishonest, but the *myth*, persistent, persuasive and unrealistic." – John F. Kennedy"

There is a widespread myth that U.S. citizens abroad are somehow tax cheats. There is a myth that they are rich "FATCA(T)s sipping champagne".

Nothing could be further from the truth.

U.S. citizens abroad come from every walk of life. They are young and old. They are rich and poor. They are represented by a variety of races and religions. What they have in common (for the most part) is that they were born in the United States. Some have been unaware of their U.S. (and in almost cases the full extent of) tax obligations. Some have been aware of their U.S. tax obligations and have attempted compliance with U.S. tax laws during every year of their lives.

U.S. taxation of Americans abroad has forced U.S. citizens into two groups:

Group 1: Those who are NOT in compliance with U.S. taxation abroad and are worried, frustrated and finding it difficult to live precisely because they are not compliant, find compliance too difficult, and are terrified of the IRS threats and penalties.

Group 2: Those who are in compliance with U.S. taxation abroad and they find that the effects of compliance are such that they are worried and do not have the same life opportunities that their neighbors do. They are forced to live as "second class citizens" in their own country.

The fact of U.S. "citizenship taxation" makes it very difficult to live as a U.S. citizen abroad.

The rise in renunciations of U.S. citizenship is a testament to this.

Nina Olson, Taxpayer Advocate, has noted that "U.S. tax compliance" for U.S. citizens abroad is at best very difficult and at worst (or more realistically) impossible. As a result, many of those who wish to comply cannot comply. Those who do find a way to comply

with "U.S. taxation abroad" find the "life restrictions" (inability to invest for retirement, difficulty in self-employment, reluctance of non-Americans to take on U.S. citizen business partners) too difficult.

The result (as clearly documented by the rise rating rate of renunciations of U.S. citizenship) is that U.S. citizens abroad are finding that they can no longer remain U.S. citizens. Rightly or wrongly, they feel that they are forced to renounce U.S. citizenship.

For a collection of former U.S. citizens who felt that they were forced to renounce their U.S. citizenship see:

http://vimeopro.com/citizenshiptaxation/video-testimonials

We particularly invite the Committee to read a "Letter to President Obama" that appeared on Robert Wood's blog in August of 2014. Of particular note is that this letter was written by a U.S. citizen living in Canada who after 40 years of U.S. tax compliance, felt that she could no longer continue.
http://www.forbes.com/sites/robertwood/2014/08/15/dear-mr-president-why-im-leaving-america/

The letter begins with:

"*Dear Mr. President,*

I am writing with a heavy heart as I, my husband, and our daughter are all seriously contemplating giving up our U.S. citizenship. We are doing this not to avoid paying U.S. taxes but because we strongly object to a system that is blatantly discriminatory and unfair to law-abiding Americans living outside the country. In addition, it has become too expensive, too difficult, and frankly, too frightening, to try to comply with all of the tax filing requirements that now apply to citizens living abroad."

and ends with:

"*For many years we have been willing to pay the substantial expenses involved in using tax accountants who are qualified to file our tax returns in both countries. As you can imagine, dual citizens cannot use just any tax accountant and still feel confident that they are complying with the very confusing U.S. tax laws, tax treaty, and all of the special requirements that apply only to Americans living outside the country. This is*

especially true when it is the Fraud Division that investigates even the most innocent errors in filing some of the necessary forms.
However, now the overall burden and the unfairness have become too heavy to reasonably bear. My earliest known American ancestor, who sailed from Europe and settled in Kentucky 166 years ago, is probably "rolling over in his grave" to think that I am giving up my U.S. citizenship. However, growing up in Colorado I was raised and educated to stand up for what is right. I have been doing that ever since.

What America is doing to its own citizens living in other countries is not right and we have had enough. What I have outlined here is only part of the problem. ***All we want in return for fulfilling our responsibilities as Americans is to be treated fairly and equally.*** *We are performing our part of the bargain. America is not.*

There are approximately one million Americans living and working in Canada, and millions more in other parts of the world. I understand from our specialized tax accountant, and our cross-border consultant, that we are not alone in contemplating or taking this very dramatic and previously inconceivable step of relinquishing our U.S. citizenship. What a sad state of affairs for America and for its citizens everywhere.

Regretfully yours,"

We also invite the Committee to read a "Dear Son, Why you should leave America now" that appeared on Robert Wood's blog in September of 2014. This letter was written on the occasion of a young man's graduation from high school.
http://www.forbes.com/sites/robertwood/2014/09/12/dear-son-why-you-should-leave-america-now/

It begins with:

"*Dear Son:*

Words cannot express how proud I am to watch you receive your diploma. Today marks the end of one chapter in your life and the beginning of another. Seize the day, or as Spock from Star Trek would say, 'go forth and prosper.'

Last night was a celebration, with everybody talking about careers. Yet it will be your family, friends, and personal relationships that will be most important to you. Never confuse having a career with having a life.

On that note, I would like you to consider your citizenship. You are a Canadian but you were born in the U.S. and lived there until you were 4."
and ends with:

To Renounce U.S. Citizenship or to Retain it? *This is the decision you must make. Let's explore what each option means. If you remain a U.S. citizen, you are subject to all of the requirements I outlined. You will be disabled from saving and investing for retirement in the same way other Canadians can.*

Examples of some disabilities include:

- you will not be able to invest in many non-U.S. investments;
- you will not be able to use a business corporation to hold investments;
- you will not be able to invest in a principal residence tax-free the way that others can
- you will be subject to the U.S. estate and gift taxes (making certain aspects of your life difficult)
- your (I assume) non-U.S. wife will be at a great financial disadvantage should she become a widow (is this fair to her)?

Should you decide to renounce your U.S. citizenship, you should realize that U.S. citizens with a net worth of two million dollars or more must pay the U.S. an Exit Tax. For those subject to this Exit Tax the financial penalty can so great that they feel trapped. At this stage in your life, you might think that a net worth of two million dollars is a lot of money. The truth is that is not. Furthermore (given the realities of inflation), you are likely to achieve that level of net worth quite quickly. Our Toronto home, where you sleep every night, is probably worth two million dollars.

Therefore, if you decide to renounce your U.S. citizenship, ***you should do it now rather than later****. This decision does not have to be made today, but should be made by the time you graduate. I am proud of you, love you and wish the best for you.*

Seize the day!

Dad"

We urge the committee to understand that Americans WHO ARE TAX COMPLIANT feel they are forced to relinquish their U.S. citizenship. For many, relinquishment is a choice in only a "theoretical sense". They cannot live under the "life controls" that are part and parcel of the rules of U.S. citizenship abroad.

We urge the Committee to view the video testimonials at:
http://www.vimeo.com/citizenshiptaxation.

We also ask the committee to be mindful of the decision of the Supreme Court of the United States in Afroyim v. Rusk (https://www.law.cornell.edu/supremecourt/text/387/253), where Justice Black held that:

"*We hold that the Fourteenth Amendment was designed to, and does, protect every citizen of this Nation against a congressional forcible destruction of his citizenship, whatever his creed, color, or race. Our holding does no more than to give to this citizen that which is his own, a constitutional right to remain a citizen in a free country unless he voluntarily relinquishes that citizenship."*

The U.S. laws governing U.S. citizens abroad have resulted and continue to result in the "forcible destruction" for those U.S. citizens abroad.

Part XI– The Costs of Renunciations Including the "Exit Tax"

It is difficult for those who are not affected by the complexity of the laws of "citizenship taxation" to understand the issues, the difficulties and the costs. They frequently say: "If you don't like it, you can always renounce your U.S. citizenship."

Why Americans abroad are renouncing U.S. citizenship

U.S. citizens abroad are renouncing U.S. citizenship NOT because they want to. They are renouncing U.S. citizenship because they feel that – U.S. laws enacted by Congress – are forcing them to renounce their citizenship.

A comment that explains the difficulties experienced by American abroad appeared at Forbes as follows:

"*Thank you for outlining the main points of tax requirements involved in expatriation. I feel it is extremely important to make a clear distinction between those who live in the US and decide to expatriate and renounce/relinquish their citizenship and those who already live abroad and decide to renounce/relinquish their US citizenship. I do not know anyone who has left the US for tax reasons and then renounced their citizenship.*

So I cannot speak to any aspect of that particular situation.

As to Americans living abroad who decide to renounce/relinquish their citizenship, the issue primarily, is not one of taxation but rather, of onerous penalization for not filing the Foreign Bank Account Report (FBAR). FBAR is part of the Bank Secrecy Act (1970), designed to track money of US Homelanders who have foreign accounts to launder money, support terrorism etc. It was not enforced for 40 years. Virtually no one living abroad had ever heard of it. Once the IRS achieved success with breaking the bank secrecy laws in Switzerland, in 2009, this little-known form was added into the pot of the US government's misleading campaign against tax evasion.

Americans living in foreign countries pay taxes to the governments of those countries. Along with FBAR, most were unaware they were required to file/pay US taxes as well. This is in no way, equivalent to Homelanders who purposely seek out places "offshore" to avoid tax. However, IRS has gone after honest Americans abroad who had no knowledge of their obligations. Instead of encouraging them to come forward in a reasonable way, the IRS has engaged in a vicious cycle of fines, penalties, interest and whatever else they can think of to persecute those who are simply presumed to be

guilty. The stories of those who have tried to comply by entering the Offshore Voluntary Disclosure Initiative are truly horrifying, many enduring 2 years of confusion, being threatened with penalties equivalent to their entire retirements. These are people who by and large, owe no tax to the US.

Some of the reporting requirements defy any level of reasonable logic. A US citizen, stay-at-home mother for instance, who likely has no income and is signed onto her non-US citizen husband's accounts, is required to report HIS bank account numbers, balances and so on. I doubt any US Homelander would be willing to do the same if living in the US, married to a foreigner with a government who demanded the same, or else be prepared to lose a considerable portion of savings, retirement plans, etc. Now FATCA promises to be even more punishing. Financial institutions across the globe will be required to report their American clients' personal banking information. The US government will coerce this reporting by withholding 30% of an institution's entire US holdings if they do not comply. Banks in Switzerland have begun to close those clients' accounts without notice, including the renewal of mortgages.

