



COMPLIANCE CHALLENGES FOR TAXPAYERS ABROAD

Taxpayers Abroad Continue to Be Underserved and Face Significant Challenges in Meeting Their U.S. Tax Obligations

WHY THIS IS A SERIOUS PROBLEM FOR TAXPAYERS

Taxpayers abroad face vast difficulties in complying with their U.S. tax obligations. Many find themselves trying to navigate a complex tax system they do not understand, and the IRS offers limited assistance and guidance. Taxpayers outside the United States face filing requirements not typically applicable to taxpayers living in the United States, with the added layer of complexity of applying the laws and treaties unique to the country in which they reside. Taxpayers lack accessible, real-time customer service assistance from the IRS, and help from private tax professionals, if available, is often expensive; both contribute to additional burden for these taxpayers. Taxpayers abroad may face severe penalties if they fail to file forms, some of which they may not even be aware.¹ The complexity of the tax code, the inability to easily comply, and the fear of severe penalties are so great that some taxpayers choose to relinquish their U.S. citizenship.²

EXPLANATION OF THE PROBLEM

International taxpayers face a complex tax code that, combined with the lack of IRS service and a comprehensive plan targeted at fixing these issues, results in frustration and non-compliance.

¹ See Most Serious Problem: *International: The IRS's Approach to International Information Return Penalties Is Draconian and Inefficient, supra*.

² Kate Dore, *The Top Reason Why Americans Abroad Want to Dump Their U.S. Citizenship*, CNBC, May 18, 2021, <https://www.cnbc.com/2021/05/18/the-top-reason-why-americans-abroad-want-to-dump-their-citizenship.html> (citing a 2021 study of over 3,100 U.S. citizens living overseas that found nearly one in four were considering giving up their citizenship and more than four in ten of those citing U.S. tax compliance as their reason). On October 2, 2023, the U.S. State Department published a Proposed Rule to reduce the current fee for processing requests for a Certificate of Loss of Nationality of the United States from \$2,350 to \$450, citing anecdotal evidence suggesting that "difficulties due at least in part to stricter financial reporting requirements imposed by the Foreign Account Tax Compliance Act (FATCA) ... may well be a factor" in the motivation for U.S. citizens to renounce their citizenship. See Schedule of Fees for Consular Services-Administrative Processing of Request for Certificate of Loss of Nationality (CLN) Fee, 88 Fed. Reg. 67687 (Oct. 2, 2023) (to be codified at 22 C.F.R. § 22.1). Public Comments to the Proposed Rule are also replete with recitations of compliance with U.S. tax laws as a reason for relinquishing U.S. citizenship.

The burden and expense of filing tax and international information returns (IIRs), especially when a large percentage of individuals do not owe tax,³ further the problem. The frustrations, time, expense, and complexity domestic taxpayers face are magnified for taxpayers abroad and exacerbated by the added layer of another country's tax laws and the potential for severe penalties for mistakes and omissions.

Challenges and issues that taxpayers abroad continue to face in meeting their U.S. federal tax obligations include:

- Significant difficulties complying with complex tax laws and filing requirements, finding affordable and competent help, and accessing declining IRS customer service options;
- Difficulty obtaining an Individual Taxpayer Identification Number (ITIN) and no ability to efficiently check the status of their application; and
- Timeframes for taxpayers abroad to respond to key IRS notices are insufficient, and in the case of certifications for passport revocations, non-existent.

ANALYSIS

U.S. taxation of individual taxpayers abroad is extremely complex. The United States, unlike almost every other country, taxes its citizens and residents on worldwide income, regardless of the taxpayer's residency ("citizen-based taxation"). This means the U.S. tax code requires a U.S. citizen or a resident alien⁴ to file a U.S. income tax return reporting all worldwide income, regardless of where the individual lives. Additionally, the U.S. tax regime applies to nonresident aliens⁵ and foreign businesses with U.S.-source income and operations. Foreign persons are generally subject to "net-basis" U.S. tax on income that is effectively connected with a U.S. trade or business.⁶ Foreign persons are also subject to a "gross-basis" U.S. tax at a 30 percent rate on certain other categories of U.S.-source income (*e.g.*, interest, dividends, rents, royalties) subject to exceptions and limitations.⁷

Because the U.S. tax code's application is so broad, it captures many types of taxpayers. For example, U.S. citizens who move overseas and do not relinquish their U.S. citizenship remain subject to U.S. tax law. Also "accidental Americans"⁸ have U.S. tax obligations even though they often do not realize it and may not even be aware they are U.S. citizens. Citizens of other countries who come to the United States temporarily can be subject to U.S. taxation, such as foreign students who may have a U.S. filing obligation.⁹ In some cases, individuals who have never been in the country are subject to U.S. taxation; for example, the United States may tax a foreign person who receives dividends from a U.S. corporation on the dividends. In addition to intricate statutory rules for the taxation of foreign income of U.S. persons and U.S. income of foreign persons, the United States has bilateral income tax treaties with 66 countries.¹⁰

3 Approximately 62 percent of individual international taxpayers reported zero tax liability between 2016 and 2021. IRS, Compliance Data Warehouse (CDW), Individual Returns Transaction File (IRTF) Tax Years (TYs) 2016-2021 (through Sept. 28, 2023).

4 A resident alien is defined as an individual who is not a U.S. citizen and: (1) is a lawful permanent resident of the U.S. (*i.e.*, a green card holder); (2) meets the substantial presence test under IRC § 7701(b)(3) and Treas. Reg. § 301.7701(b)-1(c); or (3) makes an election under IRC § 7701(b)(4) to be treated as a resident alien. IRC § 7701(b); Treas. Reg. § 301.7701(b)-1.

5 Nonresident aliens are individuals who are not U.S. citizens or resident aliens. See IRC § 7701(b)(1)(B).

6 See generally IRC §§ 871, 872, 881, 882. A U.S. person is any citizen or resident of the United States, a domestic partnership or corporation, or any estate or trust that is not considered foreign. Any person who does not fit the definition of a U.S. person is considered a foreign person. See generally IRC § 7701.

7 See generally IRC §§ 871 and 881.

8 "Accidental Americans" are citizens of a foreign country who were born in the United States and only lived there for a brief time or were born outside the United States to a parent with U.S. citizenship.

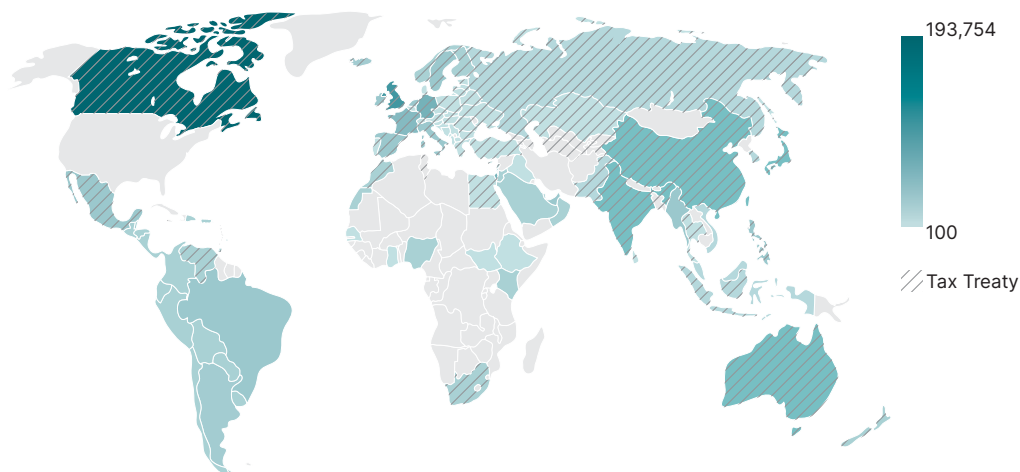
9 IRS, Foreign Students, Scholars, Teachers, Researchers and Exchange Visitors (Nov. 8, 2023), <https://www.irs.gov/individuals/international-taxpayers/foreign-students-scholars-teachers-researchers-and-exchange-visitors>.

