

“It Hurts My Heart:”  
The Case for Fairer Taxation of Non-Resident US Citizens

by Laura Snyder\*

**Post 2 of 4**

The number of US citizens living outside the United States is estimated to be anywhere from 5.5 to 9 million.<sup>1</sup> Of that number, roughly 200,000 (or 2.2 to 3.6%) are active-duty military personnel.<sup>2</sup> The remaining 97% or so come from all different walks of life: children and students, actively employed or self-employed, unemployed, homemakers, retirees. Some were born in the United States but left at a very early age (still in diapers), some left as children or teenagers, and some left as adults, including some as retirees. And many have never lived in the United States: they were born overseas to at least one US-citizen parent.

What all these persons have in common is that, even though they live outside the United States, they are subject to United States tax and banking regulations in the same manner as persons who live in the United States. This is the case regardless both of the country in which these US citizens live and of the fact that they are also subject to the tax and banking regulations of the countries in which they live, in the same manner as the other residents of those countries.

This situation is little understood. This is true with respect to the US citizens (and green card holders) living overseas themselves: while some are acutely aware of the situation, others are only vaguely aware, and some manage to live in blissful ignorance (or denial). This is also true with respect to homeland Americans: there is little awareness of the situation and, among those who have some awareness, there are many unfortunate prejudices, misconceptions and misunderstandings which serve both to perpetuate and to aggravate the very serious consequences that the situation presents for their fellow Americans who live overseas.

This is the second of a series of four posts to make the case for fairer taxation of non-resident US citizens and green card holders. The first post was a Case Study in the Marginalization of Americans Living Overseas. This second post recounts the origins of this situation, unique to the United States. The third post will describe the destabilizing effects of recent US banking regulations and explain how the 2017 Tax Cuts and Jobs Act turned an already difficult situation for entrepreneurs and small business owners into an impossible one. The fourth post will expose continuing prejudices, misconceptions and misunderstandings and how they serve to perpetuate and aggravate the situation for so many US citizens who seek simply to lead normal lives in the places where they live.

---

\* Laura Snyder was raised in the United States and has lived in Europe (mostly in France) since 1995. She holds a JD from the University of Illinois, a DEA in *droit privé* from the University of Paris 1 (Panthéon-Sorbonne) and she completed the TRIUM Executive MBA program (an alliance of New York University, London School of Economics and HEC School of Management). She is a doctoral candidate at the University of Westminster. She is the author of the books *Democratizing Legal Services: Obstacles and Opportunities* and *Modernizing Legal Services in Common Law Countries: Will the US Be Left Behind?* She is a member of the bars of New, York, Illinois and Paris.

## **The United States Is One of Just Two Countries that Taxes Its Non-Resident Citizens on their Foreign-Sourced Income**

All US citizens, including those who live outside the United States, are subject to US taxation on the basis of their worldwide income. While many countries tax their *residents* (citizens or not) on the basis of their worldwide income, the United States is just one of two countries in the world that taxes the *foreign* (non-US) income of their *non-resident* citizens (and green card holders).<sup>3</sup> The United States is the only country in the world to subject its non-resident citizens to worldwide taxation under the same rules as those applied to the country's residents, rules that treat the local financial dealings of those non-resident citizens as "foreign" cross-border transactions and penalize them as such.

### **A. Taxing Non-Resident Citizens Is Based Upon Century-Old Prejudice**

The first policy taxing non-resident citizens was adopted during the Civil War in order to punish draft dodgers as well as other US citizens residing overseas: they were seen as shirking their duties to the country, whether it be with respect to military service or to making a financial contribution to the war effort, or both. In 1862, Senator Jacob Collamer of Vermont explained: "If a man draws his income from our public debt, or from property here, and resides in Paris, skulking away from contributing his personal support to the Government in this day of its extremity, he ought to pay a higher income tax."<sup>4</sup> A few decades later, in 1894, Senator George Hoar of Massachusetts argued his support of non-resident taxation in this manner:

[The point of non-resident taxation is so that] if an American citizen went abroad and carried the protection of his country, of his citizenship with him, he did not escape its burdens... There are a great many people, I am sorry to say, who go abroad for that very purpose, and some of them went abroad during the late [Civil W]ar. They lived in luxury, at the same time at less cost, in a foreign capital; they had none of the voluntary obligations which rest upon citizens, of charity, or contributions, or supporting churches, or anything of that sort, and they escaped taxation.<sup>5</sup>

These statements demonstrate that from the very first incarnations of non-resident taxation, American homelanders typecast US citizens living outside the United States as wealthy and indolent and living in exotic locales. They were characterized as having left the country for the principal purpose of avoiding their obligations, financial and otherwise, to the United States and therefore they deserved to be punished by means of taxation.<sup>6</sup>

