The "Pax Americana" to the "Tax Americana": How the USA is imposing a separate, punitive tax regime on "nonresidents"

"Tax Colonization by exporting the Internal Revenue Code to other countries"

The Section 965 "transition tax" was part of the Tax Cuts and Jobs Act. It is understood to be a tax imposed on the "undistributed earnings" of Canadian Controlled Private Corporations that are owned by certain Canadian residents that also have U.S. citizenship (including those who are Canadian citizens). You can learn more about it in the series of posts here.

Part 9: Responding to the Sec. 965 "transition tax": From the "Pax Americana" to the "Tax Americana"

This is the ninth in my series of posts about the Sec. 965 Transition Tax and whether/how it applies to the small business corporations owned by taxpaying residents of other countries (who may also...

Tax legislation is a great place to bury "evil legislation" because it is difficult to understand. So, here is a shorter summary of what the Sec. 965 "transition tax" means. It's still really difficult to understand, but maybe this will help ...
The "Pax Americana" to the "Tax Americana": How the USA is...

The @USTransitionTax found in Section 965 of the Internal Revenue Code is the latest example of the United States: (1) imposing U.S. "worldwide taxation" on people with @taxresidency in other countries and (2) subjecting them to rules (that for all practical purposes) Homeland Americans are not subjected to. Don’t believe this? Just read on!
My comment to the article on the @USTransitionTax that appeared in today’s Financial Times on.ft.com/2E0X5zX. The actual article is here ft.com/content/cb6762... pic.twitter.com/Bt0Vems8t2

Okay, sorry the text in the above image is a little small. But, my point includes, that the “transition tax” is: (1) retroactive taxation (2) on income that was specifically NOT subject to U.S. taxation at the time that it was earned (3) without any triggering event whatsoever (4) that is an attempted tax grab before the host country can tax it (5) in a way that absolutely results in double taxation (6) that is in effect a confiscation of the “pensions” of Americans abroad. Yes, it’s true and NO U.S. TAX PROFESSIONAL HAS EVEN ATTEMPTED TO SUGGEST THAT POINTS 1 - 6 ARE FALSE. Commentary from the Twittersphere follows ...

Jaime Dunn @JaimeDunn_

«The United States imposes U.S. taxation on those “undistributed earnings” before they have actually been distributed.» Transition tax sec. 965. #USA gets a cut before host country! #FATCA @realDonaldTrump @PRyan @RandPaul #CanadaReads #IRS #expat twitter.com/ExpatriationLa...
The "Pax Americana" to the "Tax Americana": How the USA is...

Karen Alpert
@finmusings

@ExpatriationLaw @FixTheTaxTreaty The @USTransitionTax is essentially confiscation of the retained earnings of companies owned by non-resident US citizens - it is stealing from the tax base of their home countries.

A MONTH AGO

Well put! Actually to hear more from Karen Alpert ...

An Overview finmusingss Transition TaUSTransitionTaxyoutube.com/watch?v=SwoLZ4...

JOHN RICHARDSON - LAWYER FOR 'U.S. PERSONS' ABROAD @EXPATRIATIONLAW - A MONTH AGO

We need your help in getting the Transition Tax addressed in Washington. What follows is information on an important initiative organized by lawyer Monte Silver ...

John Richardson - lawyer for "U.S. persons" abroad @ExpatriationLaw

RT It's vitally important that those opposing the @USTransitionTax donate to this effort RIGHT NOW! "Expats against Repatriation Tax: Campaign to fund Lobbyist"
youcaring.com/americansabroa... via @youcaring

A MONTH AGO
Interestingly the "transition tax" does NOT apply to a U.S. resident who has carried on business through a U.S. corporation! But, the "transition tax" DOES apply to certain Canadian citizen/residents who are carrying on business through Canadian corporations? Yes, you read right! It's all part of the "Tax Americana". It's the application of a separate and punitive set of tax rules to people who do NOT live in the United States and DO live in Canada (and other countries). This is what ACA legal counsel Charles Bruce calls "upside down territoriality" ...

**Ironically, this is a prime example of “upside down” territoriality. Under a territorial approach, such as, residency-based taxation, the taxpayer is expressly not taxed on foreign income. Here, the taxpayer – say, an American abroad – for sure will be fully taxed on foreign income, whereas his or her cousin in the States who earns domestic business income will enjoy the 20% deduction.**

The USA is imposing a separate @NonResidentTax regime on those who have @TaxResidency in other countries - principle is those who live in USA pay lower taxes than those who live outside USA! See 12 examples - maybe you can identify more. It's a #FATCA citizenshipsolutions.ca/2018/04/16/par... pic.twitter.com/dLgXqcWbLX

† JOHN RICHARDSON - LAWYER FOR "U.S. PERSONS" ABROAD @EXPATRIATIONLAW · A MONTH AGO

And yes here are 12 more examples of how the USA imposes different and more punitive taxation on certain Canadians living in Canada than it does on Americans living in the USA. Seriously, #YouCantMakeThisUp!