10 IRS, United States Income Tax Treaties – A to Z (Oct. 27, 2023), <https://www.irs.gov/businesses/international-businesses/united-states-income-tax-treaties-a-to-z>. See also IRS, Tax Treaty Tables (May 22, 2023), <https://www.irs.gov/individuals/international-taxpayers/tax-treaty-tables>. For a recent case illustrating the complexity of applying statutory requirements and treaty provisions, see *Aroeste v. United States*, No. 3:22-cv-00682, 2023 WL 8103149 (S.D. Cal. Nov. 20, 2023) (holding that a Mexican citizen with U.S. lawful permanent residency status was not a "U.S. person" required to file a Report of Foreign Bank and Financial Accounts).

Because of the broad and complicated nature of the U.S. tax system, it is difficult to quantify the number of taxpayers impacted. According to the U.S. Department of State, roughly nine million U.S. citizens reside abroad as of 2020, including military personnel, students studying abroad, and State Department employees.¹¹ Other estimates and methodologies vary, ranging from 3.9 to 4.8 million (not including military).¹² Estimates may not include “accidental Americans”¹³ and do not include non-resident individuals and foreign businesses with U.S. tax obligations. While the exact numbers are unclear, the number of taxpayers abroad with U.S. tax obligations is significant.

FIGURE 2.9.1¹⁴

U.S. International Individual Tax Filers by Country, TY 2021



The IRS acknowledged in the Taxpayer First Act Report to Congress that international taxpayers have less access to IRS services and much lower e-filing rates.¹⁵ In her 2022 Annual Report to Congress, the National Taxpayer Advocate recommended that the IRS develop a comprehensive customer service strategy for U.S. citizens and resident aliens abroad and foreign individuals with U.S. tax obligations, and the IRS agreed.¹⁶ However, the IRS has not conducted any studies to assess the population’s needs.¹⁷ Because of the complexity of the tax laws and lack of IRS service and assistance, the number of taxpayers abroad who may not comply, either inadvertently or intentionally, is unknown but potentially sizeable. Until the IRS assesses the international population and makes a concerted effort to educate and assist this population in meeting its U.S. tax obligations, noncompliance will continue.

11 See U.S. Dep’t. of State, Bureau of Consular Affs., Consular Affairs by the Numbers (2020), <https://travel.state.gov/content/dam/travel/CA-By-the-Number-2020.pdf>. TAS is not aware of a more recent government study.
 12 ACA/DEG Analysis of Revenue Effects of Residence-Based Taxation, AM. CITIZENS ABROAD (Apr. 28, 2022), <https://www.americansabroad.org/articles/aca-deg-analysis-of-revenue-effects-of-residence-based-taxation/>; State of the Overseas Voter, Fed. Voting Assistance Program, <https://www.fvap.gov/info/reports-surveys/overseas-citizen-population-analysis> (last visited Dec. 7, 2023).
 13 Banking organizations estimated that in Europe in 2016 there were more than 110,000. See Vivienne Walt, *Why ‘Accidental Americans’ Are Desperate to Give Up Their U.S. Citizenship*, TIME, Dec. 23, 2020, <https://time.com/5922972/accidental-americans-fatca/>.
 14 IRS, CDW, IRTF TY 2021 (through Sept. 28, 2023).
 15 IRS, Pub. 5426, Taxpayer First Act Report to Congress (Jan. 2021), <https://www.irs.gov/pub/irs-pdf/p5426.pdf>.
 16 TAS Recommendations and IRS Responses, TAS Recommendation 10-1 (2022), <https://www.taxpayeradvocate.irs.gov/news/directory-entry/2022-msp-10-overseas-taxpayers/> (last visited Dec. 7, 2023).
 17 IRS response to TAS information request (Oct. 4, 2023).

Taxpayers Abroad Experience Significant Difficulties Complying With Complex Tax Laws, Finding Help to Ensure Compliance, and Accessing Declining IRS Customer Service Options

The Complexity of the Code Adds to the Filing Challenges Taxpayers Abroad Face

The complexity of the U.S. tax code is a barrier to return filing. The average American taxpayer finds the tax code extremely difficult to understand; this is equally true for taxpayers abroad.¹⁸ There are numerous complex and confusing areas that leave taxpayers abroad perplexed and searching for help, including determining resident status, eligibility for credits, and business and retirement issues.

Taxpayers who are not U.S. citizens must determine their resident status, which can be difficult. They must figure out whether they are resident aliens by meeting either the green card test or the substantial presence test.¹⁹ Because the code taxes resident and nonresident aliens differently, this determination is crucial, and an incorrect determination can cost taxpayers money. Similarly, while taxpayers abroad may claim certain benefits like the foreign earned income exclusion, foreign housing allowance, and the foreign tax credit,²⁰ the rules for determining eligibility for these benefits are complicated by any standard.²¹ Taxpayers residing abroad must navigate complicated tax laws if they own businesses. Many provisions are relatively new,²² and the application of the tax on global intangible low-taxed income (GILTI) to small businesses operating overseas has been particularly challenging.²³ Retirement plans present another area of complexity. U.S. taxpayers who participate in foreign workplace retirement plans need to determine whether the code taxes them on the contributions, earnings, and transfers of assets between plans,²⁴ which requires the taxpayers to figure out the laws of the United States and the country they reside in as well as any relevant tax treaties.²⁵

The requirements to file numerous IIRs are one area of significant complexity.²⁶ The tax code may significantly penalize taxpayers for failing to comply with the requirements or incorrectly completing the forms.²⁷ These IIRs are convoluted, and the instructions are not intuitive, *e.g.*, Forms 3520, Annual Return to Report Transactions With Foreign Trusts and Receipt of Certain Foreign Gifts, and 3520-A, Annual Information Return of Foreign Trust With a U.S. Owner. The forms' instructions are often inconsistent and confusing regarding due dates. Taxpayers must file the forms on paper,²⁸ and the compliance burden

18 National Taxpayer Advocate 2022 Annual Report to Congress 45, 48 (Most Serious Problem: *Complexity of the Tax Code: The Complexity of the Tax Code Burdens Taxpayers and the IRS Alike*), <https://www.taxpayeradvocate.irs.gov/reports/2022-annual-report-to-congress/most-serious-problems>.

19 IRC § 7701(b)(1)(A)(i), (ii). The substantial presence test requires an exhaustive and confusing computation of the number of days they were physically present in the United States during the current year and the preceding two years. IRC § 7701(b)(1)(A)(ii). See also IRS Topic No. 851, Resident and Nonresident Aliens (June 15, 2023), <https://www.irs.gov/taxtopics/tc851>. Even if a taxpayer doesn't qualify, they can still choose to be treated as a U.S. resident for part of the year under the first year election. See IRC § 7701(b)(1)(A)(iii).

20 See generally IRC §§ 901, 903, 904, 911, 912. For instance, U.S. taxpayers abroad may be entitled to claim the foreign tax credit if they paid foreign taxes on income that is also subject to U.S. tax. IRC § 901. In TY 2021, approximately 271,000 taxpayers filed Form 1116, Foreign Tax Credit (Individual, Estate, or Trust). IRS CDW, IRTF TY 2021 (through Sept. 28, 2023).

21 Publication 514, a 49-page document, suggests that taxpayers may also need to see other publications and forms. IRS, Pub. 514, Foreign Tax Credits for Individuals (Jan. 31, 2023).

22 See Tax Cuts and Jobs Act, Pub. L. No. 115-97, 131 Stat. 2054 (2017).

23 IRC § 951A; Ines Zemelman, EA, *Global Intangible Low-Taxed Income (GILTI): What It Is, How It Works & Examples*, TAXES FOR EXPATS (Aug. 21, 2023), <https://www.taxesforexpats.com/articles/foreign-business/global-intangible-low-taxed-income-gilti.html>.

24 See Christopher R. Callahan, U.S. Tax Laws Governing Foreign Pensions, TAX NOTES, Dec. 6, 2022; *Debunked: Three Myths About International Retirement Plans*, H&R BLOCK (Dec. 1, 2022), <https://www.hrblock.com/expat-tax-preparation/resource-center/income/retirement/international-retirement-plan-myths/>.

25 See, *e.g.*, IRS, The Taxation of Foreign Pension and Annuity Distributions (Mar. 9, 2023), <https://www.irs.gov/businesses/the-taxation-of-foreign-pension-and-annuity-distributions>.

26 Some of these include IRS Forms 3520, 3520-A, 5471, 5472, 8858, 8865, 8854, 8833, and 1120-FSC; for residents of U.S. territories, these include Forms 4563, 5074, 8689, and 8898.