Congress and the IRS are fully aware of this and do nothing to mitigate this truly destructive practice. *There is no excuse whatever, for this gross misapplication of power. A recent article pointed out that terrorists will be able to pinpoint identification and location of Americans living abroad, thus putting them in harm's way. I cannot imagine any American, abroad or not, feeling that this is the way a government should act toward it's own citizens.*

The numbers of Americans abroad renouncing is higher than the government will admit. The "Name-and-Shame List' published in the Federal Register is hardly an accurate representation of how many are doing just that. Look to the long waits at European embassies and consulates, the number of expatriates banding together in Canada and Switzerland trying to get their message out via online forums and you'll get a much better sense of how widespread this "trend" is.

Not about tax, nor political discontent, the larger issue is the complete betrayal by one's country in an attempt to gauge for money to make up for the horrific debt the US has. Add the clichés of "tax cheat," "traitor," and the guaranteed reaction such labels produce, and those who expatriated for reasons such as marriage, education or employment can count on being treated in the same manner as those who may leave the US for tax purposes.

It is high time that Americans learn that the country they grew up in, no longer exists. The "American exceptionalism" that we were taught to believe in, needs to be seen for what it has become, an excuse for the government to do whatever it wants with no concern for the consequences. ALL Americans lose in this process."
This comment is one of the best of many that appeared at Forbes on December 12, 2012. http://www.forbes.com/sites/robclarfeld/2012/12/12/renouncing-ones-us-citizenship-meaningful-trend-or-visceral-overreaction/

Furthermore, it is extremely costly for Americans abroad to renounce their citizenship.

The cost to renounce U.S. citizenship has three components.

1. The costs of "tax compliance". This would normally include the costs of 6 years of tax compliance and the costs of filing the final Form 8854. These costs vary according to the complexity of the issues, but generally start at about $5,000.

2. A "renunciation tax" of $2350

3. Some U.S. citizens abroad are subjected to a "Further Exit Tax".

A "middle class" U.S. citizen abroad living in Toronto, Vancouver, London, Paris or any other major world city is likely to have sufficient assets (the average price of a detached house in Toronto now exceeds one million dollars) to be forced to pay an "Exit Tax" to the U.S. government. In other words, he must pay the U.S. government in order to not be considered to be a U.S. citizen. The amount of the tax varies (See S. 877A of the Internal Revenue Code). It varies according to net worth, assets, length of time the assets have held, whether a pension is inside or outside America and whether the person renouncing U.S. citizenship was born a dual citizen. Significantly, the "Exit Tax" is a tax that is payable on worldwide assets.

For some U.S. citizens (including many of those living in Canada) their "worldwide assets" consist of ONLY Canadian assets. It is so arbitrary that, given an identical composition of assets, a person can pay from $0.00 from $364,000 depending. The point is that it is very expensive to renounce U.S. citizenship. People will do this only if they feel they have no choice.

For a description of how the Exit works and how it affects Americans abroad see:

1. "New Zealand and the Exit Tax"
http://citizenshipsolutions.ca/wp-content/uploads/2014/02/NewZealandandtheExitTax.pdf

2. The series of posts: "Renouncing U.S. citizenship? How the S. 877A "Exit Tax" may affect your Canadian assets
http://citizenshipsolutions.ca/2015/04/01/renouncing-us-citizenship-how-the-s-877a-exit-tax-may-apply-to-your-canadian-assets-5-parts/

The laws of U.S. "citizenship taxation" are so complex, so restrictive and involve such high compliance costs that many U.S. citizens abroad are in a position where they:

- cannot afford the ongoing compliance costs and the life restrictions that U.S. tax compliance requires; but
- cannot afford the costs to renounce U.S. citizenship

U.S. citizens abroad are clearly "caught between a rock and a hard place".

Part XII – The Cost to Renounce U.S. Citizenship – How the Exit Tax Works

The following two comments about the S. 877A "Exit Tax" appeared in Canada's National Post on April 12, 2015

"*You are absolutely correct that Canada has a "Departure Tax". That said, there are a number of very significant differences between the S. 877A rules and Canada's Departure Tax. The differences range from the range of assets that are subject to the tax, to deferral of tax, to ....*

Also, note the U.S. tax is NOT a tax on changing residence. It is a tax on renouncing citizenship. Therefore, the U.S. tax is imposed on people long after they cease to be U.S. residents.

It is conceptually quite different.

Question for you:

Say years after you had moved from Canada, Canada retroactively imposed a tax on your leaving Canada AND based the tax on assets that you accumulated after having left Canada?

How would you feel about that?

The problem is that for Americans in Canada it is really:

1. A retroactive tax imposed long after leaving the U.S., which is:

2. Imposed on assets acquired AFTER leaving the U.S.

Do you see the difference?"

http://business.financialpost.com/personal-finance/taxes/many-u-s-citizens-in-canada-are-heading-for-the-exits-but-it-could-cost-them#comment-1961643195

"*There is a large difference between the two. Canada will only tax on assets gained while resident in Canada. It does not include pensions and many other items.*

The US goes so far as to include everything no matter where it was earned. If you have a Canadian pension as a US Person living in Canada, renouncing US citizenship will require claiming the pension as if it were entirely paid out at that time and will include that tax in one's regular income. At the highest marginal rates.

The US alone practices this level of confiscation of assets."

http://business.financialpost.com/personal-finance/taxes/many-u-s-citizens-in-canada-are-heading-for-the-exits-but-it-could-cost-them#comment-1961721165

We will demonstrate how the U.S. “Exit Tax” affects “middle class” Canadians who have U.S. citizenship and wish to relinquish it. You will see how the “Exit Tax” imposes punitive taxes on Canadian assets and on income earned in Canada. You will also see how some U.S. assets are (in effect) exempted from the “Exit Tax”. We will learn from the example of a “middle class Canadian” with an average house in Toronto, a pension plan from the University of Toronto and a low value RRSP who decides that he no longer wishes to be a U.S. citizen.

This person has lived in Canada most (or perhaps all) of his adult life. You will see that he has NO U.S. assets and NO U.S. income. He was born in the United States, never officially relinquished U.S. citizenship and is therefore considered to be a U.S. citizen.

The U.S. imposes charges fees/taxes to NOT be a U.S. citizen. Everybody is required to pay an administrative fee of US$2,350 to no longer be a U.S. citizen. Others will have to pay an additional premium in the form of an “Exit Tax”.

In this particular case our “middle class Canadian” would have been required to pay the United States an additional fee in the form of an “Exit Tax”.

The amount of the “Exit Tax” is US$363,000 which is approximately CA$400,000 (Canadian dollars).

Note that this “Exit Tax” is paid NOT on U.S. assets **but completely on Canadian assets**. It could very easily have been much more! Had he been born a dual, a U.S. Canadian citizen, he might not have to pay any Exit Tax (unless he was NOT living in Canada when he renounced).

This is all possible because of U.S. “citizenship (place of birth)” taxation.

You will see that the claim that U.S. citizens abroad renounce citizenship to avoid taxes is absurd. In fact, it’s the exact opposite. Renouncing U.S. citizenship is more likely to subject a “long term, middle-class American abroad” to tax consequences that are horrific and unjust in the extreme.

How this works – the S. 877A "Exit Tax" rules in action …

In order to see the graphic and **brutal confiscatory effects of the U.S. Exit Tax** in action I asked a licensed U.S. CPA who specializes in International Tax to consider the following factual scenario:

Relinquishment date: A person who renounced U.S. citizenship on November 1, 2014. Profile: He was a "middle class" person who was completely tax compliant in Canada – his country of residence. He was a saver and investor. He had worked hard for this money.

The CPA was asked to calculate the Exit Tax based on the following "Financial Facts". Note that the person's assets do exceed the $2,000,000 dollar U.S. threshold. Notice also that this example is representative of a typical "middle class" person.

Financial Facts – All amounts were in Canadian dollars.
– pension income from Canadian sources of $50,000
– principal residence bought in 1985 for $100,000 with a fair market value on November 1, 2014 of $1,200,000. The CPA calculated the taxes under the assumption that the relinquisher WOULD be entitled to the $250,000 capital gains deduction that would normally be available under S. 121 of the Internal Revenue Code. It is NOT clear that he would be entitled to this deduction under the S. 877A rules. Note that if the S. 121 deduction does NOT apply the taxes owing will be significantly higher.
– pension from the University of Toronto with a present value of $900,000
– RRSP with a value of $500,000
– 500 shares of Telus common shares with a deemed sale on November 1, 2014 and a cost basis of half that. In other words the shares doubled.

Note that this person clearly exceeds the US$2,000,000 threshold and is therefore subject to the Exit Tax. Yet he is a person with a "middle class" life style. The CPA graciously calculated the amounts to go on the Form 8854 (mandatory asset disclosure form) and calculated the Exit Tax (amount payable to the IRS to no longer be a U.S. citizen).

Our CPA calculated the "Exit Tax" based on the following five different fact patterns.

1. U.S. citizen only at birth – living in Canada – Canadian source INELIGIBLE (meaning Canadian source) pension

Exit Tax payable: $363,954 USD

2. Dual U.S./Canada citizen from birth – living in Canada
Exit Tax payable: $00.00 USD

3. Dual U.S./Canada citizen from birth **living in U.K.** – Canadian source INELIGIBLE (Canadian source) pension
Exit Tax payable: $363,954 USD

4. U.S. citizen only at birth – living in Canada – U.S. source ELIGIBLE (U.S. source) pension
Exit Tax payable: $69,926 USD

5. U.S. citizen only at birth – billionaire – living in Cayman Islands – relinquishes before the age of 18 1/2
Exit Tax payable: $00.00 USD

http://citizenshipsolutions.ca/2015/04/05/part-5-the-exit-tax-in-action-five-actual-scenarios-with-5-actual-completed-u-s-tax-returns/

It's painfully obvious that the effect of the S. 877A Exit Tax is MOST punitive in relation to a long term U.S. citizens abroad with no U.S. assets or pension. It is significant that the S. 877A Exit Tax is imposed years after the person ceased to reside in the United States. Citizenship taxation makes it easier to impose "Exit Taxes" on people after they have left the United States. This is contrary to the way all other "known" Exit Taxes operate.

