



DEMOCRATS ABROAD

The Honorable Sheldon Whitehouse
530 Hart Senate Office Building
Washington, DC 20510

The Honorable Lloyd Doggett
2307 Rayburn House Office Building
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Dear Senator Whitehouse and Representative Doggett,

Re: Recommendations for reintroducing the Stop Tax Havens Abuse Act.

Democrats Abroad is delighted that both of you will return to serve in the 116th U.S. Congress. We look forward to the start of a productive new chapter for Americans abroad as we engage with Congress to address the serious issues impacting the community of 9 million U.S. civilian and roughly 1 million military and dependent citizens. Among these issues are the problems we face obtaining everyday banking products and services in our countries of residence (as well as in the United States¹) arising from foreign financial account disclosure requirements.

Herein we outline reforms to protect the ordinary and entirely legitimate financial accounts we hold in our countries of residence and to discourage and apprehend those using offshore accounts for tax avoidance and other nefarious purposes.

The U.S. has many laws that adversely affect Americans who live outside the country because Congress does not routinely consider the impact on us when the laws are being written. That we are *inadvertently* harmed does not make up for the fact that the conditions we endure are unfair and cause hardship.

Concerning the Stop Tax Havens Abuse Act

We ask you to give fresh consideration to some of the provisions in the Stop Tax Havens Abuse Act introduced in 2017. Though some parts of the bill are moot following the implementation of the 2017 Tax Cuts and Jobs Act, we wholeheartedly endorse most of the bill and give our enduring support to all good faith efforts to obstruct tax avoidance schemes.

That said, it is also undeniable that rules which indiscriminately apply anti-avoidance measures that involve foreign financial account reporting to Americans who live and work abroad have caused foreign banks and other financial service providers to withhold products and services to U.S. citizens. The result – hundreds of thousands of Americans living and working abroad have no access to a bank account in the country where they reside.

Local reporting requirements ensure that our accounts are known to local authorities. Our accounts are not hiding income and savings from local authorities. No one opens accounts *where they live and work* to hide income and savings from local tax authorities. Thus these financial account reporting rules, when applied to Americans who live and work abroad, are only do harm to ordinary everyday Americans without providing any benefit to U.S. tax enforcement efforts.

¹ Provisions in the USA PATRIOT Act requires holders of U.S. financial accounts to have a U.S. address. Americans living abroad without one are not able to open or retain accounts back home.

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Foreign Account Tax Compliance Act (FATCA) Reform

We reaffirm our support for the Overseas Americans Financial Access Act which would exempt from all FATCA reporting the accounts of Americans abroad in their country of residence. We use these accounts to pay our bills and save for the future. They are reported to local authorities and so are clearly not used to facilitate tax avoidance in the places where we live and work. They are of no interest to U.S. anti-avoidance efforts and should be exempted from disclosure. **Fixing the Foreign Bank and Financial Accounts Report (FBAR)**

All Americans with more than \$10,000 in aggregate in foreign financial accounts are required to file an FBAR electronically with the Financial Crimes and Enforcement Network (FinCEN). Over time the IRS has done a terrible job of providing advice and information about this reporting requirement which has been in place since the Bank Secrecy Act was enacted in 1970. To improve this flawed and inefficient government process we recommend the following reforms:

- Redress the enormous and out-of-proportion IRS penalties – civil and criminal - for non-wilfully neglecting to file;
- Legislate that the FBAR reporting threshold be indexed for inflation instead of leaving it to Treasury to set at will;
- Adjust the \$10,000 reporting threshold for inflation and set it to the level it would be today had the threshold been adjusted annually from the date reporting was implemented;
- Address the vulnerability of FBAR data security inherent in electronic filing;
- Remove the barriers imposed on filers who are computer illiterate or with no access to computers by eliminating mandatory electronic reporting.

Tackling Tax Evasion Schemes that use offshore accounts

Democrats Abroad appreciates that offshore accounts are *fundamental* to the complex financial structures created for High Net Worth citizens to hide assessable income from the IRS. Congress enacted FATCA to shine a light on those accounts and the illicit financial flows they facilitate. The Panama Papers and Paradise Papers exposés reveal, however, that these accounts remain hidden from FinCen and the funds in them remain hidden from the IRS because the accounts are in the name of anonymous shell companies.

Formation agents create anonymous shell companies and open company accounts in foreign financial institutions for clients seeking financial secrecy. The clients are not named on the shell company accounts (though they have control of funds on deposit in them). FATCA is, therefore, powerless to expose U.S. taxpayers using these offshore anonymous shell company accounts to hide untaxed funds.

Democrats Abroad endorses the following legislative reforms to **end the abuse of offshore accounts**:

- End anonymous shell companies - mandate the disclosure of persons who have the beneficial interest in shell companies registered in any state in the U.S.;
- Create a public register of investors in unlisted companies;
- Impose strict and detailed Customer Due Diligence (“Know Your Customer”) rules on formation agents and sales agents who facilitate transactions of property, art, jets, yachts and all high end luxury goods, much like the rules that exist in the European Union;
- Make senior decision makers at financial institutions, accounting firms, financial planning/advisory firms and law firms personally accountable for the actions of their organisations; and
- Observe the reciprocity required under FATCA so that the U.S. does not act as a financial secrecy jurisdiction for foreign nationals.

Democrats Abroad gives its full-throated support to laws and regulations created to end illegal tax avoidance. We do not believe, however, that FATCA disclosures of the accounts of law-abiding overseas resident U.S. citizens in their bona fide country of residence advances anti-tax avoidance efforts; we know, however, that it causes personal and financial harm to ordinary Americans abroad who use accounts in their countries of residence to pay bills and save for the future.

From meetings held over many years and intensively throughout the 115th Congress, it is our view that our elected representatives have an insufficient understanding of the many U.S. laws and regulations that discriminate against Americans abroad. We reiterate our request, therefore, that Congress schedule hearings early in the 116th Congress into U.S. laws and regulations impacting Americans abroad, including those governing financial account transparency and disclosure. This would be a precursor to debate on specific reforms, including the Overseas Americans Financial Access Act, the establishment of a Commission on Americans Abroad and the implementation of Residency Based Taxation.

Please contact me or Democrats Abroad Taxation Task Force Chair, Carmelan Polce, (carmelan@democratsabroad.org) at any time with questions.

Thank you.

Sincerely,

/S/

Julia Bryan

International Chair

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cc: House Minority Leader Nancy Pelosi
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