27 For a detailed discussion on the penalties associated with IIRs, see Most Serious Problem: *International: The IRS's Approach to International Information Return Penalties Is Draconian and Inefficient*, *supra*.

28 See Letter from the American Institute of Certified Public Accountants (AICPA) Tax Executive Committee to Ryan K. Bessey, Senior Program Analyst, IRS Office of Servicewide Penalties (Aug. 14, 2023), <https://us.aicpa.org/content/dam/aicpa/advocacy/tax/downloadabledocuments/2023/aicpa-comments-on-suggestions-for-changes-to-form-3520-and-instructions-submit.pdf>.

is substantial, with the IRS estimating it takes on average 54 hours to prepare and file Form 3520 and 43 hours for Form 3520-A.²⁹ The IRS took a much-needed step to clarify these forms' applicability to foreign retirement plans when it issued Rev. Proc. 2020-17 to exempt certain plans from reporting under IRC § 6048.³⁰ Nonetheless, burdens still exist,³¹ and the IRS should consider providing additional clarification, including whether the IRS will provide reporting relief to foreign pensions where deferral of tax on earnings is available under a tax treaty.

One reason for the complexity with IIRs is the overlapping statutory reporting requirements under the Foreign Account Tax Compliance Act (FATCA) and Bank Secrecy Act.³² FATCA requires U.S. citizens, residents, and certain nonresidents to report information on foreign financial assets to the IRS when the assets' value exceeds certain thresholds.³³ The Bank Secrecy Act requires U.S. citizens and residents to report foreign accounts to the Financial Crimes Enforcement Network (FinCEN) when their combined value exceeds \$10,000 at any time during the year.³⁴ Individuals must complete separate forms for each law: they file Form 8938, Statement of Specified Foreign Financial Assets, with their annual income tax return to comply with FATCA and FinCEN Form 114, Report of Foreign Bank and Financial Accounts (FBAR), to comply with the Bank Secrecy Act.³⁵ Individuals are subject to significant penalties for failure to report assets on one or both forms, even when they owe little or no tax.³⁶ The filing burden is disproportionately greater to international taxpayers, as they must file Form 8938 at considerably higher rates than domestic individuals, as Figure 2.9.2 shows.

29 IRS, 2022 Instructions for Form 3520, at 13 (Dec. 2023), <https://www.irs.gov/pub/irs-pdf/i3520.pdf>; IRS, 2022 Instructions for Form 3520-A, at 7 (Dec. 2023), <https://www.irs.gov/pub/irs-pdf/i3520a.pdf>.

30 Rev. Proc. 2020-17, 2020-12 I.R.B. 539, <https://www.irs.gov/pub/irs-drop/rp-20-17.pdf>.

31 See, e.g., Letter from AICPA Tax Executive Committee to Ryan K. Bessey, Senior Program Analyst, IRS Office of Servicewide Penalties (Aug. 14, 2023), <https://us.aicpa.org/content/dam/aicpa/advocacy/tax/downloadabledocuments/2023/aicpa-comments-on-suggestions-for-changes-to-form-3520-and-instructions-submit.pdf> (suggesting an exception for certain pension plans); *Foreign Trust Transaction Reporting Must Be Improved, Firm Says*, TAX NOTES, Feb. 9, 2023 (private law firm provides suggested improvements to Forms 3520 and 3520-A, including increasing the reporting thresholds); Roy A. Berg & Marsha-Laine Dungog, *U.S. Income Tax Treatment of Australian Superannuation Funds*, TAX NOTES, Oct. 10, 2016 (suggesting that Australian superannuation arrangements be exempted from reporting).

32 Additionally, the National Taxpayer Advocate encourages Congress and the IRS to take legislative and regulatory action to reduce the duplicative burdens. See National Taxpayer Advocate 2024 Purple Book, *Compilation of Legislative Recommendations to Strengthen Taxpayer Rights and Improve Tax Administration (Eliminate Duplicative Reporting Requirements Imposed by the Bank Secrecy Act and the Foreign Account Tax Compliance Act)*.

33 Pub. L. No. 111-147, Title V, Subtitle A, § 511, 124 Stat. 71, 109-10 (2010) (codified at IRC § 6038D).

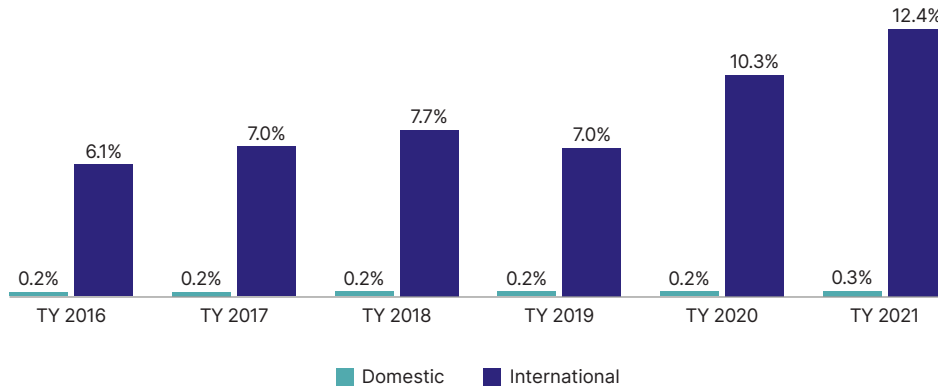
34 31 U.S.C. § 5314; 31 C.F.R. § 1010.306(c).

35 The authority to enforce the FBAR reporting requirements has been redelegated from FinCEN to the Commissioner of Internal Revenue by means of a Memorandum of Agreement between FinCEN and IRS. See 31 C.F.R. § 1010.810(g).

36 For example, in the context of FATCA, civil penalties begin at \$10,000 for taxpayers who fail to file a complete Form 8938 plus an additional penalty of up to \$50,000. IRC § 6038D(d). Non-willful violations of FBAR reporting requirements are subject to penalties of up to \$10,000 (adjusted annually for inflation). 31 U.S.C. § 5321(a)(5)(B)(i); 31 C.F.R. § 1010.821. Willful violations of FBAR reporting requirements are subject to penalties of up to the greater of 50 percent of the account balance or \$100,000 (adjusted for inflation), 31 U.S.C. § 5321(a)(5)(C), (D)(ii).

FIGURE 2.9.2³⁷

Domestic and International Taxpayers Filing Form 8938, TYs 2016-2021



Adding to the burden on international taxpayers, the IRS offers the vast majority of tax forms and instructions in English only. The main publication for international taxpayers is Publication 54, Tax Guide for U.S. Citizens and Resident Aliens Abroad, a 35-page publication that includes information on filing requirements, withholding and self-employment tax, key exclusions and deductions, and tax treaties, among other things. However, the IRS publishes it in English only;³⁸ the IRS should provide Publication 54 in other languages so that non-English speaking taxpayers can understand and comply with their U.S. tax obligations.

Taxpayers Abroad Lack Affordable, Qualified Tax Return Preparers and Free IRS Return Preparation Assistance

Due to the complexity of the tax code, individual taxpayers abroad often resort to using paid preparers to help them meet their tax filing obligations, as Figure 2.9.3 shows.

FIGURE 2.9.3, Individual Returns Filed Using a Paid Return Preparer by Type of Taxpayer, Tax Years (TYs) 2018-2021³⁹

Tax Year	International Taxpayers Using a Paid Return Preparer	Domestic Taxpayers Using a Paid Return Preparer
2018	62%	54%
2019	49%	49%
2020	61%	53%
2021	64%	53%

37 IRS, CDW, IRTF, Modernized Tax Return Data Base, Business Returns Transaction File, TYs 2016-2021 (through Sept. 28, 2023).