Whether by accident or design, the effects of the U.S. "Exit Tax" are by far the harshest on those U.S. citizens who have lived outside the United States the longest. The Exit Tax operates to confiscate a large percentage of a person's non-U.S. assets.

I am NOT aware of any other "Exit Tax" or "Departure Tax" that has the primary effect of confiscating assets that are foreign to the country.

The "confiscation of foreign assets" was probably NOT the intent of the S. 877A rules. That said, the confiscation of "foreign assets" is the primary effect of the S. 877A rules. One might ask, how did this happen? How could such an unbelievable "cruel" and "unfair effect" develop?

The answer is that the "confiscation of foreign assets" is the result of "citizenship taxation". Why?

"Exit Taxes" are designed to impose taxes when an individual leaves and is NO longer subject to the "taxing jurisdiction" of a country.

In a system of "residence based taxation", the event that severs the "tax connection" with a country is ceasing to be a resident of a country and establishing residence in a new country.

In a system of "citizenship taxation", the event that severs the "tax connection" with a (and there is only the U.S.) country is ceasing to be a citizen of the country (U.S.). Since, few people will want to be "stateless", those relinquishing U.S. citizenship are (almost) always citizens of another country. **Furthermore, they will likely be residents of that other country and have assets in that other country.** It is for this reason that the U.S. "Exit Tax" has the primary effect of confiscating "foreign assets". (Assets that are local to you, but "foreign" to the U.S.) This is a matter that should be of great concern to those countries who foolishly signed FATCA IGAs.

As goes the tax system, so goes the "moral conscience" of the nation

I suspect that most would agree that "Exit/Departure" taxes reveal the worst and the ugliest aspects of a country's tax system. Therefore, the S. 877A rules demonstrate how incredibly "ugly" U.S. citizenship taxation really is.

For all practical purposes, U.S. homelanders live under a system of "residence taxation". I agree that the Internal Revenue Code uses the word "citizen". But the rules of U.S. "citizenship taxation" are written for those who are U.S. residents. Therefore, for 98% of U.S. citizens, U.S. "citizenship taxation" is actually "residence taxation". It's only for the 2% of Americans abroad that "citizenship taxation" is revealed for what it really is.

Citizenship taxation is:

The taxation of people who were "born in the U.S." and "live outside the U.S". Those subject to "citizenship taxation" are taxed on income earned **outside the U.S.** (which is also subject to taxation in their country of residence"). I have never met a person who was SUBJECT to U.S. "citizenship taxation" (meaning they lived outside the U.S.) who approved of it.

The general principles of "citizenship taxation" are "death by a thousand cuts. The S. 877A Exit Tax is "death by the guillotine".
The S. 877A rules are particularly vicious because they are the inevitable and logical result of the American system of "citizenship taxation". If the United States is to have an "Exit Tax" at all, that "Exit Tax" CANNOT be defined according to the principles of "citizenship taxation".

In fact, the S. 877A rules are the best argument there is for the United States to move to "residence based taxation".

I believe that the United States has three options:

1. Not have an "Exit Tax" at all – preferred
2. Have an "Exit Tax" that is based on the principles of "residence taxation" (For example, American Citizens Abroad has suggested an "Exit Tax" based on Canada's "Departure Tax".)
3. Change to "residence taxation" and have an "Exit/Departure" tax that is based on a system of "residence taxation".

It is clear that the current S. 877A tax cannot continue. I suggest there are three reasons:

First, it is unjust and immoral in the extreme. Once the U.S. "Exit Tax" is understood, it will provide powerful disincentives to immigrate to America. It's simply wrong. Why would anybody move to a country that they could not leave without being forced to surrender a significant portion of their net worth?

Second, there is no way that people can pay the tax. The S. 877A rules create taxation with no "income realizing event". Where does the money come from to pay the tax? It's a huge liquidity problem.

Third, as this tax becomes more and more understood, I suggest that the prospect of the "Exit Tax" will drive Americans abroad to "renounce citizenship".
Those who are NOT "covered expatriates" will want to renounce before "inflation" or "currency fluctuations" make them "covered expatriates". Those who are "covered expatriates" will consider all their options for exiting the U.S. tax system at the lowest cost. Many "covered expatriates" will pay the "Exit Tax" viewing the payment as in investment in their future finances and peace of mind.

Is this what the United States regards as sound tax policy?

It's seems clear that the "Exit Tax" (as expressed in the S. 877A rules) has to change.

What should the appropriate change be?

The answer is to move to system of "residence taxation". This will immediately mitigate the worst effects of any "Exit Tax". Furthermore, under a system of "residence taxation", any "Exit Tax" will be triggered ONLY by ceasing to be a resident of the United States.

Part XIII – "Citizenship taxation" and U.S Foreign Policy – The imposition of excessive regulatory burdens on U.S. citizens abroad

Michael DeSombre, President, Republicans Overseas:

"FATCA and FBAR reporting conflict with attorney-client privilege and require disclosure of client accounts held by American citizens for benefit of non-citizens. Americans practicing law overseas have primarily non-U.S. citizens as clients. For certain transactions, particularly real estate transactions, attorneys generally hold funds on behalf of clients pending completion of the transaction of legal services.

The attorney will need to have signing authority over these accounts and this would need to disclose these accounts under the account reporting requirement, ***in violation of attorney client privilege.***

Non-U.S. citizen clients will not want to risk such disclosure ***and this will generally stop using American citizen attorneys for such work."***

https://www.facebook.com/republicansoverseas/posts/371670443016757

The rules of citizenship-based taxation and FATCA are clear interferences with the rights of U.S. citizens to live outside of the United States. They are in effect a form of "residence-based life control". They also provide strong incentives for non-American citizens to avoid any significant interaction with Americans.

We assume that Congress considers it to be desirable for U.S. citizens abroad to develop business in other countries. The current rules of "citizenship taxation" both:

- impose costs and restrictions on U.S. citizens abroad that make it difficult for them to create businesses abroad. Examples include (but are not limited to): the excessive taxation and reporting requirements associated with PFICs and Foreign Corporations, double taxation (example: Obamacare surtax), and taxation on income that is tax exempt in the country of residence

- reporting requirements that make people want to avoid associations with U.S. citizens (including the Foreign Corporation reporting requirements – Form 5471), Foreign Partnerships.

The problem is recognized by a young American living in Berlin who writes in 2015:

"*In order to encourage exports and international commerce, the physical presence of US persons abroad has been tacitly acknowledged as important by Congress through the passage of the Foreign Earned Income Exclusion (FEIE) and the Foreign Housing Exclusion (FHE). [3] While these provisions entirely eliminate any tax liability for 82% of international filers, they do not take into account the increasing cost of compliance and regulatory burdens imposed on US persons abroad. [4]*

If a US person abroad creates or acquires a non-US company (anything equal to or greater than 10%), the company becomes subject to both local and US reporting requirements. The complexity of these reporting requirements is inherently greater than for companies operating domestically because of differences in language, currency and any additional local reporting obligations. In addition to reporting requirements, the US reserves the right to levy taxes on certain Controlled Foreign Corporations. Because of the complexity and expense of compliance, many foreign firms may choose to avoid US persons altogether. [5]

The reluctance on the part of Foreign Financial Institutions (FFIs) and other businesses to do business with US has a direct, although not perfectly quantifiable impact on US exports of both goods and services. The entry barrier to foreign markets imposed on US persons (CBT, FATCA, Controlled Foreign Corporations, Passive Foreign Income Companies) severely limit a US person's economic freedom in their country of residence and create strong incentive to renounce citizenship."

The problem was recognized by an adoption agency in British Columbia, Canada which has publicly **warned of the dangers of adopting U.S. born children** as follows:

"Important Information for all Canadians Who Have Adopted a Child from the USA

All children born in the USA and adopted by Canadians over the past number of years (of which there are several hundred) are US citizens. This, of course, brings a number of rights and responsibilities. For example, they would be subject to a military draft.

The USA is the only country in the world that requires its citizens to report on their world-wide income, file a tax return, and pay US taxes, no matter where they live and irrespective of what other citizenship they hold.

Now the USA has introduced a new and complicated law, which will affect every US adopted child in Canada.The name of the legislation is "The Foreign Account Tax Compliance Act" (FATCA).

Although the original intent of FATCA is to track down Americans who put money in tax havens

off-shore, it applies to every US citizen anywhere. It applies to Canada even though it is not a tax haven.

All US citizens living in Canada must now do the following:

1. US citizens, residents and green-card holders who own financial accounts outside the US that exceed $10,000 in total at any time of the year must disclose them in the US Department of Treasury Form TD F90-22.1, Report of Foreign Bank and Financial Accounts, commonly called FBARs (this is in addition to filing an annual US Income Tax Return).

2 .A “foreign financial account” means Canadian bank accounts, checking and savings accounts, investments, securities and brokerage accounts, RRSPs, RESPs, TFSAs, insurance and annuity policies with a cash surrender value, commodity futures or options account, shares in a mutual fund, etc.

3. All Canadian financial institutions will be required to advise the IRS of any account holders who are US citizens.

Needless to say, these requirements have been controversial in Canada. Margaret Wente of the Globe and Mail has written an article outlining these controversies, and the Globe and Mail Web Page also links to several other articles outlining the concerns of the Canadian government, Canadian banks, and financial institutions, as well as those of US citizens living in Canada. While these rules apply to all US citizens living in Canada, the purpose of this article is to focus on adopted children.

Some children are not old enough to have bank accounts yet, while other children will have bank accounts in their names (and perhaps other financial instruments which may have been gifts from grandparents etc). Until the child reaches the age of majority the parent is required to file the forms on the child’s behalf on all qualifying accounts back to and including 2005.

Adopting parents face difficult decisions in the years ahead. The reasons for this are complex, but families basically have three options:

A. Parents and their adopted children can comply with the US legislation. This seems like the prudent approach, as explained further below.

B. Have the child renounce his or her US citizenship. Of course this is not a decision that should be taken lightly. The catch is that you cannot renounce your US citizenship unless all your tax returns are filed, all the financial asset disclosure statements (FBARs) have been filed, and all US taxes and penalties are paid to the IRS.

