

Relief coming for US citizens living abroad? Unfortunately, we don't think so.

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On December 20, 2018, in the middle of the perfect storm on Capitol Hill created by the impending change in control of the House of Representatives back to the Democratic party, threatened government shutdown, and President Trump's border wall funding demands, a bill was introduced that would *"amend the Internal Revenue Code of 1986 to provide an alternative exclusion for nonresident citizens of the United States living abroad."*

Specifically, [H.R. 7358 \(the "Tax Fairness for Americans Abroad Act of 2018"](#) or "the Bill") seeks to essentially replace the current citizenship-based taxation system with a more residence-based taxation system for "qualified nonresident" US citizens. While many dual citizens or US citizens residing in Canada may meet the proposed definition of "qualified nonresident citizen" under the Bill – more on this below — it might be helpful to first put the Bill in historical context to understand the likelihood of such ground-breaking legislation becoming US law.

While proponents of the Tax Fairness for Americans Abroad Act of 2018 argue that the proposed legislation would create a tax regime that is simpler, fairer, and more competitive for US citizens residing in Canada and around the world, the Bill is likely only creating false hope for US citizens who haven't been complying with their US reporting obligations. To be clear, similar legislation has been either proposed or subject of interest for many years by both Republicans and Democrats. Most recently, this topic was proposed in the historical tax reform of the Tax Cuts and Jobs Act of 2017 but was not included in the final bill that was enacted even where the Republican party controlled the House of Representatives, Senate, and White House.

On January 3, 2019, the Democratic party will control the legislative agenda in the House of Representatives and they have made it very clear that in addition to providing a check on The White House and Washington corruption, their priorities will take a more populist tone such as minimum wage increases, protecting US health care under the Affordable Care Act, and immigration reform for Dreamers. With respect to tax reform, they have also made it clear that their first order of business will be to require Presidential nominees to release their personal tax returns from the three most recent taxable years and not to make it easier for US citizens living abroad to file and pay their taxes.

As drafted, the Bill would add Code Section 911A – "Alternative for Nonresident Citizens of the United States Living Abroad" which would provide that those citizens electing to be taxed as "qualified nonresident citizen(s)" would be exempt from taxation on, and shall exclude from gross income their foreign source income. This includes both foreign earned income (as defined in Code Section 911(b)) and foreign unearned income (defined as income other than foreign earned income that is sourced outside the U.S).

Importantly, the term "nonresident citizen" means "an individual who –

- is a citizen of the United States,

- has a tax home in a foreign country,
- is in full compliance with US income tax laws for the previous 3 years, and
- either – (I) establishes to the satisfaction of the Secretary that such individual has been a bona fide resident of a foreign country or countries for an uninterrupted period which includes an entire taxable year, or (II) is present in a foreign country or countries during at least 330 full days during such taxable year.”

Such a proposed definition above comes with both pros and cons that are beyond the scope of this short blog. In our opinion, the likelihood of the Bill getting any attention in 2019 by the Democrats is slim given their expected legislative agenda and proposed oversight investigations on President Trump. For US citizens living abroad who are not compliant with their US tax affairs, we would strongly urge such people not to rest easy and assume that this proposed bill will provide them with an easy answer. Providing such people with false hope is disappointing.

Everyone here at Moodys Gartner Tax Law wishes you all the best in 2019.