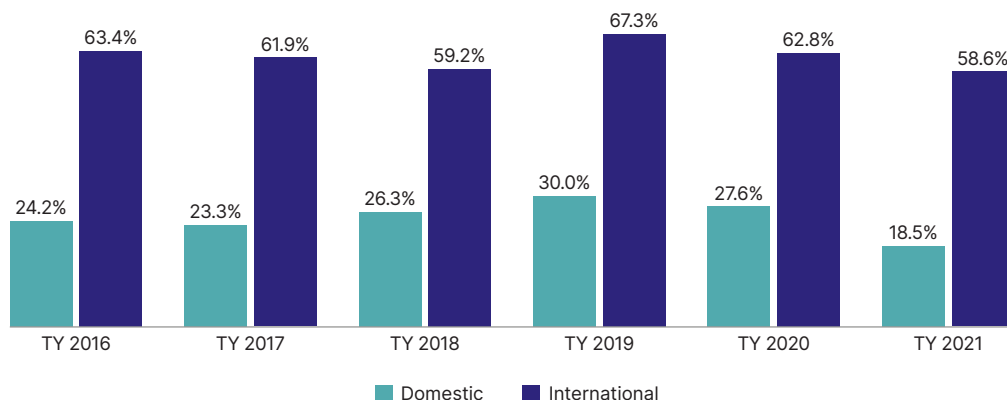
38 IRS, Forms and Publications Index Search, <https://www.irs.gov/forms-pubs-all-search> (last visited Nov. 28, 2023). In contrast, Publication 519, U.S. Tax Guide For Aliens, is available in several languages. IRS, About Publication 519, U.S. Tax Guide for Aliens (Aug. 3, 2023), <https://www.irs.gov/forms-pubs/about-publication-519>.

39 IRS, CDW, IRTF TYs 2018-2022 (through Sept. 28, 2023). Thus, with the exception of TY 2019 (when pandemic-related stimulus from the Coronavirus Aid, Relief, and Economic Security Act encouraged filing or use of the Non-Filer portal), individuals residing abroad had their tax return prepared by paid preparers at a higher rate than those in the United States.

However, there is a lack of return preparers abroad with sufficient knowledge and expertise to prepare U.S. tax returns, and those available may charge exorbitant fees.⁴⁰ The IRS Directory of Federal Tax Return Preparers With Credentials and Select Qualifications reflects the shortage of qualified professionals for some countries.⁴¹ The absence of qualified preparers arguably contributes to non-compliance, as taxpayers may not file if they don't understand the law and cannot find a reasonably priced, qualified, and competent professional to prepare their returns. Further, the majority of the individual taxpayers abroad who filed Forms 1040 and 1040NR in TYs 2016 through 2021 reported no tax liability.⁴² The disparity in the numbers of international taxpayers who reported no tax liability compared to domestic taxpayers who reported no tax liability is significant, as shown in Figure 2.9.4. However, the cost of filing the return is much higher for international taxpayers, which adds to their burden and especially affects lower-income taxpayers.⁴³ Outside stakeholders report that the burden and high cost of filing a return, especially when there is no tax liability, can lead taxpayers abroad to question the need to file a return or to justify not filing at all.⁴⁴ In fiscal year (FY) 2021, 56 percent of individual international filers reported adjusted gross income (AGI) of less than \$25,000, 68 percent less than \$50,000, and 76 percent less than \$75,000. Only less than five percent had AGI greater than \$400,000.⁴⁵

FIGURE 2.9.4⁴⁶

Individual Domestic vs. International Taxpayers Who Filed a Return Reporting No Tax Liability



40 One stakeholder relayed that an individual had to pay an entire month's salary to have her return prepared. Discussions with outside stakeholders (Aug. 2023). See also National Taxpayer Advocate 2022 Annual Report to Congress 171 n. 45 (Most Serious Problem: Overseas Taxpayers: Taxpayers Outside of the United States Face Significant Barriers to Meeting Their U.S. Tax Obligations), https://www.taxpayeradvocate.irs.gov/wp-content/uploads/2023/01/ARC22_MSP_10_Overseas.pdf (noting that American Citizens Abroad estimated that return preparation fees for individual U.S. returns for U.S. citizens abroad are generally between \$2,000 and \$3,000, while the National Society of Accountants estimated that average fees for a Form 1040 prepared in the United States in 2021 was \$220 or \$323, depending on whether the return included itemized deductions).

41 For example, Thailand, a country from which 7,409 individual income tax returns were filed in TY 2021, lists only five preparers, all but one in Bangkok. Mexico, a country from which 10,929 individual income tax returns were filed in TY 2021, lists only 23 preparers. See IRS, Directory of Federal Tax Return Preparers with Credentials and Select Qualifications, <https://irs.treasury.gov/rpo/rpo.jsf> (last visited Dec. 18, 2023); IRS, CDW, IRTF, TYs 2016-2022 (through Sept. 28, 2023).

42 IRS, CDW, IRTF, TYs 2016-2021 (through Sept. 28, 2023).

43 See note 40, *supra*.

44 Discussions with outside stakeholders (Aug. 2023).

45 IRS, CDW, IRTF TY 2021 (through Sept. 28, 2023).

46 No tax liability is defined as having a "Total Tax" of \$0 before payments and refundable credits. IRS, CDW, IRTF TYs 2016-2021 (through Sept. 28, 2023).

Taxpayers abroad also have almost no ability to access free IRS return preparation assistance. The IRS manages free tax return preparation services for qualifying taxpayers through its Volunteer Income Tax Assistance (VITA) and Tax Counseling for the Elderly (TCE) programs.⁴⁷ The IRS conducted virtual VITA training at 22 military bases in Europe and Asia in 2022 and established regular VITA sites in Germany, Japan, Korea, Kosovo, the Netherlands, and the United Kingdom.⁴⁸ While TAS welcomes this development, these sites are on military bases and are not accessible to many taxpayers abroad, who need real-time assistance and services. In the absence of in-person services, the IRS should provide taxpayers abroad free assistance through virtual IRS-sponsored VITA or TCE appointments.

The IRS Has No In-Person Assistance Options Outside of the United States and Puerto Rico, a Problem That Has Persisted for Many Years

The lack of affordable and knowledgeable return preparers or free return preparation services abroad leaves taxpayers on their own to figure out how to comply with the complex rules they encounter when filing their tax returns. This would reasonably drive many of these taxpayers to seek assistance from the IRS, but IRS customer service options are limited. Taxpayers abroad continue to face serious customer service and support deficiencies, with one of the prime deficiencies being no access to in-person assistance. At one time, the IRS had 15 foreign attaché posts that allowed taxpayers abroad free and convenient access to in-person IRS assistance.⁴⁹ Citing decreased appropriations, the IRS closed its last four tax attaché offices in Beijing, Frankfurt, London, and Paris in 2014 and 2015. With these closures, the IRS completely erased its international footprint for in-person customer service.

Domestically, the IRS is ramping up its in-person customer service, but nothing similar is happening abroad. In November 2022, the IRS announced plans to hire over 700 employees to staff more than 270 Taxpayer Assistance Centers (TACs) in the United States.⁵⁰ However, aside from the U.S. territory of Puerto Rico, the IRS has no TACs abroad, as shown in Figure 2.9.5.

47 See IRS, Free Tax Return Preparation for Qualifying Taxpayers (Nov. 16, 2023), <https://www.irs.gov/individuals/free-tax-return-preparation-for-qualifying-taxpayers>. The IRS manages the VITA and TCE programs, but IRS partners operate and volunteers who have passed tax law training that meets IRS standards staff them.

48 See National Taxpayer Advocate 2022 Annual Report to Congress 168 (Most Serious Problem: *Overseas Taxpayers: Taxpayers Outside of the United States Face Significant Barriers to Meeting Their U.S. Tax Obligations*) (IRS comments to report), https://www.taxpayeradvocate.irs.gov/wp-content/uploads/2023/01/ARC22_MSP_10_Overseas.pdf.

49 See National Taxpayer Advocate 2015 Annual Report to Congress 72, n.4 (Most Serious Problem: *International Taxpayer Service: The IRS's Strategy for Service on Demand Fails to Compensate for the Closure of International Tax Attaché Offices and Does Not Sufficiently Address the Unique Needs of International Taxpayers*), https://www.taxpayeradvocate.irs.gov/wp-content/uploads/2020/08/ARC15_Volume1_MSP_07_International-TP-Service.pdf.

50 IRS News Release, IR-2022-197, IRS Announces Job Openings to Hire Over 700 New Employees Across the Country to Help Taxpayers in Person (Nov. 9, 2022), <https://www.irs.gov/newsroom/irs-announces-job-openings-to-hire-over-700-new-employees-across-the-country-to-help-taxpayers-in-person>.