C. Parents and the adopted child could simply not comply. As the Globe and Mail articles point out, many US citizens living in Canada are confused as to what to do, and some have stated that they do not intend to comply because of the exposure to high rates of taxes and penalties. This reason does not make sense for an adopted child. The chances of them having complex or large assets at this stage in their life are small. It does not make sense for adopted children to choose this route.

Whether your child lives in Canada as an American citizen, or unless and until they eventually renounce their American citizenship, they must file tax returns every year (if they have income),

> and if they have any qualifying financial accounts must file FBARs every year.
>
> As a result, I recommend that all parents of children adopted from the USA become familiar with these rules and, if applicable, file the necessary documents with the IRS every year.
>
> For more information Google search for FATCA, and that will bring you to links to the IRS web page (which has a FAQ page), as well as many other articles and opinions on this new law.
>
> Please disseminate this information widely to anyone you know who has adopted a child from the USA or intends to do so in the future."

http://www.sunriseadoption.com/adoptive-parents/what-all-adopting-parents-in-canada-need-to-know/important-information-for-all-canadians-who-have-adopted-a-child-from-the-usa

Think of it.

The fact is that **U.S. "citizenship taxation" makes *U.S. born children less attractive for adoption***. Is that good tax policy for the United States of America?

Part XIV – "Citizenship taxation" and U.S Foreign Policy – The imposition of capital taxes on the economies of other nations

"*You write these articles as if only we American expatriates suffer from American taxes. Most of our money is earned within our countries of residence. Every time America takes a dollar from me, that is one less dollar circulating from the Canadian economy and one extra dollar to pay down the impossible American debt. It is lost Canadian spending, lost Canadian jobs. If every one of the one million or so Americans living in Canada paid America $1,000, that's $1Billion pirated. That's Canadian debt. That's a lot of new cars. That's jobs.*
Why is the Financial Post not upset at this?"

Comment in Canada's National Post – March 27, 2015
http://business.financialpost.com/personal-finance/estate-planning-benjamin-franklin-was-doubly-right#comment-1933895982

To put it simply: U.S. "citizenship taxation" has the effect of drawing "after tax capital" from the economies of other nations to the United States. This has been described in a previous essay which was titled: "Paying Tribute To America" (http://citizenshipsolutions.ca/wp-content/uploads/2014/02/Paying-Tribute-to-America.pdf)

A recent example of the principle of the "transfer of productive capital" to the United States is the recent example of London Mayor Boris Johnson. As described by Robert Wood:
http://www.forbes.com/sites/robertwood/2014/11/25/londons-boris-johnson-gets-help-in-irs-fight/
http://www.forbes.com/sites/robertwood/2015/02/15/savvy-london-mayor-boris-johnson-paid-irs-is-now-renouncing-u-s-citizenship/

Mr. Johnson sold a house in England that was his principal residence. The sale generated a significant capital gain. This capital gain was exempt from tax under U.K. Law. Mr. Johnson was born in the U.S. and is a U.S. citizen by birth. As a result he had to pay a significant capital gains tax to the IRS on the sale of his London home. My point is that this is an example of "after tax" U.K. Capital extracted from the U.K. by operation of the U.S. laws of "citizenship taxation". All students of economics understand the impact of increasing or decreasing money in an economy.

U.S. citizenship taxation is an interference with the fiscal sovereignty of all nations.

Part XV – "Citizenship taxation" – A deterrent to immigrating to America

Throughout its history, the United States of America has been a clear beneficiary of immigration. (How might the world be different if Albert Einstein had NOT immigrated to America?) Immigration is competitive and the U.S. must compete against other countries to attract the best immigrants. Those immigrants who come to America as permanent residents will be subject to U.S. taxation including (should they decide to leave) the provisions of the S. 877A Exit Tax rules.

There are at least two ways in which U.S. "Citizenship Taxation" discourages immigration to America.

First, they will be less likely to immigrate to American because of the threat of the S. 877A "Exit Tax" should they decide to leave.

Professor Ruth Mason of the University of Virginia law school, writing on the desirability of "citizenship taxation" noted that the "Exit Tax" will act as a deterrent to people making America the immigrant destination of choice.
http://www.law.nyu.edu/sites/default/files/upload_documents/Ruth%20Mason.pdf
See the discussion beginning on page 47.

Second, they will find it harder to live in America because of the U.S. tax implications of retaining bank accounts and other financial assets in their home country.

In order to understand this, one must consider what happened in 2011 under the Offshore Voluntary Disclosure Programs to "Green Card holders" who learned that their "bank accounts and financial assets" in the U.S. were subject to FBAR reporting. Understand that these were bank accounts that they were using in India prior to migrating to America. They were bank accounts that existed to assist family members who were left behind.

Incredibly, many of them were pressured to enter the "Offshore Voluntary Disclosure Program" (an IRS program designed for criminals) to atone for their sins. Those entering the program were required to pay a massive penalty, 25% of their highest account balance, for failing to report so called "foreign bank accounts" (in their home country that they didn't know had to be reported).

The unfair treatment of the "Indian American" community is canvassed in the discussion at this "well known" blog:

http://federaltaxcrimes.blogspot.ca/2011/07/indian-american-groups-push-for-foreign.html

"***Indian American Groups Push for Foreign Account Relief (7/29/11)***

There are reports that major Indian American community groups are lobbying the Secretary of the Treasury to bring relief to Indian Americans caught in the vise of the tax and FBAR rules and the OVDI 2011. I link to some articles below. The Indian American U.S. taxpayer community seems to have been hit particularly hard because of a confluence of circumstances – including, but not limited to, their industrious as recent U.S. immigrants, their willingness to save, their love of their native country and relatives in the native country, their lack of knowledge of the scope of U.S. tax filing and related FBAR filing obligation, and their general desire to play by the rules.

Many in fact innocently underpaid their U.S. tax liabilities by not reporting relatively modest Indian accounts and failing to file the FBARs, yet feel that they inappropriately being punished disproportionately to their conduct by having to pay the 25% in lieu of penalty inside OVDI 2011. Having met with a number of these and having read still others' comments on the blogs, I do think that the IRS is being a bit harsh. Perhaps the safety valve will be the opt out, provided that it is administered reasonably to make the punishment fit the crime.

Articles:

Indian Americans seek relief from US tax rules for foreign accounts (The Times of India | U.S. Canada News 7/28/11).

Joseph Septimus, Indian-American Community Seeks Relief From Draconian FBAR Penalties (Yeshiva World 7/29/11)."

with "follow up" here.
http://federaltaxcrimes.blogspot.ca/2011/08/irs-responds-to-indian-american.html

Note in particular the sentiment expressed in the following comment:
http://federaltaxcrimes.blogspot.ca/2011/07/indian-american-groups-push-for-foreign.html#comment-530164305

"*This is certainly a mind maze and scary for 'small fry' folk new to the country (say 2-4 years). I have always been treated fairly by the IRS but the penalties here seem to be*

potentially high and life altering thus scary. Considering many have taken hits with employment and investments they are already on shaky ground and the prospect of getting cleaned out by correcting their past oversight can be unsettling. The prospect of fines against existing savings, attorney fees, potential audits and associated costs will cause many to lose sleep and possibly their minds. The fear mongering out there certainly doesn't help.

I am reassured by my past (positive) experiences with the IRS that this isn't a witch hunt for those new to the country that want to do the right thing and get everything up to speed.

If you have ever moved to another country you know there are many things to cope with (especially during a recession).

The timing does seem a little odd thus there is much speculation that the US is hungry for whatever money it can get its hands on. This is border line conspiracy thinking however the timing does raise eyebrows. I prefer not to go down that road.

I think there should be a MUCH better effort to inform newcomers about these obscure filing requirements.

CPAs from other countries don't seem to have a clue and some in the US don't either. Being new to a Country you rely on referrals from other people and if these referrals don't pan out then you suffer. It is trial and error until you build a trusted network and get the right advice.

I wish everyone all the best and I believe each person needs to make informed choices that will serve them best according to their circumstances."

Part XVI – Citizenship Taxation – Creating possible "diplomatic problems" for America

"*How the world is allowing the US to get away with this amoral, unjustifiable, "might is right" bullying and blatant theft is beyond belief. Come on leaders of the world, stop the US from stealing assets that belong in your country, over-riding your laws, allowing the financial devastation of your citizens and the extortion of your banks. You have a choice, whimper in the corner like spineless victims without resource or get a backbone and stand up for your country and your people. Otherwise you need to quit your job and allow leaders with courage and integrity to take the helm."*
http://business.financialpost.com/personal-finance/taxes/many-u-s-citizens-in-canada-are-heading-for-the-exits-but-it-could-cost-them#comment-1959140450

U.S. "citizenship taxation" and FATCA have turned the IRS and the Internal Revenue Code into one of America's largest exports. FATCA is for the purpose of enforcing U.S. "citizenship taxation". FATCA is "importing the effects of U.S. citizenship taxation" to the world. FATCA is unknown to most homeland Americans. It is well known to foreign governments and their banks. FATCA is a U.S. law of extra-territorial application pursuant to which, the U.S. government is:

- requiring non-U.S. banks (at the expense) of the bank to undertake expensive compliance procedures for the purpose of identifying account holders who may be subject to U.S. "citizenship taxation"; and
- reporting the financial details of those accounts and the account holders to the IRS.

In some cases the reporting is directly to the IRS. In other cases, the reporting is first to the home government and then to the IRS. In the latter case the reporting is pursuant to "agreements" entered into between the U.S. Treasury and the host government.

Why would any country agree to the application of U.S. law in their country? **The answer is that the FATCA threatens non-U.S. banks with economic sanctions if they don't cooperate.**

FATCA (the Foreign Account Tax Compliance Act) is Part 4 of the Internal Revenue Code beginning with S. 1471. The FATCA law is breathtakingly simple in its application. (The IRS regulations are of course exceedingly complex.) FATCA also provides strong incentives for the world to reduce and eventually avoid any reliance on the U.S. dollar. What does this have to do with "citizenship taxation"? The answer is that the U.S. is seeking, via FATCA, information on those who are subject to the U.S. "citizenship

taxation". This group is composed primarily of U.S. citizens abroad and Green Card holders.