† Templeton Mutual Fund bought in the U.S. by a U.S. resident is NOT subject to PFIC confiscation. The same mutual fund (with exactly the same securities) bought in Canada by a Canadian resident is subject to PFIC confiscation. Furthermore, the Canadian resident is required to report his ownership in his Canadian mutual fund on Form 8621 - check it out here.

The USA is imposing a separate @NonResidentTax regime on those who have @TaxResidency in other countries - principle is those who live in USA pay lower taxes than those who live outside USA! Meet Ms. #PFIC - maybe you can identify more. It's a #FATCA citizenshipsolutions.ca/2018/04/16/par... 1/12 pic.twitter.com/25NTtaGgjg

† JOHN RICHARDSON - LAWYER FOR "U.S. PERSONS" ABROAD @EXPATRIATIONLAW · A MONTH AGO
2. A U.S. resident who invests in a ROTH IRA has automatic "tax deferral" and is not subject to U.S. taxation. A Canadian resident who invests in an equivalent TFSA does not have "tax deferral" and is subject to U.S. taxation on the income on TFSA even though he is not subject to taxation on the income in Canada.

The USA is imposing a separate @NonResidentTax regime on those who have @TaxResidency in other countries - principle is those who live in USA pay lower taxes than those who live outside USA! ROTH vs TFSA - maybe you can identify more. It’s a #FATCA citizenshiosolutions.ca/2018/04/16/par ... 2/12 pic.twitter.com/ptsgq2Ir2N

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3. A U.S. resident who invests in an ABLE plan (Achieving a Better Life Experience Act) has automatic tax deferral. A Canadian resident who invests in an RDSP (equivalent “special needs plan”) is subject to U.S. taxation on that income. Furthermore, the Canadian resident is required to report his ownership of his RDSP on Form 3520 - check it out here.

The USA is imposing a separate @NonResidentTax regime on those who have @TaxResidency in other countries - principle is those who live in USA pay lower taxes than those who live outside USA! ABLE vs. #RDSP - maybe u can identify more. It’s a #FATCA citizenshiosolutions.ca/2018/04/16/par ... 3/12 pic.twitter.com/bkE8uvyV54

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4. A U.S. resident who invests in a S. 529 "education plan" has automatic tax deferral. A Canadian resident who invests in an RESP (equivalent “education plan”) does not have "tax deferral" and is subject to U.S. taxation on that income. Furthermore, the Canadian resident is required to report his ownership in his RESP on Form 3520 - check it out here.

The USA is imposing a separate @NonResidentTax regime on those who have @TaxResidency in other countries - principle is those who live in USA pay lower taxes than those who live outside USA! 529 vs. #RESP - maybe you can identify more. It’s a #FATCA citizenshiosolutions.ca/2018/04/16/par ... 4/12 pic.twitter.com/xuWZ0Ar0YF

@JOHN RICHARDSON - LAWYER FOR "U.S. PERSONS" ABROAD @EXPATRIATIONLAW · A MONTH AGO
5. A U.S. resident who receives distributions from a 401K plan is not subject to the 3.8% Obamacare surtax. A Canadian resident who takes a distribution from an (equivalent) Canadian RRSP is subject to the 3.8% Obamacare surtax. Furthermore, the Canadian resident is required to report his Obamacare surtax on Form 8960 - check it out here.

The USA is imposing a separate @NonResidentTax regime on those who have @TaxResidency in other countries - principle is those who live in USA pay lower taxes than those who live outside USA! 401K vs RRSP - maybe you can identify more. It's a #FATCA citizenshpsolutions.ca/2018/04/16/par...

6. A U.S. resident is not required to report his local U.S. bank accounts to U.S. Financial Crimes. A Canadian resident is required to report his Canadian bank accounts to U.S. Financial Crimes. This is a very special category of “form crime” - see information about Mr. FBAR.

The USA is imposing a separate @NonResidentTax regime on those who have @TaxResidency in other countries - principle is those who live in USA pay lower taxes than those who live outside USA! #FBAR for CDN - maybe you can identify more. It's a #FATCA citizenshpsolutions.ca/2018/04/16/par...

7. A U.S. resident is not required to report his U.S. financial assets annually to the IRS on Form 8938. A Canadian resident may be required to report his Canadian financial assets annually to the IRS on Form 8938. Form 8938 is an extremely intrusive, time consuming form. Check it out here.

The USA is imposing a separate @NonResidentTax regime on those who have @TaxResidency in other countries - principle is those who live in USA pay lower taxes than those who live outside USA! Form #8938: CDN residents report asset 2 USA It's a #FATCA citizenshpsolutions.ca/2018/04/16/par...
8. A U.S. resident is NOT required to treat his business activities in the USA as foreign and subject to penalties and reporting. Certain Canadian residents are required to treat their business activities in Canada as foreign and subject to penalties and reporting. Check out Form 5471 and Form 8865.

