

AMERICAN CITIZENS ABROAD, INC.
MARYLOUISE SERRATO – EXECUTIVE DIRECTOR
TESTIMONY BEFORE NATIONAL TAXPAYER ADVOCATE FORUM

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My name is Marylouise Serrato. I am the Executive Director of American Citizens Abroad, Inc. (“ACA”). ACA is a section 501(c)(4) exempt, non-profit, nonpartisan, practically all-volunteer, social welfare organization, with a sister organization, American Citizens Abroad Global Foundation, a section 501(c)(3) publicly-supported charity. I appear today on behalf not only of ACA but also the Federation of American Women’s Clubs Overseas (“FAWCO”) and the Association of Americans Resident Overseas (“AARO”)¹. Our three organizations have worked together for many years to represent the interests of Americans abroad. We are pleased to have this opportunity to present these remarks and we thank National Taxpayer Advocate Nina Olson for inviting us to present at this important public forum.

I am accompanied by Charles Bruce, Legal Counsel, ACA, who is also Of Counsel with Bonnard Lawson in Lausanne, Switzerland.

I have with me a written statement and, with your permission, will submit this for the record.

Our purpose today is to comment upon the Internal Revenue Service’s development of a “Future State” from the perspective of the community of international taxpayers, Americans who are living and working overseas.

- **Size.** Strangely, there is not a reliable figure for the total number of non-military American citizens and green card holders residing outside the US. There are figures for numbers of tax return filers. Missing, however, is the number of non-filers. Non-filers exist for a number of reasons, including a low income level, ignorance of their filing obligation and confusion over the process of filing and forms required to file. A relatively small number of “bad actors” deliberately choose not to file, however this is nowhere near a majority of the community. The US State Department, Internal Revenue Service, and other agencies should do more to obtain an accurate count of the population of overseas taxpayers even if this requires changes in the law. There are also figures for numbers of FBAR filers but, again, a reliable figure for the number of individuals who should be filing an FBAR appears not to be available. This lack of information does not help anybody – government or individuals. The problem needs to be addressed.

- **Demographics.** The community of Americans living and working abroad reflects a broad range of individuals: business executives in both US and International corporations, independent contractors and consultants, missionaries, aide-workers, academics, clergy, housewives, retirees, and this is only a short list. Research results from a variety of demographic surveys ² indicate that this community is fairly evenly split by gender with approximately 45% male and 55% female. The majority are married

¹ AARO is a non-partisan, non-profit association formed in 1973 and based in Paris, France. FAWCO was formed in 1931 and is a 501(c)(3) corporation which comprises over 65 independent associations in 35 countries worldwide. It is a recognized NGO with consultative status with the UN Economic and Social Council.

² ACAGF and University of Nevada 2015 “A Study of the Consequences of the FATCA on Americans Living Overseas,” ACAGF Greenback Tax Preparation Services “2014 Expat Survey,” University of Kent “Citizenship Renunciation Intentions Among US Citizens Abroad,” Democrats Abroad 2014, “FATCA Affecting Everyday Americans Every Day,” ACA 2015 members and non-members surveys.

or in a common law marriage situation. Many are of traditional working age (under 55 years) and most are below traditional retirement age (under 65 years). Over 50% earn under \$99,000 annually³ (It should be noted here that overseas salaries need to be considered in terms of the jurisdiction where these individuals are living. Just as the buying power of a salary of \$35,000 in New York City differs from Butte, Montana, the same holds true for overseas salaries in foreign jurisdictions.) A high percentage are dual-nationals, including individuals that are non-native English speakers.