Four diplomatic issues raised by "citizenship taxation"

Diplomatic Issue 1: Access to banking services

FATCA is illuminating the fact that U.S. citizens who reside in other countries are often (but not always) citizens of the country where they reside. It is well known, that non-U.S. banks are simply closing the accounts of those who they suspect to be U.S. citizens.

The problem is that this means the non-U.S. banks are also closing the accounts of citizens of other countries.

Let's take a simple example. Imagine we have a U.S citizen residing in France. Imagine that U.S. citizen is also a French citizen. Imagine that the bank closes the account of the U.S. citizen. Well, the bank has also closed the account of a French citizen who is residing in France.

To put it simply, U.S. "citizenship taxation" is now operating to deny citizens of other countries, who reside in those other countries, the right to have a bank account in their country of citizenship and residence.

Diplomatic Issue 2: Forcing non-U.S. banks to "turn their own citizens over to the IRS"

An even sadder example of this principle is the recent IRS program for "Swiss Banks".

The point is that Swiss banks, under threat of criminal prosecution, have agreed to search for "non-compliant U.S. taxpayers" who may be citizens of Switzerland.

Consider the fact that:

Swiss banks are pressuring Swiss citizens to enter IRS disclosure programs for conduct that is NOT illegal according to Swiss law.

As Robert Wood explains:
"With the impending FATCA compliance rollout and the U.S. Justice Department deal for Swiss banks, there are lots of letters and phone calls being made to account holders

with American indicia. American citizens, residents—even people with a U.S. address or phone number—should be prepared. Possible American status means proving you're compliant with the IRS or proving you're not American after all.

Some people react like a deer in the headlights. But the bank's letter or call is unlikely to evaporate. Failing to respond in any way is likely to mean the bank will close your account, if it isn't closed already. Banks routinely turn over the names of closed accounts, and may even be more likely to disclose closed accounts than active ones.. Swiss banks are the most serious, since they are trying to get better penalty categories for themselves. But FATCA, the Foreign Account Tax Compliance Act, is also taking some blame. The U.S. can penalize foreign banks if they don't hand over Americans."

http://www.forbes.com/sites/robertwood/2014/06/09/offshore-bank-letters-fatca-irs-penalties-are-any-choices-left/

Regardless of whether you think this is justifiable, the fact remains that U.S. "citizenship taxation" is interfering with the sovereignty of other nations and with the rights of citizens of other nations to hold bank accounts in those other nations.

This is causing and will continue to cause diplomatic problems for the United States.

Diplomatic Issue 3: The U.S. S. 877A "Exit Tax" rules operate primarily to tax the gains of assets that are part of the capital base of other countries.

Whether by accident or design, the effects of the U.S. "Exit Tax" are by far the harshest on those U.S. citizens who have lived outside the United States the longest. **The Exit Tax operates to confiscate a large percentage of a person's non-U.S. assets. We are NOT aware of any other "Exit Tax" or "Departure Tax" that has the primary effect of confiscating assets that are foreign to the country.** The "confiscation of foreign assets" was probably NOT the intent of the S. 877A rules. That said, the confiscation of "foreign assets" is the primary effect of the S. 877A rules. One might ask, how did this happen? How could such an unbelievable "cruel" and "unfair effect" develop?

http://citizenshipsolutions.ca/2015/04/08/part-9-for-americansaroad-us-citizenship-taxation-is-death-by-a-thousand-cuts-but-the-s-877a-exit-tax-is-death-by-the-guillotine/

Diplomatic Issue 4: The U.S. may increasingly pay a price for insisting on the "savings clause" in tax treaties.
Professor Reuven Avi-Yonah of the University of Michigan Law School comments:

https://www.law.umich.edu/centersandprograms/lawandeconomics/abstracts/2010/Documents/10-009aviyonah.pdf

"If we did not tax nonresident citizens, we could abolish section 911. We could also abolish IRC section 877, which has proven ineffective in deterring tax motivated expatriations, and simply apply the new IRC 877A (the exit tax on expatriation) to individuals abandoning US residency, like most countries do. ***Finally, we could give up on the "savings clause" in our tax treaties, which we insist upon to enable us to tax nonresident citizens but which have to pay a price for in treaty negotiations.****"*

Diplomatic Issue 5: Lawsuits against foreign governments that are rooted in United States citizenship based taxation applied to residents of their countries.

In Canada, a non-profit organization, the Alliance for the Defence of Canadian Soverieignty, has launched (August, 2014) a lawsuit against the Government of Canada. The lawsuit is based on the Government of Canada agreeing to assist the United States in enforcing U.S. citizenship-based taxation on Canadian citizens resident in Canada.

Information on the litigation is available at www.adcs-adsc.ca

Part XVII – "Citizenship taxation" and "equal concern and respect"

We repeat that we do NOT believe that Congress, Treasury or the IRS are enacting laws with the full knowledge of the amount of hardship they have created for Americans abroad.

We believe that Congress, Treasury and the IRS are indifferent to Americans abroad. They simply do NOT consider how laws written for homeland Americans impact Americans abroad. That said, it is well established that "indifference", when attention is required, is a form of abuse.

There are rumored to be approximately 7 million Americans abroad. This is a population that is greater than the population of many U.S. states. It is clear that Americans abroad are NOT the concern of Congress. They don't vote in sufficient numbers to make a difference.

That their votes do NOT make a difference is reflected in the fact that some of the most abusive legislation appears in the form of "revenue offset provisions" to broader pieces of legislation. For example both the "Exit Tax" provisions in the HEART Act and the FATCA provisions of the HIRE Act were listed as ways to raise revenue to pay for other forms of spending. Put another way:

Congress is using the politically powerless group of Americans abroad to pay for spending for homeland Americans. See:

HIRE Act:

https://www.jct.gov/publications.html?func=startdown&id=3650

A more recent expression of the principle is using Americans abroad to pay for homeland Americans is found in new 3.8% Obamacare surtax (NIIT).

This is a special 3.8% surtax on the investment income of people over a certain threshold. The "threshold" depends on one's filing status. The lowest "threshold" is for those with the "married filing separately" status. It is quite obvious that Americans abroad, with a non-U.S. spouse, are more likely to use the "married filing separately" status. Therefore, a higher percentage of people who are subject to the Obamacare surtax are Americans abroad. Think of it. Congress has used Americans abroad, who would not have U.S. medical care, to pay for medical care for homeland Americans.

The late Professor Ronald Dworkin was one of America's (and the world's) premier legal scholars. In his classic book "*Taking Rights Seriously"*, Professor Dworkin argued that the fundamental right of a citizen "is the right of each individual to the equal respect and concern of those who govern him."

http://www.hup.harvard.edu/catalog.php?isbn=9780674867116

We respectfully submit that since Congress has NO concern for Americans abroad, that Americans abroad cannot have the “equal respect and concern” of the U.S. government. Since Congress has no interest in Americans abroad, Congress cannot have equal respect and concern for Americans abroad.

When it comes to tax policy, since Congress does not have equal “respect and concern” for Americans abroad, Congress should NOT have tax laws that apply to Americans abroad.

The way to NOT have tax laws that apply to Americans abroad is to abolish “citizenship taxation”.

Part XVIII – Ways to achieve justice for U.S. citizens abroad

To whom does "citizenship taxation" apply?

At present any person born in the United States who has not relinquished or renounced U.S. citizenship is subject to U.S. "citizenship taxation". Furthermore, there are many people who were born outside the United States to "U.S. citizen parents" who have no connection to the United States. Many of these people simply do NOT know whether they are considered to be U.S. citizens. In many cases they do NOT consider themselves to be U.S. citizens. Nobody chooses where they were born. Nobody chooses their parents. At most, we might say that these are members of a group that could exercise an "option on U.S. citizenship".

At present, U.S. "citizenship taxation" is capturing many people who have no connection to the United States and do NOT feel (and for all practical purposes are not) that they are U.S. citizens. In many cases, they are surprised to learn that the U.S. considers them to be U.S. citizens. (Interestingly in 2011 the IRS offered those who did NOT know they were U.S. citizens the opportunity to pay only a 5% penalty on their financial assets to "come clean" and enter the U.S. tax system.) It is clear that current U.S. law tax applies to many who:

- may not have any connection to the United States (other than birth)
- do NOT consider themselves to be U.S. citizens and DO consider themselves to be ONLY citizens of other nations.

This leads to absurd results. We previously mentioned the residents of the Town of Stanstead, Quebec. Should 25% of the town be required to pay taxes to the U.S.? This is an example of a town. But, what about individuals? The current King of Thailand was born in the United States. He is therefore subject to U.S. taxation. Yet nobody would believe that he does or should pay taxes to the United States (at least we hope).

At present, the United States considers "U.S. citizenship" to be a status that is conferred on the many (birth) and allowed to a smaller group (naturalization).

How does U.S. "citizenship taxation" apply?

"Citizenship taxation" is creating great hardship for those born in the United States but no longer live in the United States. It has evolved into a form of "life control" which many characterize as a "fiscal prison". This point has been made in many submissions related

to “tax reform”, numerous media articles, blogs, twitter accounts, facebook groups, and “dinner conversations” around the world. Without repeating the specifics, the problem is that compliance with U.S. rules of “citizenship taxation”:

- is often incompatible with compliance to the tax rules of the country of residence
- requires that Americans abroad live exactly the same way as homeland Americans
- punishes all forms of retirement planning in the country of residence
- imposes huge compliance costs that make the retention of U.S. citizenship difficult
- imposes tremendous stress and fear due to unreasonable penalties
- has requirements that are complicated to the extent, that few Americans abroad understand what they are required to do
- makes Americans unattractive as business and marriage partners and makes the adoption of U.S born children undesirable
- in summary makes a normal life impossible
- has created a situation where tax compliant American abroad are renouncing their U.S. citizenship to protect themselves from the U.S government.

As John Adams, would have said:

> “Facts are stubborn things.”

It is clear that either:

1. Citizenship taxation must be abolished; or

2. The United States must have a different system of “citizenship taxation”.

We strongly believe that the United States should simply participate in the world the way that the rest of the world works and abolish “citizenship taxation”.

Is “citizenship taxation” good tax policy?