The USA is imposing a separate NonResidentTax regime on those who have TaxResidency in other countries - principle is those who live in USA pay lower taxes than those who live outside USA! CDN Bus in CA - maybe you can identify more. It's a FATCA citizenshipsolutions.ca/2018/04/16/par...8/12 pic.twitter.com/XhbCFU4fpn

9. A U.S. resident married to a U.S. citizen spouse is allowed to make unlimited gifts to his spouse. A Canadian resident married to a Canadian citizen spouse is NOT allowed to make unlimited gifts to his spouse. Furthermore, the Canadian resident is required to report certain gifts to his spouse on Form 709 - check it out here.

The USA is imposing a separate NonResidentTax regime on those who have TaxResidency in other countries - principle is those who live in USA pay lower taxes than those who live outside USA! CDN resident restricted gifts to CDN spouse - It's a FATCA citizenshipsolutions.ca/2018/04/16/par...9/12 pic.twitter.com/UEI4YTCdkm

10. A U.S. resident who renounces U.S. citizenship will not have his U.S. pension plan subject to confiscation because of the Section 877A Exit Tax. A Canadian resident who renounces U.S. citizenship would have his Canadian pension plan subject to confiscation because of the Section 877A Exit Tax. It's because it the pension is NOT a "U.S. pension", but is a "Canadian pension".

The USA is imposing a separate NonResidentTax regime on those who have TaxResidency in other countries - principle is those who live in USA pay lower taxes than those who live outside USA! ExitTax confiscates CDN but not US pension It's a FATCA citizenshipsolutions.ca/2018/04/16/par...10/12 pic.twitter.com/xTJyphBWFS
11. The TCJA includes a provision that allows U.S. residents to deduct property taxes on their U.S. principal residences, but specifically does NOT allow a Canadian living in Canada to deduct property taxes on his Canadian principal residence.

The USA is imposing a separate @NonResidentTax regime on those who have @TaxResidency in other countries - principle is those who live in USA pay lower taxes than those who live outside USA! ONLY US residents can deduct local prop tax It’s a #FATCA citizenshipsolutions.ca/2018/04/16/par...

11/12 pic.twitter.com/IYgZZKwQqR

12. The TCJA provided allows a deduction of up to 20% of pass-through income for specified service business owners with income under $157,500 (twice that for married filing jointly) for certain income effectively connected with the conduct of the trade or business within the US. A U.S. resident operating a U.S. business is entitled to the deduction. A Canadian resident carrying on a small unincorporated business in Canada is NOT entitled to the 20% reduction.

The USA is imposing a separate @NonResidentTax regime on those who have @TaxResidency in other countries - principle is those who live in USA pay lower taxes than those who live outside USA! ONLY US business eligible for 20% deduction It’s a #FATCA citizenshipsolutions.ca/2018/04/16/par...

12/12 pic.twitter.com/ec46DXixwD

Yup, there is NO doubt that the USA is imposing a “separate and more punitive” tax regime on certain people who are “tax residents” of other countries and do not live in the USA. This is a form of “tax colonization”. Time for other governments to step up and put a stop to USA abuse of the citizens and residents of other countries. The Government of Canada might say: “Well it’s just U.S. tax policy”. Well that is exactly right! It is U.S. tax policy and therefore it has NO PLACE IN CANADA OR ANY OTHER COUNTRY!! Some closing thoughts ...
The effect of the Repatriation/Transition Tax on small business owners is devastating. Even if this tax doesn’t directly affect you, please contribute to this important lobbying effort. This will be the last straw for many Americans abroad - and perhaps it will finally drive home to American lawmakers the injustices non-residence taxation create for Americans abroad! This is “beyond the pale”.

Part 8: Responding to the Sec. 965 “transition tax”: This small business thought it was saving to invest in business expansion – Wrong, they were saving to be robbed by America!

The Gov of Canada thinks that US taxation of Canadian residents is okay bc “It’s U.S. Law”. But the fact that “It’s U.S. law” is exactly WHY the Gov of Canada CAN NO LONGER ALLOW THIS - especially the @USTransitionTax citzenshipsolutions.ca/2018/04/13/par... pic.twitter.com/cqTUOvkJXt

JOHN RICHARDSON - LAWYER FOR "U.S. PERSONS" ABROAD @EXPATRIATIONLAW · A MONTH AGO

In summary, see the video discussion referenced in the following tweet ...
To reiterate ...
"Facts are stubborn things; and whatever may be our wishes, our inclinations, or the dictates of our passions, they cannot alter the state of facts and evidence."

- John Adams  
December 4, 1770  
Defending the British soldiers on trial for the "Boston Massacre"

"Facts are stubborn things". #FATCA is that the USA is imposing a separate and punitive tax regime on people with @TaxResidency in other countries. Regime includes imposition of retroactive taxes on #fakeincome with no realization event! @USTransitionTax thisdayinquotes.com/2009/12/facts-... pic.twitter.com/Y8JGxArp6b

JOHN RICHARDSON - LAWYER FOR "U.S. PERSONS" ABROAD @EXPATRIATIONLAW · 24 DAYS AGO