FIGURE 2.9.5

International Taxpayer Assistance Center Locations



On October 20, 2023, the IRS announced that it had reopened 50 TACs with Inflation Reduction Act (IRA)⁵¹ funding and had also started a special series of events called Community Assistance Visits (CAVs).⁵² CAVs are temporary TACs designed to provide taxpayers in underserved areas a chance to meet face-to-face with the IRS.⁵³ However, there are no international CAVs.⁵⁴ Due to the temporary nature of CAVs, offering this service internationally would be a way for the IRS to provide much-needed customer service while still assessing long-term solutions. IRS Commissioner Danny Werfel has noted that as far as getting taxpayers the help they need, “in-person assistance is a vital piece that the IRS cannot overlook.”⁵⁵ Unfortunately, the IRS continues to neglect this vital service for international taxpayers. The IRS needs to provide in-person service abroad, including reopening foreign tax attachés and/or establishing international TACs. Until the IRS rectifies this problem, it should provide virtual TAC appointments for taxpayers abroad.⁵⁶

51 An Act to Provide for Reconciliation Pursuant to Title II of S. Con. Res. 14, Pub. L. No. 117-169, 136 Stat. 1818, 1831-33 (2022) [hereinafter referred to as the “Inflation Reduction Act”]; see also Fiscal Responsibility Act of 2023, Pub. L. No. 118-5, § 251, 137 Stat. 10, 30-31 (rescinding some of the funding).

52 IRS News Release, IR-2023-194, IRS Launches New Initiatives Using Inflation Reduction Act Funding to Ensure Large Corporations Pay Taxes Owed; Continues to Improve Service and Modernize Technology with Launch of Business Tax Account (Oct. 20, 2023), <https://www.irs.gov/newsroom/irs-launches-new-initiatives-using-inflation-reduction-act-funding-to-ensure-large-corporations-pay-taxes-owed-continues-to-improve-service-and-modernize-technology-with-launch-of-business-tax-account>.

53 IRS News Release, IR-2023-127, IRS Continues Reopening Closed Taxpayer Assistance Centers; Begins Special Series of Community Assistance Visits to Help Taxpayers in 8 States to Expand Service for People Who Aren’t Near Agency Offices (July 14, 2023), <https://www.irs.gov/newsroom/irs-continues-reopening-closed-taxpayer-assistance-centers-begins-special-series-of-community-assistance-visits-to-help-taxpayers-in-8-states-to-expand-service-for-people-who-arent-near-agency-offices>.

54 The IRS identified Ciales, Puerto Rico, as an additional location to host a CAV. IRS News Release, IR-2023-194, IRS Launches New Initiatives Using Inflation Reduction Act Funding to Ensure Large Corporations Pay Taxes Owed; Continues to Improve Service and Modernize Technology with Launch of Business Tax Account (Oct. 20, 2023), <https://www.irs.gov/newsroom/irs-launches-new-initiatives-using-inflation-reduction-act-funding-to-ensure-large-corporations-pay-taxes-owed-continues-to-improve-service-and-modernize-technology-with-launch-of-business-tax-account>.

55 IRS News Release, IR-2023-127, IRS Continues Reopening Closed Taxpayer Assistance Centers; Begins Special Series of Community Assistance Visits to Help Taxpayers in 8 States to Expand Service for People Who Aren’t Near Agency Offices (July 14, 2023), <https://www.irs.gov/newsroom/irs-continues-reopening-closed-taxpayer-assistance-centers-begins-special-series-of-community-assistance-visits-to-help-taxpayers-in-8-states-to-expand-service-for-people-who-arent-near-agency-offices>.

56 The IRS did not conduct face-to-face (i.e., in-person) assistance, outreach, or education outside of the United States and Puerto Rico in 2023. IRS response to TAS information request (Sept. 22, 2023).

In the absence of in-person service, the IRS needs to provide alternative support. Yet, other IRS services are lacking, and it has cut programs that were available to taxpayers abroad without replacing them.⁵⁷ A program specifically geared toward international taxpayers was the International Individual Taxpayer Assistance (IITA) team, which the IRS created in 2012 and included representatives from IRS Business Operating Divisions and TAS. The IITA team did useful work, including producing videos aimed to assist individual taxpayers abroad. Recognizing the importance of support to the international community, the National Taxpayer Advocate recommended the IRS make the team permanent, but the IRS did not agree.⁵⁸ Taxpayers abroad desperately need an IRS team devoted to assist them with their unique and complex needs.

The IRS also needs to improve other methods of communications and assistance. It provides only one dedicated telephone line for international taxpayers (the International Taxpayer Service Call Center).⁵⁹ This is not a toll-free line, and the IRS does not offer customer callback as an option.⁶⁰ Therefore, the taxpayer must wait on the line until an IRS representative gets to the call. While the IRS does offer extended hours of operation for this line,⁶¹ it is not convenient for all taxpayers considering the differences in global time zones. Taxpayers have cited chronic problems with dropped calls and inability to reconnect to the original agent, resulting in inefficient service and duplicative calls and explanations by taxpayers.⁶² Further, the IRS limits this line to questions regarding tax accounts, such as overpayment status, balances owed, and correspondence; it refers taxpayers to a website that provides resources on more complex tax topics.⁶³ This is frustrating, time-consuming, and expensive for taxpayers who waited on hold for a representative only to find out their questions are ones that the representative cannot answer. The IRS should establish a toll-free number or other workable free alternative dedicated to international taxpayers, devise a way to connect taxpayers with more complex questions to an IRS employee with specialized knowledge, and provide a customer callback option.⁶⁴

Problems Accessing Online Resources and Limited Payment and Refund Options Persist

Many IRS systems still are not compatible with the needs of taxpayers abroad. While the IRS has made technological strides in accessibility, many are inapplicable to these taxpayers because of IRS limitations. For example, the IRS offers an online account application that allows individual taxpayers to access tax records, make and view payments, view their accounts and balances, create and view payment plans, obtain transcripts, and more.⁶⁵ To access an online account, taxpayers must first create an account through a credential service provider (CSP).⁶⁶ Taxpayers living outside of the United States who have a government-issued credential and a Social Security number may verify their identity through the CSP self-service option. However, taxpayers living outside of the United States who don't have a U.S. phone number, mailing address, or Social Security

57 See National Taxpayer Advocate 2015 Annual Report to Congress 72 (Most Serious Problem: *International Taxpayer Service: The IRS's Strategy for Service on Demand Fails to Compensate for the Closure of International Tax Attaché Offices and Does Not Sufficiently Address the Unique Needs of International Taxpayers*), https://www.taxpayeradvocate.irs.gov/wp-content/uploads/2020/08/ARC15_Volume1_MSP_07_International-TP-Service.pdf.

58 See National Taxpayer Advocate 2012 Annual Report to Congress 262, 265-67, 273 (Most Serious Problem: *Challenges Persist for International Taxpayers as the IRS Moves Slowly to Address Their Needs*), <https://www.taxpayeradvocate.irs.gov/wp-content/uploads/2020/08/Most-Serious-Problems-International-Taxpayer-Issues.pdf>.

59 IRS, Contact My Local Office Internationally (July 24, 2023), <https://www.irs.gov/help/contact-my-local-office-internationally>.

60 Last year, the National Taxpayer Advocate recommended that the IRS offer customer callback on the international telephone line. The IRS agreed to explore the possibility, noting it would need to evaluate the feasibility within the IRS call center infrastructure. See TAS Recommendations and IRS Responses, TAS Recommendation 10-5 (2022), <https://www.taxpayeradvocate.irs.gov/news/directory-entry/2022-msp-10-overseas-taxpayers/> (last visited Dec. 7, 2023).

61 The hours of operation are from 6 a.m. to 11 p.m. (Eastern Time, U.S. and Canada).

62 Systemic Advocacy Management System Issue 68439 (July 25, 2023).

63 See IRS, Find Information on Complex Tax Topics (June 13, 2023), <https://www.irs.gov/help/find-information-on-complex-tax-topics>.

64 TAS has a dedicated phone line for all incoming international calls. This line is programmed to automatically route calls from abroad to the appropriate TAS office depending on the country of origin and TAS business hours. While this line is not toll-free, it guarantees that the call is directed to the appropriate office, thus saving time and frustration. The IRS should provide a similar service that would help alleviate wait times. TAS, TAS Provides One-Stop Phone Service for Taxpayers Living Abroad (Apr. 18, 2023), <https://www.taxpayeradvocate.irs.gov/news/tas-provides-one-stop-phone-service-for-taxpayers-living-abroad>.