We believe that “good tax policy” should be based on principles that include the following:

A. The United States must exist as a member of the “community of nations”.

“Citizenship taxation” is applied in a way that attacks the “capital base” of other nations. The problem is compounded when the United States (under the guise of

"citizenship taxation") is actually levying taxes on the residents and citizens of other nations.

B. The tax system must respect the integrity of other nations to tax income earned in their nations.

"Citizenship taxation" as applied by the United States, makes use of U.S. citizens abroad to extract capital from other nations. Consider the example of Boris Johnson. Under U.K. Law, he was NOT required to pay a capital gains tax on the sale of his home. Under U.S. law his home was subject to capital gains taxes. The United States would NOT allow Boris Johnson a "tax preference" which his home country deemed (that tax preference) be in the interest of the U.K. The result is that the IRS was able to use Boris Johnson's "U.S. citizenship" to extract U.K. capital to the United States.

C. The tax system should NOT provide disincentives to immigrate to America.

At the present time few people understand "citizenship taxation" prior to immigrating to America. FATCA will educate the world. Once people understand how "citizenship taxation works", and that they will be subject to "Exit Taxes" if they leave America, people will have incentives to immigrate to other nations.

D. The tax system should NOT provide incentives to renounce citizenship or leave the United States.

Americans abroad are renouncing U.S citizenship because they can't be both U.S. tax compliant and live a life that allows them to plan for retirement. If the U.S. tax system is causing people to renounce their U.S. citizenship, there is something seriously wrong with the U.S. tax system.

E. Those subject to taxation must be able to understand what is required of them.

The authors of this submission are of at least average intelligence and have attempted compliance with U.S. tax laws for more than 30 years. We are like Donald Rumsfeld. We have no idea what is required of us and do NOT understand our tax returns.

F. The costs of compliance for the taxpayers must be minimal.

Because of the large number of information returns required of Americans abroad and the cost of competent tax preparers, the tax returns easily exceed 100 pages and the costs are typically in the thousands of dollars.

G. The costs of administration for the IRS must be manageable.

"Citizenship taxation" is clearly an abuse of Americans abroad. It is also clearly an abuse of the IRS. How can the IRS possibly apply the Internal Revenue Code to the retirement planning and pension plans in other countries. The truth is that they cannot. Therefore, the IRS relies on threats of penalties and a program of "generalized tax terrorism" to urge Americans abroad to find a competent tax preparer outside the United States. To put it another way, the IRS has made the "cross border tax community" a partner in enforcing "citizenship taxation" on Americans abroad.

H. The tax system should promote confidence and trust in America and should not provide incentives to search for a "more just tax system".

Some Americans abroad are formally renouncing U.S. citizenship. Many others cannot afford to live as a "tax compliant American abroad" and have gone into hiding. The point is that, either way, they are forced to avoid the U.S. tax system as it applies to Americans abroad.

I. The tax system should encourage people to carry on business and NOT look for "loopholes "in the system.

The United States has the most complex anti-deferral regime in the world. It is also a very high tax country. A simplified tax system that encouraged people to "earn income" and NOT look for ways to "unearn income" would be in the interests of all.

J. The tax system should be based on the principle that "governments exist to serve its citizens" and that "citizens don't exist to serve their governments".

The tax system must assume that U.S. citizens are free people who have the right to leave the United States. We respectfully suggest that it would be better for Congress to devise a tax system where people wanted to stay in America or be Americans, rather than find ways to punish those who leave.

What then is the future of "citizenship taxation"?

The time has come for U.S. "citizenship taxation" to come to an end. This means that the U.S. tax system must meet two basic requirements:

1. It must impose taxes based on residence; and

2. It must respect the principle that other countries have the right to impose taxes on economic activity and residents of their jurisdiction.

How should the U.S. transition to "residence based taxation"?

One must consider how a system of "residence based taxation" would work under the following three scenarios:

- First, taxation as a resident of the U.S. tax system;

- Second, taxation upon ceasing to reside in the United States and becoming a resident of another nation;

- Third, death.

First, taxation as a resident of the U.S. tax system

We generally support the principle that something analogous to the current "substantial presence test" (found in S. 7701(b) of the Internal Revenue Code) should be used. We strongly suggest that the test be simplified so that it is clear exactly what is required to meet the test of "substantial presence". The test should not be so complex that one must hire a lawyer to know whether they are resident in the United States for tax purposes.

To be clear, the "substantial presence test" must be related to having a physical connection to the United States that most people would agree justifies taxation.
It also needs to have clear rules for resolving situations where two countries can legitimately claim a person as "resident for tax purposes".

Second, taxation upon ceasing to reside in the United States and becoming a resident of another nation

We believe that “Exit/Departure Taxes” are necessary only in countries where the tax system provides incentives to leave the country. Therefore, we believe that U.S. tax policy should focus on creating a tax system that does NOT provide either the desire or incentive to leave for tax purposes.

Under the current “citizenship taxation” system, the “Exit Tax” is particularly punitive toward “Americans abroad” and their “foreign” assets. Under a “residence based” system of taxation, a “Departure Tax” would be triggered by ceasing to be a “resident” of the United States. In general we suggest that Canada’s “Departure Tax” may be an appropriate model in terms of both:

- the assets subject to a departure tax; and
- the way in which those assets are taxed.

It is particularly important to note that under NO circumstances can an “Exit/Departure” tax be retroactively applied to the assets of “long-term Americans abroad”.

The key point is that any “Exit/Departure” tax must be based on a change in residence and NOT on a “relinquishment of citizenship”.

Furthermore, any “Exit/Departure” tax must NOT be more punitive than taxes that would be applied on death. Under the current “Exit Tax” system, one becomes a “covered expatriate” with assets of 2 million dollars. Yet, one has an “Estate Tax” exemption of approximately 5.5 million dollars. Clearly, the current 2 million dollar threshold for becoming a “covered expatriate” should be raised to the 5.5 million dollar “Estate Tax” exemption.

Third, death

When the U.S. transitions to a “residence based” system of taxation, citizenship should NOT be a factor in determining “death taxes”. We submit that the United States must rethink the way that it levies taxes on death. What is the purpose of the death tax? At the present time, expatriation triggers a “deemed disposition” of all assets. Perhaps “death” should be treated as triggering a deemed disposition of all assets. This would have the effect of repealing the “death tax” and simply making “death” an event that triggers capital gains.

We believe that sound tax policy compels a transition to "residence taxation".

Nevertheless, we offer some suggestions in the event that the United States delays the move to "residence based taxation".

In the event that "residence based taxation is NOT adopted and some form of "citizenship taxation" is retained then we would suggest:

A. Retain "citizenship taxation" for a specified number of years after U.S. citizens cease being residents of the United States. After that number of years expires, they would no longer be subject to "citizenship taxation". They would retain the right to move back to the United States at any time.

B. Retain "citizenship taxation" but adopt rules that recognized that impossibility of subjecting "citizens abroad" to the same rules as homeland Americans.

   This would require creating a separate tax code for "Americans abroad". Perhaps it could be modeled on the system used by Eritrea. Eritrea's tax policies for its citizens abroad are (in this respect) more just and humane than America's tax policies toward its citizens abroad.

C. If U.S. citizenship is something that is inherently valuable and should be "paid for" then perhaps it should simply become a "chargeable item". The U.S. could impose an "annual citizenship fee" on any U.S. citizen living outside the United States. It would be analogous to a "poll tax". How about $100 per month? It can be indexed to inflation. This option would be both:

   - less costly for Americans abroad (they would not have the compliance costs); and

   - likely generate more revenue for the U.S. government (most Americans abroad do NOT owe U.S. taxes at the end of the day).

Or, perhaps a combination of these things. In any case, we are NOT aware of a single person who is committed to the view that the present system of the "taxation of U.S citizens abroad" is workable.

Part XIX – OUR RECOMMENDATIONS

RECOMMENDATIONS:

Based on the above considerations, we recommend the following to the Senate Finance Committee International Taxation Working Group:

1. **Adopt the world standard system of residence-based taxation.** We do not provide specifics at this time but suggest that the Senate Finance Committee consider generally those found in submissions made by American Citizens Abroad:

   (https://americansabroad.org/files/6513/6370/3681/finalsubrbtmarch2013.pdf --- note, a more recent ACA submission is expected to be made the week of April 12, 2015), and Heitor David Pinto:

   https://app.box.com/s/p1u65g2n0y4utj6q0kvbqah9gqdogveq

   Given the extent of harm caused by citizenship taxation to non-resident U.S. citizens we ask that residence based taxation legislation be introduced no later than by 3Q2016.

2. **Provide emergency relief for "non-meaningfuls".** As an interim measure only, provide emergency relief of taxation to persons having no meaningful relationship with United States. President Obama recognized in his FY2016 budget proposal that some persons deemed to be U.S. citizens by the United States, but who have no meaningful relationship, should not be subjected to taxation. As a follow-up to this proposal we ask that all tax obligations, penalties, and costs of any kind be waived for those persons living outside the United States and deemed to be U.S. citizens by the United States who do not have any meaningful relationship (e.g., voting, U.S. residence). These persons will be taxed only as non-resident aliens.

   As President Obama's relief for "non-meaningfuls" was, in our opinion, too restrictive in terms of inclusion criteria, we ask that this group should include but not be limited to U.S, citizens having a non-U.S. citizenship (acquired at any time) who left the United States for another country before the age of 18 years, all persons born outside the United States, and those persons who have not lived in the United States for at least twenty years and who have not spent more than 60 days (as one of many possibilities) per year in the United States. This request also recognizes the world-wide standard that citizenship and its obligations cannot be imposed without consent.

We ask that the relevant IRS statutes be changed to provide relief to non-meaningfuls no later than by 3Q2015. Our attorney (Jim Butera, Jones-Walker LLP, Washington D.C.) will be providing to the Committee the specifics of this recommendation.

3. **If an "exit tax" is required (our position is that there should be no exit tax) change the "expatriation tax" to a Canada-style "departure tax". No exit tax of any kind will be imposed on long-term non-resident U.S. citizens or persons.**

4. **Refrain from adopting or implementing any legislation that punishes Americans who exercise their right to leave the United States permanently.**

   This thinking pf Congress is best exemplified in the "Reed Amendment" which aims to prevent those persons (especially well to do persons such as Mr. Eduardo Saverin) who renounced U.S. citizenship for "tax reasons" (e.g., including pensioners living overseas who cannot afford to comply with IRS tax laws) from ever returning to the United States.