- **Character.** Studies indicate that reasons for living abroad are highly linked to marriage, job opportunities, education or simply birth abroad to an American parent(s). Certainly very few are tax cheats and, in fact, ACA, AARO and FAWCO receive hundreds, if not thousands of communications annually from Americans overseas who want to comply with their tax obligations but lack the resources and information and need assistance. Because this community is subject to tax and bank account reporting rules and nationality rules that are extremely complex, many do not understand the process and are confused by it. Those that do try to comply, understandably, can make an above-average number of errors. The IRS should be able to give some indication of error rates on individual tax returns filed by this population.
- **Special needs.** Just as in the United States, there are groups within the overseas community with special needs. Our organizations hear from retirees, the mentally and physically disabled and low-income taxpayers who lack the necessary resources to understand the tax code as it applies to them and their filing requirements. The IRS must take into consideration the servicing needs of these individuals, many of whom lack Internet connectivity and up-to-date technology.
- **Complexity.** It is not our job today to discuss the specific complexity of the US tax code, however for Americans overseas, the complexity of the US tax code grows exponentially. There is an inherent incongruity as Americans living overseas must earn and invest in the currency and vehicles of the country of their residency however, for US tax filing, they must adhere to rules based on the interpretation of US domestic taxation. Not only does this lead to instances of double taxation but it also prevents many from taking advantage of tax-saving or investment opportunities in the country where they reside solely because of their US nationality. There are a myriad of regulations that determine what foreign taxes are accepted as credit, how foreign investments should be reported, etc. but little in the way of guidance on this to assist filers.
- **Historically subpar services.** Americans abroad, I'm sorry to say, have historically suffered from subpar service from the IRS. Again, the rules and forms are numerous and very, very complicated and frequently changed. In the best of times, there were less than a handful of overseas IRS offices. To be fair, there were exceptions to this picture: The IRS offices in the American Embassy in London as well as Paris were widely known to be excellent. Proposed steps toward online service can greatly benefit Americans abroad and, in time, will be welcomed by them. Also, recent steps to improve information provided on the IRS website and the organization of that information are noted and appreciated. The challenge of providing the needed information is great, however: there is still much to be done and the human element remains key to a complete package. Unless there is major reform and simplification of the tax code, this diverse community of Americans living across the globe, dealing with many home-country investment and local tax requirements, will continue to have more servicing needs than their state-side counterparts.
- **Language Barrier.** One of the recently identified issues for the community overseas is language. Not only is the US tax code complex, but individuals need to have a good command of the English language to navigate the system. Currently IRS online information is available in Spanish, Chinese,

³ Democrats Abroad 2014, "FATCA Affecting Everyday Americans Every Day"

Korean, Vietnamese and Russian. The recent implementation of FATCA however, has brought into compliance a more diverse community of individuals and many have little to no knowledge of the English language. For these individuals, understanding their basic tax obligations, navigating the system (IRS website), identifying a competent tax professional, and applying for a Social Security number can present monumental tasks posing huge barriers to compliance. It goes without saying that to benefit from IRS services, these Americans need more than automation and will continue to require human intervention.

- **Reliance on mail delivery.** For many good reasons the IRS communicates with taxpayers via traditional mail delivery. Unfortunately mail delivery services vary greatly by country. Some tax filers report receiving IRS communications with action dates already past due by the time they arrive in their country of residence. If the communication involves a tax debit with penalties and late fees associated, the late delivery time can result in increased and unwarranted additional penalties. If the IRS is to rely on mail delivery services, better management of these communications, ensuring that they arrive in a timely manner, needs to be addressed.
- **Online accounts.** We support the creation of online tax accounts where taxpayers can check the status of their tax affairs and self-correct problems. Done correctly and with the caveats below, these can be a big help for Americans abroad.
- **For many, problems with Internet access.** In the overseas community, it must be appreciated that many reside in places where Internet access is either non-existent or of very poor quality. Globally there is only 32% penetration of high speed (10Mbps) internet⁴ Things are improving and there may be wonderful technological strides in the future; but there are and likely will remain many no-service areas. Today, for example, many overseas Americans needing to file FBARs electronically are challenged if not completely stymied. “Workarounds”, like sitting in an Internet café or public library, create unacceptable risks.
- **Need to avoid “cutting-edge”.** Use of online accounts frequently requires expensive, up-to-date software and computers. As we all know, when working with a distant server, whether at an IRS facility somewhere or in the cloud, the workings of the server can be good but the user’s software can be poor, or out of date, or otherwise lacking. Everything comes to an immediate halt. An example of this problem is a recent testimonial from a man trying to fill out his FinCEN Form 114 form (FBAR). He encountered problems with software incompatibility, inability to “save form and return,” and difficulty in determining the date for foreign currency conversion for reporting (testimonial included in written submission).
- **Security.** Data and identity theft present a real problem for all tax filers using on-line and internet systems. For overseas filers the problem is heightened as many security monitoring systems for data and identity theft do not exist internationally. Recent GAO studies on the IRS’s ability to securitize data have not given great confidence⁵; more needs to be done in this area to assure taxpayers that their personal data can be properly secured for online filing. In addition to the worrisome problem of exposure and loss of personal data, Americans overseas are at an increased threat of being identified and targeted for terrorist actions. Breaches in data security can not only result in devastating financial consequences but in actual personal harm.