65 IRS, Your Online Account (Oct. 10, 2023), <https://www.irs.gov/payments/your-online-account>.

66 The IRS outsources identity proofing and credential management to a CSP, which is also responsible for assisting taxpayers who have difficulty completing the process.

number need to take additional steps to verify and complete the process through a video chat call and the submission of supplementary documents. If these taxpayers cannot verify their identities through the CSP, the IRS has no practical alternative method for them to establish their identities and gain access to these online systems.

Taxpayers abroad also face difficulties in making payments to and receiving payments from the IRS. The current IRS system cannot accept electronic payments from foreign bank accounts.⁶⁷ Therefore, foreign taxpayers can only make electronic payments through a U.S. financial institution or U.S. corresponding bank. Similarly, they can only make international wire transfers, which can be expensive, from a U.S. financial institution or corresponding bank or a bank that has a banking relationship with a U.S. bank, if the taxpayers have a bank account with the foreign bank.⁶⁸ Otherwise taxpayers have to either make a paper remittance or pay with a credit card. Fortunately, the IRS is in the planning stages of the Make Payments Easy Initiative, which will allow taxpayers abroad to make electronic payments to the IRS directly from their foreign bank accounts.⁶⁹

Direct deposit of refund options for foreign taxpayers are even more limited. The only current option for international direct deposit of refunds is a manual refund issued through the International Treasury Service (ITS), which is only available for refunds over \$1,000,000 or for TAS hardship situations.⁷⁰ Between November 2022 and July 2023, the IRS issued just 12 manual refunds through ITS to taxpayers in six countries.⁷¹ Thus, for all practical purposes, this option is unavailable to almost all international taxpayers.

The IRS's Strategic Operating Plan Fails to Specify How It Will Address Customer Service Gaps

While the IRS has received significant funding from the IRA,⁷² it is unclear how much it will devote to improving service deficiencies and reducing the burden on international taxpayers. The IRS's Strategic Operating Plan (SOP) lists its priorities for the funding.⁷³ Specific provisions relating to international taxpayers in the IRS SOP are almost non-existent,⁷⁴ and it is unclear the extent to which the general improvements in service and technological enhancements will apply to international taxpayers. With the IRA funding, the IRS can analyze the needs of international taxpayers and provide much-needed outreach, education, and customer service to assist them in understanding and complying with their tax obligations. Squandering this opportunity will only further perpetuate the difficulties taxpayers abroad experience.

Taxpayers Abroad Struggle to Obtain Individual Taxpayer Identification Numbers and Efficiently Check Their Application Status

Individuals who are not eligible for Social Security numbers must use an ITIN to file their tax returns.⁷⁵ The process for obtaining an ITIN burdens and confuses taxpayers. The IRS states that it takes up to 11 weeks for international taxpayers to receive an ITIN,⁷⁶ although processing times can fluctuate throughout the

67 IRS response to TAS information request (Sept. 13, 2023).

68 *Id.*

69 IRS response to TAS information request (Sept. 13, 2023).

70 *Id.*

71 *Id.*

72 Inflation Reduction Act, Pub. L. No. 117-169, 136 Stat. 1818, 1831-33 (2022); see also Fiscal Responsibility Act of 2023, Pub. L. No. 118-5, § 251, 137 Stat. 10, 30-31 (rescinding some of the funding).

73 IRS, Pub. 3744, IRS Inflation Reduction Act Strategic Operating Plan (Apr. 2023), <https://www.irs.gov/pub/irs-pdf/p3744.pdf>.

74 A search of the word "international" in the IRS SOP results in 12 hits with only four actually involving provisions relating to international taxpayers.

75 See IRC § 6109(d), (i); Treas. Reg. § 301.6109-1(d)(3)(ii). Individuals eligible for Social Security numbers are U.S. citizens, lawful permanent residents (green card holders), non-citizens who are authorized to work in the United States, and non-citizens who need a Social Security number to receive certain benefits and services. For more information on who qualifies for a Social Security number, see Abigail F. Kolker & William R. Morton, Cong. Rsch. Serv., R47483, *Noncitizen Eligibility for Employment Authorization and Work-Authorized Social Security Numbers (SSNs)* (Mar. 22, 2023), <https://crsreports.congress.gov/product/pdf/R/R47483>.

76 See IRS, Instructions for Form W-7, Application for IRS Individual Taxpayer Identification Number (Nov. 2023), <https://www.irs.gov/pub/irs-pdf/iw7.pdf>.

year,⁷⁷ and the IRS rejected approximately 26 percent of the applications processed in FY 2022.⁷⁸ Taxpayers may only apply for an ITIN when they need one to file a federal income tax return, unless a limited exception applies.⁷⁹ To apply, the individual must complete Form W-7, Application for IRS Individual Taxpayer Identification Number, and submit it with their income tax return (unless an exception applies) and identification documents (*e.g.*, a passport or birth certificate).⁸⁰ The documents must be the originals or copies certified by the issuing agency as exact copies.⁸¹

International taxpayers have two options to submit the application: (1) mail Form W-7 to the IRS and include the original documents or certified copies, thus risking the originals being lost or not timely returned by the IRS⁸² or (2) pay to use a Certifying Acceptance Agent (CAA) who reviews the documents and submits the application to the IRS with copies of the documents.⁸³ Taxpayers located in the United States also have the option to get help by making an appointment at a designated TAC, but there are no TACs outside the United States and Puerto Rico. Failure to provide requisite identity documents often results in rejection of the application. For applications the IRS processed in FY 2022, taxpayers had an almost 15 percent higher rate of success for receiving an ITIN when submitting via a CAA than individuals who submitted their applications directly (84.1 percent to 69.4 percent) and approximately half the rejection rate (15.9 percent to 30.5 percent).⁸⁴ As of February 2023, there are 410 Acceptance Agents⁸⁵ and CAAs in 43 foreign countries.⁸⁶ While it is actively conducting outreach to increase the number of domestic CAAs, the IRS should also focus on increasing the number of foreign CAAs.⁸⁷ It generally costs a taxpayer several hundred dollars to use a CAA, which is often too expensive for low-income individuals. While some VITA sites currently offer CAA services,⁸⁸ they may not use VITA grant funds for this purpose. The IRS should explore expanding the scope of its VITA program to allow grant funds to be used to provide certification services for taxpayers at VITA sites.

77 See, *e.g.*, IRS, IRS Operations: Status of Mission-Critical Functions, Requested an Individual Taxpayer Identification Number (ITIN) (Dec. 1, 2023), <https://www.irs.gov/newsroom/irs-operations-status-of-mission-critical-functions>.

78 IRS, CDW, Entry Application Programs (EAP) FY 2022 (through Sept. 28, 2023).

79 See Internal Revenue Manual (IRM) 3.21.263.5.2, Filing Tax Return versus Exception Criteria (Jan. 1, 2023), https://www.irs.gov/irm/part3/irm_03-021-263r. ITINs expire if not used on a tax return at least once every three years, and all ITINs issued prior to 2013 have expired. IRC § 6109(i)(3).

80 IRC § 6109(i)(2). The IRS accepts 13 types of identification documents. See IRM 3.21.263.5.6(4), ITIN Documentation Requirements (Nov. 12, 2021), https://www.irs.gov/irm/part3/irm_03-021-263r.

81 IRC § 6109(i)(2); IRM 3.21.263.6.3.4.2.1(4), Supporting Identification Document Certification Requirements (Mar. 16, 2023), https://www.irs.gov/irm/part3/irm_03-021-263r. Employees of U.S. consulates and embassies may be able to certify foreign documents.

82 See, *e.g.*, TAS, TAS Helps Locate Missing Passports Filed With Individual Taxpayer Identification Number (ITIN) Request (Sept. 23, 2020), <https://www.taxpayeradvocate.irs.gov/news/successstories-tas-helps-locate-missing-passports-filed-with-individual-taxpayer-identification-number-itin-request/>.

83 IRC § 6109(i)(1); Treas. Reg. § 301.6109-1(d)(3)(ii), (iv); IRM 3.21.263.4.2, Acceptance Agents Form W-7 Documentation Requirements (Jan. 1, 2022), https://www.irs.gov/irm/part3/irm_03-021-263r.