   In response to this concern we point out to the Committee that Mr. Saverin, to our knowledge, complied with all IRS regulations, including an onerous expatriation tax (i.e., he has not committed a tax crime and has in fact paid his "fair share") and that it is a right of all humans to expatriate without penalty.

   This individual right was explicitly recognized by Congress in the Expatriation Act of 1868, which provides in the following terms:

   "Whereas the right of expatriation is a natural and inherent right of all people, indispensable to the enjoyment of the rights of life, liberty, and the pursuit of happiness … Therefore any declaration, instruction, opinion, order, or decision of any officer of the United States which denies, restricts, impairs, or questions the right of expatriation, is declared inconsistent with the fundamental principles of the Republic." 15 Stat. 223; R.S. § 1999; 8 U.S.C.A. 1481 notes.

Part XX -- ACTION TO BE TAKEN SHOULD RESIDENCE TAXATION NOT BE ENACTED IN A TIMELY MANNER:

We intend to litigate should tax reform not be accomplished in a timely manner. We fully acknowledge the practical difficulty the House and Senate will have in agreeing in a timely manner on any comprehensive tax legislation, including that of dismantling citizenship taxation.

However, the Senate Finance and House Ways and Means Committees, and President Obama and his advisors, are now fully aware, by these and countless other submissions over the years, of the significant and unjustified harm caused by Congressional tax legislation to innocent Americans.

Consequently, should there be no significant movement in a timely manner on legislative relief we will have no choice but to initiate, on behalf of all non-resident U.S. citizens harmed by citizenship taxation, legal proceedings (litigation) in U.S. Federal Court that will focus on those Congressional citizenship tax laws that force Americans to abandon their U.S. citizenship and which violate their constitutional rights.

Part XXI – IN CONCLUSION

All roads lead to the repeal of "citizenship taxation" and a move to "residence taxation".

At the beginning of our submission, we observed that the "enforcement of citizenship taxation" has led to commentary from many stakeholders. These include: law professors, organizations representing Americans abroad, historians, and individual citizens.

We therefore conclude this submission with excerpts and thoughts representative of each of these groups.

A. The thoughts of University of Michigan law professor Professor Reuven Avi-Yonah.

He concludes his "*The Case Against Taxing Citizens*" paper as follows: https://www.law.umich.edu/centersandprograms/lawandeconomics/abstracts/2010/Documents/10-009aviyonah.pdf

b. Conclusion

Taxation of nonresident citizens is a relic of the past that is ripe for abandonment. Historically, it stems from the outrage felt during the Civil War at draft and even though no other country in the world (with the possible exception of Eritrea) taxes nonresident citizens. The only way we can maintain the fiction that we actually tax most of our nonresident citizens is by enacting complicated credit and exclusion provisions that are difficult to administer and are frequently ignored in practice. For someone who acquired US citizenship by being born here and has lived almost their entire life overseas, filing tax returns and complying with sections 9 01 and 911 must be a highly unlikely proposition even if no tax burden would likely result. If we did not tax nonresident citizens, we could abolish section 911. We could also abolish IRC section 877, which has proven ineffective in deterring tax motivated expatriations, and simply apply the new IRC 877A (the exit tax on expatriation) to individuals abandoning US residency, like most countries do.

Finally, we could give up on the "savings clause" in our tax treaties, which we insist upon to enable us to tax nonresident citizens but which we may well have to pay a price for in treaty negotiations. None of the traditional arguments for taxing nonresident citizens are persuasive. The benefits provided to nonresident citizens are much weaker than the benefits provided to residents (whether citizens or aliens) and are identical to the benefits provided by other countries that do not tax

nonresident citizens. The ability to pay argument fails because we apply ability to pay taxation to resident aliens, thus showing that residence and not citizenship defines the relevant community for applying redistribution. And the administrability argument goes in the opposite direction: Taxation of nonresident citizens is both unadministrable in many cases and in others imposes heavy transaction costs.

Finally, abandoning taxation of nonresident citizens could lead to significant simplification benefits.

The main reason we continue to tax nonresident citizens is history- it's a tradition that is 150 years old, and a significant part of American tax exceptionalism. But just as we joined the rest of the world in adopting corporate/shareholder integration, it is time for us to relinquish this part of our history and update our taxation to fit the globalized world of the 21st century, in which more and more US citizens should be able to move overseas in pursuit of economic opportunity without being incentivized to relinquish their citizenship.

B. The thoughts of James Dale Davidson (historian) writing in his 1996 book: "*The Sovereign Individual*"

In 1996 James Dale Davidson writing in "*The Sovereign Individual*" noted on page 287 that:

"Unless there is an astonishing and most radical change in policies, the successful investor or entrepreneur in the Information age will pay a lifetime penalty of tens of millions, hundreds of millions, or even billions of dollars to reside in countries with the fiscal policies like those that have enjoyed the highest living standards during the twentieth century.

Absent, a radical change the penalty will be the highest for Americans. The United States is one of just three jurisdictions on the planet that impose taxes based on nationality rather than residence. The other two are the Philippines, a former U.S. colony, and Eritrea, one of whose exiled leaders fell under the spell of the IRS during its long rebellion against Ethiopian rule. Eritrea now imposes a nationality tax of 3 percent. While this is a pale imitation of U.S. rates, even that burden makes Eritrean citizenship a burden during the information age. Current law makes U.S. citizenship even a larger liability. The IRS has become one of America's leading exports. More than any other country, the United States reaches to the corners of the earth to extract income from its nationals.

If a 747 jetliner filled with one investor from each jurisdiction on earth touched down in a newly independent country, and each investor risked $1000 in a start-up venture, in the new economy, the American would face a far higher tax than anybody else on any gains. ***Special, penal taxation of foreign investment, exemplified by the so-called PFIC taxation, plus the U.S. nationality tax, can result in tax liabilities of 200 per cent or more on long term assets held outside the United States.*** *A successful American could*

reduce his total lifetime tax burden as a citizen of any of more than 280 other jurisdictions on the globe.

The United States has the globe's most predatory, soak-the-rich tax system. Americans living in the United States or abroad, are treated more like assets and less like customers than citizens or any other country.

…

Holding a U.S. passport is destined to become a major drawback to realizing the opportunities for individual autonomy made possible by the information revolution. Being born an American during the industrial revolution was a lucky accident. Even in the early stages of the Information Age, it has become a multi-million dollar liability.

To see how great a liability, consider this comparison. Under reasonable assumptions, a New Zealander with with the same pre-tax performance as the average of the top 1% of American taxpayers would pay so much less in taxes that the compounding of his tax savings alone would make him richer than the American ever would ever be. At the end of a lifetime, the New Zealander would have $73 million more to leave to his children or grandchildren. And New Zealand is not even a tax haven."

C. **The thoughts of Jackie Bugnion of American Citizens Abroad**

Her 2013 submission to the House Ways and Means committee included:

U.S. citizens abroad are living under siege. A wonderful express of this comes from Jackie Bugnion in her submission to the House Ways and Means Committee on Tax Reform.

She wrote:

In 1776, the United States declared independence because the mother country on the other side of the ocean was imposing taxes on the colonies for the benefit of England. Resentment started when Britain tried to enforce the Navigation Act after 1763. Resentment increased with the Stamp Act in 1765, a way for Britain to tax the colonies. The British Tea Act of 1773 led to the Tea Party and we all know the outcome – the American Revolution and independence crying out "no taxation without representation".

Today, the estimated 7 million Americans resident abroad, of whom the majority are long-term overseas residents in high tax OECD countries, face a comparable situation. Their representation in Congress is non-existent in reality. Americans abroad amount to only 1 to 2% of the votes in any particular state; Congressmen

and Senators have ignored their tax issues. The unjustified myth that Americans abroad are wealthy and disloyal restricts a rational approach to the problems because of political image issues.

Citizenship-based taxation (CBT) has existed ever since the federal income tax was adopted. Despite CBT being an anomaly involving double taxation, taxation of phantom gains and explicit tax code discrimination, it was grudgingly tolerated by Americans abroad because it was essentially voluntary, most often involved little tax or no U.S. tax liability and basically was not enforced. In particular, the FBAR filing requirement was so obscure that even the big four accounting firms were not aware of the filing obligation dating from 1970 and failed to inform Americans abroad of the need to file the FBAR.

Since 2001, a series of legislative events have radically changed the situation:
– In 2001, the Patriot Act made anything foreign suspect, including Americans residing overseas.
– In 2004, Congress, under the Jobs Act, drastically increased the FBAR civil and criminal penalties to confiscatory levels, creating a disguised form of taxation on assets held overseas.
– In 2006 administration of the FBAR reports was transferred to the IRS for enforcement.
– In 2006 the Tax Increase Prevention and Reconciliation Act (TIPRA) extended the Bush tax cuts and included a compensatory revenue raising provision that reduced the benefit of the foreign earned income exclusion, limited the foreign housing allowance and pushed Americans overseas into higher tax brackets, thereby increasing U.S. tax liabilities for many Americans abroad.
– In 2008 the law relating to renunciation of U.S. citizenship was revised under Section 877A and introduced an Exit Tax on wealthy individuals (defined as “covered”). The law also provided that Americans who inherit from estates of former “covered” U.S. citizens are subject to U.S. inheritance tax with no exclusion. This outrageous discriminatory provision aims to discourage renunciation of citizenship, but in fact penalizes children of former U.S. citizens for an act they did not commit. In practice, it encourages the children to also renounce their U.S. citizenship.
– In 2009 the IRS launched its initiative against tax evasion linked to foreign assets through the Overseas Voluntary Disclosure Programs and a threatening public relations campaign. While it justifiably targeted U.S. resident tax evaders, it simultaneously trapped Americans abroad who necessarily have foreign assets. The IRS’s one size fits all policy and bait and switch tactics led to abuses of

Americans abroad which inspired sharp criticism from the National Taxpayer Advocate.
– In 2010 FATCA was slipped into the HIRE bill with no debate in Congress and no cost/benefit analysis. FATCA aims to provide the door that closes the fiscal trap by requiring foreign financial institutions to report to the IRS on assets held overseas by U.S. persons. It effectively cuts off many Americans from foreign financial institutions which find it too onerous to maintain American clients. FATCA creates a barrier to free movement of capital and people.
– In 2012 S.3457 proposed to grant the IRS the authority to have a U.S. passport cancelled or not issued if the IRS determined that the individual owed $50,000 or more U.S. tax.
– In 2012 the Ex-patriot Act, S.3205, proposed to deny any "covered" expatriate re-entry into the United States, with retroactive effect for ten years prior to enactment of the law. The Reed Amendment of the 1996 Illegal Immigration Reform and Immigrant Responsibility Act already allows the United States to deny entry of former citizens into the United States.
– In 2013, S.268 was introduced; it compounds difficulties created by FATCA.
– In 2013 the Senate Finance Committee included in its tax reform recommendations a provision which would grant the IRS authority to cancel a U.S. passport for tax collection purposes.