At the time of the Civil War as well as during a century afterwards dual citizenship was rare and US citizens living outside the United States were unlikely to also be citizens of their host countries. This was in large part because naturalizing in another country was an expatriating act, as were other activities, such as voting in a foreign election or, in the case of women, marrying a non-citizen. However, in 1967

the US Supreme Court held in *Afroyim v. Rusk* that the commission of a relinquishing act cannot lead to the loss of US citizenship unless the individual performed the act with the intention of losing US citizenship.<sup>7</sup> One result of this decision has been an explosion in the number of US citizens living outside the United States and, more than that, in the number of dual citizens living overseas. For example, Australian census data shows that 54% of US-born Australian residents are Australian citizens.<sup>8</sup> The high prevalence of dual citizenship belies the stereotype of US citizens living overseas—are they “skulking” as self-exiles from US taxation, all the while “drawing” their income from US sources, or are they integrated members of society in their new home countries, “drawing” their income from sources outside the United States?

## **B. Compliance Levels Are Low**

The legal obligation to declare and pay taxes on the basis of worldwide income has been difficult to enforce. United States tax authorities have had limited access to information about the income and assets of US citizens living overseas and limited means of compelling them to declare their income and pay the applicable taxes.<sup>9</sup> Further, given how aberrational the practice of non-resident taxation is, it never occurred to many US citizens living overseas that they could be subject to such an obligation.

This is particularly the case with respect to US citizens who have never lived in the United States or who have lived there only for a very short time when they were (very small) children (these persons are often referred to as “Accidental Americans”). Not only were many such persons not even aware of the fact that they are considered to be US citizens but, even if they were aware, the suggestion that they were supposed to file US tax returns and pay US income tax would, on its face, be met with dumbstruck incredulity. On what legitimate basis, they would ask, could this possibly be the case? And who would be foolish enough to comply with what could only be a scam?

And even for US citizens who had previously studied, worked or lived in the United States and had previously declared and paid US taxes—for them, too, the fact that they remained subject to US income taxation even though they no longer either lived in the United States or drew an income from the country was, for many, difficult to come to terms with. While this difficulty was due to a variety of reasons, it was especially because remaining in compliance with US tax obligations while residing outside the United States is highly problematic, especially for those residing outside the US on a long-term basis. The reasons for that include:

- (1) They already pay taxes in the places where they live, in many cases at much higher rates,
- (2) It is impossible to reconcile the US tax system with the system of their country of residence, with the result that many investment and retirement vehicles favored under the system of their country of residence are harshly penalized by the US system. This has a number of consequences not the least

of which is significant difficulties in planning and saving for retirement,<sup>10</sup> and

- (3) The tax reporting obligations for US citizens living overseas are so complex and lengthy that it is impossible for most US citizens to comply with them without spending several hundreds if not several thousands of dollars for professional assistance. This is the case even when the US citizen's income is very low (as low as \$5) and the US tax ultimately owed is \$0.<sup>11</sup>

Given the above, it is hardly a surprise that from the very inception of non-resident taxation over 150 years ago the level of compliance (that is, the number of non-resident US citizens filing US tax returns) has been limited. At the same time, the efforts as well as the ability of US tax authorities to enforce compliance were also limited.

The next and second of this series of three posts will describe the destabilizing effects of recent US banking regulations and explain how the 2017 Tax Cuts and Jobs Act<sup>12</sup> turned an already difficult situation for entrepreneurs and small business owners into an impossible one.

---

<sup>1</sup> Estimating a population of 9 million US citizens living outside the United States: "CA by the Numbers," U.S. Department of State's Bureau of Consular Affairs, [https://web.archive.org/web/20160616233331/https://travel.state.gov/content/dam/travel/CA\\_By\\_the\\_Numbers.pdf](https://web.archive.org/web/20160616233331/https://travel.state.gov/content/dam/travel/CA_By_the_Numbers.pdf). Estimating a population of 5.5 million: Federal Voting Assistance Program, "2016 Overseas Citizen Population Analysis: Study Findings Volume 1," Sept., 2016: 3, <https://www.fvap.gov/uploads/FVAP/Reports/FVAP-2016-OCPA-FINAL-Report.pdf>. In fact, there are no reliable figures on the number of US citizens living outside the United States. See Joe Costanzo and Amanda Klekowski von Koppenfels, "Counting the Uncountable: Overseas Americans," Migration Information Source, May 17, 2013, <https://www.migrationpolicy.org/article/counting-uncountable-overseas-americans>.

<sup>2</sup> Kristen Bialik, "U.S. Active-Duty Military Presence Overseas Is at Its Smallest in Decades," Pew Research Fact Tank, Aug. 22, 2017, <http://www.pewresearch.org/fact-tank/2017/08/22/u-s-active-duty-military-presence-overseas-is-at-its-smallest-in-decades/>.