84 IRS, CDW, EAP, FY 2022 (through Sept. 28, 2023).

85 Acceptance Agents are agents who are authorized by the IRS to assist individuals obtain ITINs. They review necessary documents and forward completed Forms W-7 to the IRS. However, they cannot certify original documents. IRS, How to Become an Acceptance Agent for IRS ITIN Numbers (Aug. 22, 2023), <https://www.irs.gov/individuals/international-taxpayers/how-to-become-an-acceptance-agent-for-irs-itin-numbers>.

86 IRS response to TAS information request (Sept. 13, 2023).

87 Relatedly, the IRS needs to ensure an end to the moratorium on accepting CAA applications that has been in place since August 2022 and is currently expected to last until the end of 2023. See IRS, New ITIN Acceptance Agent Program Changes (Nov. 20, 2023), <https://www.irs.gov/individuals/new-itin-acceptance-agent-program-changes>. While the purpose of the moratorium is laudable – modernizing the application process to include electronic filing – it is concerning that it has lasted as long as it has.

88 IRS, VITA Sites that Offer CAA Services, <https://www.irs.gov/individuals/vita-sites-that-offer-cao-services> (last visited Dec. 15, 2023).

ITINs are critical for taxpayers to be able to comply with their U.S. tax obligations, but delays receiving them occur because the application and tax return are submitted and processed on paper, not electronically.⁸⁹ If a taxpayer abroad wants to know the status of an application or is struggling with the documentation rules, it can be difficult to get assistance. All ITIN applications go to the IRS's Austin ITIN unit, which has specialized training and experience, but there is no way for taxpayers to contact the Austin ITIN unit by phone for questions on their specific application.⁹⁰



Individual Taxpayer Identification Numbers are critical for taxpayers to be able to comply with their U.S. tax obligations. But the IRS processes the applications and related returns on paper, which causes delays.

The IRS SOP stated a generalized intention to modernize the ITIN process.⁹¹ To better serve taxpayers, prevent unnecessary delays, and encourage voluntary compliance, the National Taxpayer Advocate recommends the IRS modernize the ITIN process to allow taxpayers to apply for an ITIN throughout the year and submit alternate proof of a filing requirement other than an annual tax return;⁹² allow CAAs to electronically file Form W-7 with copies of the supporting documentation; and modernize the Real-Time System (RTS) the IRS uses to process W-7 forms to enhance data quality and management, including a process for logging documents upon receipt. The IRS should also provide dedicated phone resources, including a phone number to the Austin ITIN unit, to assist taxpayers with the ITIN application process and prominently display current estimates of ITIN processing times on the ITIN landing page of the IRS website.

Timeframes for Taxpayers Abroad to Respond to Key IRS Notices Are Insufficient and in Some Cases Non-Existent

It generally takes longer for mail sent from the United States to reach taxpayers abroad. Contributing to the delays are the variations in postal systems by country and problems with taxpayers not updating their foreign address.⁹³ While it is not possible to determine the average mailing time due to external factors in other countries, it can be significant.⁹⁴ Many IRS notices are time-sensitive, requiring responses within a certain timeframe. Failure to take timely action often carries serious consequences. The IRS issued over 1.3 million notices and other correspondence to foreign addresses in FY 2021 and over 1.6 million in FY 2022.⁹⁵

89 While the IRS announced its Paperless Processing Initiative as part of its SOP, it did not eliminate any paper processing from the Form W-7 application process. IRS response to TAS information request (Sept. 14, 2023).

90 IRS response to TAS information request (Sept. 14, 2023).

91 IRS, Pub. 3744, IRS Inflation Reduction Act Strategic Operating Plan 22 (Apr. 2023), <https://www.irs.gov/pub/irs-pdf/p3744.pdf>.

92 See Erin M. Collins, Most Taxpayers Needing a New ITIN Are Prohibited From Filing Electronically, Causing Unnecessary Refund Delays, NATIONAL TAXPAYER ADVOCATE BLOG (Feb. 6, 2023), <https://www.taxpayeradvocate.irs.gov/news/nta-blog-most-taxpayers-needing-a-new-itin-are-prohibited-from-filing-electronically-causing-unnecessary-refund-delays/>.

93 The IRS has developed an "update my foreign address" application. Once this application is available to the public for the Individual Online Account, it should help prevent delays due to inaccurate addresses. IRS, Individual Online Account (IOLA) & Tax Pro Account Status Briefing (Sept. 27, 2023) (on file with TAS). While the results remain to be seen, this is a step in the right direction.

94 See Laura Snyder et al., *Mission Impossible: Extraterritorial Taxation and the IRS*, TAX NOTES (Mar. 22, 2021) (citing a 2020 Taxpayer Advocacy Panel study concluding that it is common for it to take more than 50 days, and sometimes more than 100, for mail from the IRS to reach international recipients).

95 IRS, CDW, Notice Delivery System, FY 2022 (through Sept. 28, 2023); National Taxpayer Advocate 2022 Annual Report to Congress 173, n.107 (Most Serious Problem: *Overseas Taxpayers: Taxpayers Outside of the United States Face Significant Barriers to Meeting Their U.S. Tax Obligations*), https://www.taxpayeradvocate.irs.gov/wp-content/uploads/2023/01/ARC22_MSP_10_Overseas.pdf.

For taxpayers abroad, lack of timely notification causes them to lose critical administrative, due process, and judicial rights. In several instances, the IRS provides taxpayers abroad either no additional time or insufficient additional time. For example, the IRS sends paper correspondence to taxpayers who are subject to correspondence and Automated Underreporter (AUR) examinations.⁹⁶ The IRS only provides taxpayers with a foreign address 15 additional days to respond to an AUR audit inquiry;⁹⁷ the IRS gives taxpayers abroad 45 days and domestic taxpayers 30 days. Even more egregious, the IRS provides taxpayers abroad no additional time in the case of a correspondence exam.⁹⁸ If the taxpayer does not timely provide information, the IRS will generally issue a notice of deficiency. Further, while an extension to provide documentation to the IRS in a correspondence exam may be available upon request, many taxpayers may not be aware of this option. The IRS should provide additional time upfront without putting the burden on a taxpayer to request an extension. While the IRS can administratively extend response time for some notices, others, such as Collection Due Process (CDP) and math error notices, are statutory.⁹⁹ Because of the significant legal consequences these notices impart, Congress should consider amending the CDP and math error notice requirements to allow taxpayers located outside of the United States additional time to respond.¹⁰⁰

Taxpayers Should Receive a Separate Notice Informing Them of Passport Revocation and Providing Them With Appeal Rights

There is also one instance in which a lack of any type of notice can have a profound effect on taxpayers, especially those abroad. IRC § 7345 provides for the revocation or denial of passports in the case of certain tax delinquencies. The IRS is required to certify individuals to the Department of State when they have a “seriously delinquent tax debt.”¹⁰¹ The Department of State will generally not renew a passport or issue a new passport upon receiving the certification and can also revoke a passport. The IRS does not send a standalone precertification notice; rather, it only notifies the taxpayer at the time it makes the certification.¹⁰² While a

96 IRS response to TAS information request (Sept. 15, 2023). The IRS uses correspondence examinations to look at limited issues on a taxpayer’s return, and they are generally narrower in scope than a regular audit. The AUR program compares income reported on a taxpayer’s return to information provided to the IRS by third parties. See IRS, How the IRS Ensures Compliance With the Tax Laws (Oct. 23, 2023), <https://www.irs.gov/about-irs/how-the-irs-ensures-compliance-with-the-tax-laws>.

97 IRM 4.19.3.22.8(7)a, Correspondence (June 28, 2021), https://www.irs.gov/irm/part4/irm_04-019-003r.

98 Any taxpayer may request an extension, and the IRS will grant an automatic 30-day extension for the first request. IRM 4.19.13.11.7(2), Taxpayer Requests Additional Time to Respond (Apr. 6, 2022), https://www.irs.gov/irm/part4/irm_04-019-013r.