This stream of legislation and proposals categorizes Americans abroad as suspected criminals seeking to escape U.S. taxes. Congress has outdone George III and has turned the United States into a fiscal prison, including legislation which is deemed anti-constitutional under the Fifth Amendment1 and is contrary to Articles of the Universal Declaration of Human Rights.2 The foundation of the U.S. fiscal prison is citizenship-based taxation. Americans working and living abroad carry a ball and chain of dual taxation throughout their entire lives up to and including death.

Americans abroad already pay taxes in the country where they reside and receive governmental services.

The additional U.S. tax obligation creates inevitable incompatibilities and discrimination and even requires Americans abroad to break foreign exchange control laws to pay U.S. taxes.

A revolution among long-term overseas residents is now underway. Five years ago, Americans abroad never talked about renunciation of citizenship. Today, it is a

common topic in the press and among the community abroad. For more and more individuals, renunciation is the only solution to an intolerable situation created by the U.S. imposing its laws beyond its borders. The United States is literally destroying the community of Americans abroad, which plays an essential role in representing U.S. interests and goodwill overseas. The United States is shooting itself in the foot. While the absolute number of renunciations, currently around 2,000 a year, is insignificant compared to the average annual U.S. citizenship naturalizations of 680,000, renunciations have multiplied seven times over the last four years. So far we have seen only the tip of the iceberg if CBT remains in force.

Today's situation leads to serious hidden prejudice for the United States. U.S. exports are far below where they should to be because citizenship-based discourages U.S. companies from deploying U.S. citizens overseas to sell U.S. products; the law makes them too expensive. U.S. tax law and FATCA create insurmountable barriers for small and medium-sized companies to establish beachheads abroad to develop exports. The loss represents millions of U.S. jobs, hundreds of billions of dollars of exports, billions of dollars of U.S. tax revenue, and an unsustainable trade and budget deficit. Americans married to a foreign spouse, who represent about a third of the Americans resident abroad, now hesitate to register their children born abroad with the U.S. Embassy. The hot thing among young adults in their twenties is to renounce U.S. citizenship; they are aware of the impossible web of U.S. regulations that restrict job opportunities and personal freedom. Pushing away the young generation of Americans abroad is an immense loss to the United States. In prior generations, many highly educated multi-lingual American children returned to the United States, founded companies and created jobs in the U.S.

Adopting RBT will stop this revolution immediately. RBT law needs to be drafted in the spirit to allow free movement of individuals to leave and return to the United States, to reinforce the competitiveness of Americans and the United States overseas, to provide a simple, non-penalizing transition to RBT for the community of Americans already overseas, to ensure that Americans abroad are not subject to FATCA and FBAR, to adapt existing bilateral tax treaties and enter into new tax treaties so that withholding tax rates on U.S. source income are reasonable and to ensure that Americans abroad who have the majority of their assets in the United States (retirement funds, pension funds, real estate) are not disadvantaged under RBT with regard to either income or estate taxes.

I thank you for the opportunity to comment and hold high hopes that your bi-partisan efforts will lead to the constructive tax reform so necessary for Americans residing abroad.

Sincerely yours, Jacqueline Bugnion

D. The thoughts of a U.S. citizen abroad

This comment by Deckard1138 was made to: *Dropping The Bomb* at the Economist.

Please, let's all cut the crap, shall we? Especially those apologists for CBT who treat it like some esoteric academic exercise, the same way supposedly learned men, who should have known better, once opined about eugenics.

It's really very simple: citizenship-based taxation is America's Apartheid system. It is repugnant, immoral and indefensible. Since CBT is so clearly irredeemable, there is really nothing to talk about, unless your intellectual curiosity exists in a profoundly amoral vacuum.

CBT discriminates against a particular group of people on the basis of their place of birth – a characteristic as immutable as the colour of their skin. It labels them, tracks them, intimidates them, criminalizes them and forces them into virtual prisons from which escape is nearly impossible. Worse, the architects of CBT are now co-opting the rest of the world to implement this discriminatory regime for them. It is astonishing and disheartening how quickly and easily this is unfolding.

Far too many countries, cowed by the 30% withholding stick that the U.S. threatens to beat them with, like the FBAR and OVDP sticks they already beat their CBT victims with, simply refuse to challenge America on fundamental moral grounds and it is wrong.

The U.S. does not deserve a free pass on CBT and FATCA any more than the old South African government deserved a free pass for its heinous apartheid policies. Yet several ostensibly modern and enlightened nations have rationalized their acquiescence to FATCA by publicly exclaiming that America has the inherent right to tax its citizens in whatever manner it chooses. Well, in a just world it does not, for CBT represents a clear denial of basic human rights and dignity.

Yes, the global hypocrisy is staggering, especially from countries like Canada. Last year, our Conservative government expelled the consul-general for Eritrea for that regime's tax extortion efforts against its expats in Canada. Just last week, the same government enthusiastically ushered-in America's FATCA laws to override our country's own Charter of rights and freedoms, discriminating on the basis of national origin, gutting federal banking privacy laws and setting the stage for a massive legal challenge which will be fought in our Supreme Court.

Beneath all the technocratic language about forms, compliance, jurisdictions and enforcement, there is a fundamental truth: these American policies are morally unjust and the world must not condone them any longer. FATCA will be a global disaster unless it is stopped now.

It is indeed time for the world to say no to the U.S. practice of citizenship-based taxation and to force it to adopt residency-based taxation like the rest of the world. If not, then the world better find a more deserving reserve currency in a hurry – the United States has abused its position of trust for far too long and it needs to be reminded that it is just one nation in a community of nations. The breathtaking audacity of FATCA is simply a bridge too far.

E. The thoughts of the authors of this submission:

Tax reform is NOT about the justification of old and antiquated rules. It is an opportunity to "rethink" or perhaps for the first time "think" about matters of good tax policy.

We are both long term U.S. citizens living outside the United States. We are "middle class people" with "middle class concerns". We have "first hand knowledge" of how U.S. "citizenship taxation" (as confirmed by the above comments) is both:

- destroying the community of Americans abroad; and
- turning some of America's most patriotic citizens into people who no longer support the United States.

U.S. "citizenship taxation" is absolutely destroying the lives of those who attempt compliance with U.S. tax laws.

Nina Olson, Taxpayer Advocate, has recognized that the laws of U.S. "citizenship taxation" have the effect of "tormenting Americans abroad".

http://www.taxanalysts.com/www/features.nsf/Features/FD2860D17810639485257D6B0052AC9C?OpenDocument

A former U.S. citizen abroad recently commented that he hopes that somebody in the U.S. government will recognize that "we tortured some folks".
https://adcsovereignty.wordpress.com/2015/03/06/repealing-citizenship-taxation-the-difficult-we-do-today-the-impossible-takes-a-little-longer/

The past is over. All we have is a future. It's time for the Government of the United States of America to do the right thing. It's time to join the world by adopting "residence taxation".

We have expended considerable effort in preparing this and other submissions about "citizenship taxation". We do this as proud American citizens. We do this because we have a image of America (we hope correctly) as "a great citadel of freedom and justice".

Tax reform is on the agenda. It's time for Congress to consider this issue. There is no excuse to NOT consider the issue. If the U.S. does not move to "residence taxation" the relinquishments of U.S. citizenship will continue. At some point, "U.S. citizenship abroad" will become a "relic of the past". That will be a sad moment for America.

In Cook v. Tait, Justice McKenna said that:

> "The U.S. government, by its very nature benefits its citizens wherever they may be".

Actually, what is clearly true is that:

> "U.S. citizens abroad benefit the U.S. government wherever they may be".

U.S. citizens abroad are America's best ambassadors of good will. Why would America want to destroy that precious resource? They include some of America's most patriotic citizens.

On the question of patriotism, we are reminded of the wisdom of Mark Twain when he remarked:

> "Patriotism is supporting your country all the time and your Government when it deserves it."

A switch to “residence taxation” would ensure loyalty to the Government.

John Richardson

Stephen Kish

Toronto, Canada

On April 15, 2015, John Richardson and Stephen Kish sent seven submissions to the Senate Finance Committee.

Although the seven submissions are related, each submission is separate from the others.

Submissions 2-7 are Appendices to the Submission 1 - the Richardson Kish Main Citizenship Taxation submission:

1. Richardson Kish Main Citizenship Taxation - April 15, 2015 - International Tax

2. Richardson Kish Video Testimonials of Americans Abroad - April 15,2015 - International Tax

3. Richardson Kish Comments of Americans Abroad Citizenship Taxation - April 15, 2015 - International Tax

4. Richardson Kish The S. 877A Exit Tax - April 15, 2015 - International Tax

5. Richardson Kish Revenue Raising Measures - April 15, 2015 - International Tax

6. Richardson Kish Mutual Fund Comparison: Canada vs. United States – April 15, 2015 - International Tax

7. Richardson Kish Complaint to United Nations Re: United States Citizen Taxation – April 15, 2015 International Tax

This is Submission #1 with the title "Richardson Kish Main Citizenship Taxation -- April 15 2015 -- International Tax"

ALL OF THE SUBMISSIONS CAN BE VIEWED HERE:

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