⁴ Akamai “State of the Internet” Q4 2015 Report, pg. 14 figure 9, <https://www.akamai.com/us/en/multimedia/documents/content/state-of-the-internet/q4-2015-state-of-the-internet-connectivity-report-us.pdf>

⁵ GAO *IRS Needs to Further Improve Controls over Taxpayer Data and Continue to Combat Identify Theft Refund Fraud*, GAO-16-589T: Published: Apr 12, 2016, www.gao.gov/products/GAO-16-589T

- **Caveat regarding third-party access to online tax accounts.** We agree that we should all be wary of the role of third parties such as return preparers. Whoever has access to the taxpayer's online tax accounts must be subject to the strongest rules, including Circular 230. The taxpayer should be able easily to add and terminate persons authorized to access his/her account. Just as an individual might be notified about a "large purchase" on a credit card, (s)he should be notified of certain types of actions by a person authorized to interact with his/her tax account.
- **24/7 support.** I'm sorry to have to break the news but Americans abroad are spread out over all the different time zones. Also, there are different versions of "weekends" and "holidays". People commonly work on their taxes during "off" hours. Like other financial services organizations, the IRS needs to provide some level of 24-7 service. We suggest having call centers located in several different time zones.
- **The need to upgrade return preparation services.** Let me make an obvious point: The international tax laws applicable to individuals living abroad are ridiculously complicated and should be simplified. Eliminating the overlap of reporting information, adopting a Safe Harbour/Same Country Exemption for FATCA Form 8938 and a model for Residence-based taxation need serious consideration. Another major problem is finding competent, professional tax return preparation help. We hear that the population of return preparers is dropping while the cost of tax preparation is increasing. Tax preparation firms are having to consolidate to be able to deal with increasing complexities and keep up with changes. Many of these firms themselves are relying on automation. The trend is away from small, personal professional servicing towards large, impersonal and automated services. The IRS's vetting website is a good thing. Almost 2 years ago ACA launched its Tax Return Preparer Directory to make it easier for individuals to find a preparer and, importantly, to have the ability to shop for a good, reasonably-priced one. We continue to improve this Directory but there is no doubt that personalized service is diminishing for the overseas community.
- **Part of team dedicated to Americans overseas.** We recommend that as you go forward with development of a Future State within your organization, you dedicate a team to Americans overseas. The issues and problems affecting this group are unique. It's difficult for someone who is not immersed in the subject to come up with the right solutions. We also strongly recommend the establishment of Taxpayer Advocate offices abroad—real or virtual, to provide the kind of personalized assistance now available throughout the United States.
- **Due diligence as to the identity and residence/location of taxpayer.** Typically, financial institutions, and here the IRS is just another financial institution, need to identify the user and place him somewhere on the map. As seen with efforts to permit creation of tax identification numbers and access to tax records, this can be fraught with problems. There are, believe it or not, significant numbers of Americans who do not have a Social Security number. This became obvious in the offshore voluntary disclosure programs. The process for applying for a Social Security number from overseas can range from 3 to 18 months depending on the person and location. A more expedient process needs to be developed or a temporary identification number assigned for immediate use in tax filing.
- **The need for US bank accounts.** To make the Future State work, tax payments need to be made to the Treasury Department and refunds need to come back to a US bank account. Until recently, Americans abroad who do not have a US residence or mailing address, and there are a large number of them, faced an almost insurmountable difficulty opening a US bank account. ACA is very pleased, as of March 1 of this year, together with the State Department Federal Credit Union, to have solved this problem. Americans abroad, regardless of whether they have any States-side presence, can now

have a SDFCU account; they can open it entirely online; the account-opening procedures can entail using a scanned copy of his or her US passport and proof of residence – say a local utility bill. Because SDFCU services Foreign Service officers, employees and American embassies around the world, and many other individuals spread far and wide, it is very competent and experienced in dealing with all the nitty issues. In fact, the IRS would do well to run over to old town Alexandria and sit down with the SDFCU people. They are the most knowledgeable people we know delivering financial services to Americans outside the US.

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In closing I would like to thank again the Taxpayer Advocate for this Conference and for inviting our groups to testify. I hope that our testimony has highlighted the special needs of the overseas American community with regard to tax compliance. We believe that while automation can help facilitate the filing process for these individuals, simplification of the process is crucial. Much of what the community is experiencing stems from complexity, in the tax code itself, in the filing process, the number of forms, and the access to easily understandable and centrally located data.

We continue to advocate for a dedicated resource within the IRS for Americans overseas. A phone line with minimum wait-times staffed by competent professionals who can answer specific international filing questions in a language the user understands along with a user-friendly, interactive website.

Our organizations are pleased to see the IRS advance on providing increased outreach and assistance to the overseas community and this should be built upon. ACA, AARO and FAWCO can be great resources for the IRS teams working on the Future State. We look forward to further dialogue with the IRS, as we want and are happy to help in shaping this future state.