99 CDP notices allow taxpayers to request a hearing before the Independent Office of Appeals (Appeals) to review a filed Notice of Federal Tax Lien or a proposed levy, but they must do so within 30 days of the date of the CDP notice. IRC §§ 6320(a)(3)(B), 6330(a)(3)(B). After the hearing, Appeals issues a notice of determination, which allows taxpayers 30 days in which to request judicial review of the determination. IRC §§ 6320(c), 6330(d)(1). While the Supreme Court recently held that this 30-day time limit is not jurisdictional and may be tolled in *Boechler, P.C. v. Comm’r*, 596 U.S. 199 (2022), a taxpayer must establish that equitable tolling applies. Math error notices allow a taxpayer 60 days in which to request abatement of a “summary assessment” of tax arising from mathematical or clerical errors as defined in IRC § 6213(g). See IRC § 6213(b)(1), (2)(A). If a taxpayer timely requests abatement, the IRS must abate the summary assessment and then follow deficiency procedures under IRC § 6212 if it wishes to reassess an increase in tax. IRC § 6213(b)(2)(A).

100 While the IRC allows taxpayers outside the United States an additional 60 days (150 days total) to challenge a deficiency determination under IRC § 6213(a), it does not afford them a similar extension of the 30-day period under IRC §§ 6320(c) and 6330(d)(1). Congress should amend IRC § 6330(d) to allow additional time to request a CDP hearing and to request judicial review of a CDP determination, consistent with IRC § 6213(a). See National Taxpayer Advocate 2002 Annual Report to Congress 244 (Legislative Recommendation: *Collection Due Process*), https://www.taxpayeradvocate.irs.gov/wp-content/uploads/2020/08/arc2002_section_two.pdf; see also National Taxpayer Advocate 2024 Purple Book, *Compilation of Legislative Recommendations to Strengthen Taxpayer Rights and Improve Tax Administration (Give Taxpayers Abroad Additional Time to Request a Collection Due Process Hearing and to File a Petition Challenging a Notice of Determination in the U. S. Tax Court)*. Similarly, IRC § 6213(b)(2)(A) does not allow taxpayers outside of the United States any additional time to challenge a math error notice. To protect taxpayer rights and promote consistency, Congress should amend IRC § 6213(b)(2)(A) to allow taxpayers an additional 60 days (120 days total) to request an abatement of tax when a math error notice is addressed to a person outside the United States. See National Taxpayer Advocate 2024 Purple Book, *Compilation of Legislative Recommendations to Strengthen Taxpayer Rights and Improve Tax Administration (Give Taxpayers Abroad Additional Time to Request Abatement of a Math Error Assessment)*.

101 A “seriously delinquent tax debt” is defined as unpaid, legally enforceable taxes (including interest and penalties) totaling more than \$50,000 (adjusted annually for inflation), for which the IRS has filed a Notice of Federal Tax Lien and all administrative remedies under IRC § 6320 have lapsed or been exhausted, or a levy has been issued. IRC § 7345(b)(1).

102 IRC § 7345(d). The only direct notice the IRS provides to taxpayers that their passports may be revoked is a paragraph on the second page of a CDP levy notice (Letter 1058) that the IRS may have issued months or even years prior to making a certification. A seriously delinquent tax debt certification is not the reason for the notice.

taxpayer can challenge a certification in court, this can be costly and time-consuming. Because of the vital importance of a passport to Americans, especially those abroad, the IRS should provide a precertification notice to taxpayers that allows them to appeal a proposed IRS certification of a seriously delinquent tax debt.¹⁰³

CONCLUSION AND RECOMMENDATIONS

Taxpayers abroad continue to face significant challenges complying with their U.S. tax obligations. The extreme complexity of the tax code is magnified by the interpretation and application of the U.S. tax laws through the tax laws of the countries in which taxpayers reside and the technical treaties that may exist between the United States and their countries. Taxpayers abroad are a community the IRS underserves, and they need help that is unavailable from the IRS in person and is difficult and sometimes expensive to otherwise obtain. They experience unique burdens without the benefit of IRS services. While simplification of the tax code is up to Congress, unless and until that occurs, it is incumbent upon the IRS to do more to help taxpayers abroad understand and comply with their tax obligations. The IRS can and should take actions administratively, such as facilitating in-person and remote filing assistance through VITA and TCE and modernizing the ITIN processing system. With the additional funding provided by the IRA, the IRS can cure deficiencies in service to taxpayers abroad if it makes them a priority. In the absence of assistance and support from the IRS, taxpayers abroad may demonstrate waning compliance.

Administrative Recommendations to the IRS

The National Taxpayer Advocate recommends that the IRS:

1. Clarify the scope of Rev. Proc. 2020-17 to provide certainty regarding the reporting requirements of foreign workplace retirement plans under IRC § 6048, including foreign pensions where deferral of tax on earnings is available under a U.S. tax treaty.
2. Translate the most common international tax forms and instructions, starting with Publication 54, into multiple languages other than English.
3. Provide in-person services abroad including reopening foreign tax attachés and/or TACs, beginning with cities with the highest number of filers. Until it does, the IRS should offer or facilitate virtual TAC, VITA, and TCE appointments to taxpayers outside of the United States, with the same services available to domestic taxpayers.
4. Develop a cross-functional team solely focused on assisting international taxpayers. The team should have regular meetings, objectives, and measurable results.
5. Provide a toll-free international telephone line or alternative free service dedicated solely to taxpayers abroad.
6. Provide greater accessibility to online accounts for taxpayers abroad who cannot authenticate through the current CSP.

103 See Nina E. Olson, The IRS's New Passport Program: Why Notice to Taxpayers Matters (Part 1 of 2), NATIONAL TAXPAYER ADVOCATE BLOG (Feb. 6, 2023), <https://www.taxpayeradvocate.irs.gov/news/ntablog-the-irss-new-passport-program-why-notice-to-taxpayers-matters-part-1-of-2/>; Nina E. Olson, The IRS's New Passport Program, How Lack of Notice Harms Taxpayers (Part 2 of 2), NATIONAL TAXPAYER ADVOCATE BLOG (Feb. 6, 2023), <https://www.taxpayeradvocate.irs.gov/news/ntablog-the-irss-new-passport-program-how-lack-of-notice-harms-taxpayers-part-2-of-2/>.

7. Modernize the ITIN application process to: 1) allow taxpayers to apply for an ITIN throughout the year and submit alternate proof of a filing requirement other than an annual tax return; 2) allow CAAs to electronically file Form W-7 with copies of the supporting documentation; and 3) improve the RTS the IRS uses to process W-7 forms to enhance data quality and management, including a process for logging documents upon receipt. The IRS should also provide dedicated resources and a phone number to the Austin ITIN unit and prominently display current estimates of ITIN processing times on the ITIN landing page of the IRS website.
8. Explore expanding the scope of the VITA program to allow grant funds to be used to provide ITIN certification services for taxpayers at VITA sites.
9. Allow taxpayers located outside the United States an additional 60 days upfront to respond to all IRS correspondence that requires a response or other action from the taxpayer.
10. Provide a precertification notice to taxpayers that allows them to attempt to resolve tax liabilities and appeal a proposed IRS certification of a seriously delinquent tax debt before the IRS sends a certification regarding passport revocation to the Department of State. This notice should give taxpayers outside of the United States an additional 60-day response time beyond that provided domestically.

Legislative Recommendations to Congress

The National Taxpayer Advocate recommends that Congress:

1. Amend IRC § 6038D and 31 U.S.C. § 5314 to eliminate duplicative reporting of assets on IRS Form 8938 where a foreign financial account is correctly reported or reflected on an FBAR while ensuring continued IRS access to foreign financial asset data for both tax compliance and financial crime enforcement purposes.
2. Amend IRC §§ 6320(a)(3)(B), 6330(a)(3)(B), and 6330(d)(1) to allow 90 days (*i.e.*, an additional 60 days) (i) to request a CDP hearing after the issuance of a CDP lien or levy notice and (ii) to file a petition for review in the U.S. Tax Court after the IRS issues a notice of determination if the notice is addressed to a person outside the United States.
3. Amend IRC § 6213(b)(2)(A) to allow taxpayers 120 days to request an abatement of tax when a math error notice is addressed to a person outside the United States.

RESPONSIBLE OFFICIALS

Amalia Colbert, Commissioner, Small Business/Self-Employed Division

Holly Paz, Commissioner, Large Business and International Division

Kenneth Corbin, Commissioner, Wage and Investment Division

David Padrino, Chief Transformation and Strategy Officer, Transformation and Strategy Office