<sup>3</sup> The other country is the brutal African dictatorship of Eritrea. For a description of the brutality of Eritrea's enforcement of its taxation of non-resident citizens, see DSP-groep Amsterdam, Tilburg School of Humanities, Department of Culture Studies, "The 2% Tax for Eritreans in the Diaspora: Facts, Figures and Experiences in Seven European Countries," June, 2017, [https://www.dsp-groep.eu/wp-content/uploads/The-2-Tax-for-Eritreans-in-the-diaspora\\_30-august-1.pdf](https://www.dsp-groep.eu/wp-content/uploads/The-2-Tax-for-Eritreans-in-the-diaspora_30-august-1.pdf). The UK, Netherlands and Canada have strongly criticized that country for the practice. They described it as "coercive," "extortionist," and a means to "punish and control" Eritreans living outside Eritrea. Both the Netherlands and Canada went so far as to expel Eritrean diplomats because of the practice. John J. Xenakis, "World View: Netherlands Expels Eritrean Diplomat over Coercive 'Diaspora Tax' Collections," Feb. 15, 2018, <https://www.breitbart.com/national-security/2018/02/15/15-feb-18-world-view-netherlands-expels-eritrean-diplomat-over-coercive-diaspora-tax-collections/>; Don Whiteley, "Will Canada's Hard Line on Eritrea's 'Diaspora' Tax Apply to the U.S.?" May 29, 2013 updated May 9, 2018, <https://www.theglobeandmail.com/opinion/will-canadas-hard-line-on-eritreas-diaspora-tax-apply-to-the-us/article12224084/>; Sam Jones, "Diaspora Tax for Eritreans Living in UK Investigated by Metropolitan Police," *The Guardian*, June 9, 2015, <https://www.theguardian.com/global-development/2015/jun/09/eritreas-diaspora-tax-uk-investigated-metropolitan-police>. In 2011 the United Nations Security Council condemned Eritrea for the practice; the resolution was co-sponsored by the United States. See Whiteley, "Will Canada's Hard Line on Eritrea's 'Diaspora' Tax Apply to the U.S.?"

<sup>4</sup> Michael S. Kirsch, "Taxing Citizens in a Global Economy," *New York University Law Review* 82 (2007): 451, [https://scholarship.law.nd.edu/cgi/viewcontent.cgi?article=1550&context=law\\_faculty\\_scholarship](https://scholarship.law.nd.edu/cgi/viewcontent.cgi?article=1550&context=law_faculty_scholarship).

---

<sup>5</sup> <https://www.renunciationguide.com/citizenship-taxation-and-expatriation-background-and-history/tax-on-expatriation-background-and-history/>

<sup>6</sup> See also: Montano Cabezas, “Reasons for Citizenship-Based Taxation?” *Penn State Law Review* 121 (2016): 112, <http://www.pennstatelawreview.org/wp-content/uploads/2016/10/ARTICLE-3-CABEZAS.pdf>. For more recent examples, see “Tax on Expatriation: Background and History,” Renunciation Guide, undated, <https://www.renunciationguide.com/citizenship-taxation-and-expatriation-background-and-history/tax-on-expatriation-background-and-history/>.

<sup>7</sup> Henry J. Chang, “Loss of Citizenship and Dual Nationality,” Chang and Boos’ Canada – US Immigration Law Center, undated, <http://www.americanlaw.com/dualcit.html>.

<sup>8</sup> “2016 Census QuickStats Country of Birth: People in Australia who were born in United States of America,” Australian Bureau of Statistics, [http://quickstats.censusdata.abs.gov.au/census\\_services/getproduct/census/2016/quickstat/8104\\_036](http://quickstats.censusdata.abs.gov.au/census_services/getproduct/census/2016/quickstat/8104_036).

<sup>9</sup> Ruth Mason, “Citizenship Taxation,” *Southern California Law Review* 89 (2015): 212-13, <https://ssrn.com/abstract=2606744>.

<sup>10</sup> See generally: Allison Christians, “Understanding the Accidental American: Tina's Story,” Tax Analysts, Dec. 8, 2015, <http://www.taxhistory.org/www/features.nsf/Articles/4B25BA71D312B2D285257F1500682E46?OpenDocument>; Karen Alpert, “Investing with One Hand Tied Behind Your Back – An Australian Perspective on United States Tax Rules for Non-Resident Citizens,” Jan. 8, 2018, [https://papers.ssrn.com/sol3/papers.cfm?abstract\\_id=3097931](https://papers.ssrn.com/sol3/papers.cfm?abstract_id=3097931); John Richardson, “The Biggest Cost of Being a “Dual Canada/U.S. Tax Filer” is the “Lost Opportunity” Available to Pure Canadians,” Citizenship Solutions, Aug. 6, 2018, <http://www.citizenshipsolutions.ca/2017/08/04/the-biggest-cost-of-being-a-dual-canada-u-s-tax-filer-is-the-lost-opportunity-available-to-pure-canadians/>.

<sup>11</sup> Mason, “Citizenship Taxation,” 215-18.

<sup>12</sup> Public Law 115–97—Dec. 22, 2017, <https://www.congress.gov/115/plaws/publ97/PLAW-115publ97.pdf>.