



AMERICAN CITIZENS ABROAD  
EDUCATE, ADVOCATE AND INFORM  
AMERICAN CITIZENS ABROAD  
*global foundation* FOR EDUCATION AND RESEARCH

November 19, 2024

Andres Garcia  
Internal Revenue Service, Room 6526  
1111 Constitution Avenue, NW  
Washington, D.C. 20224

[pra.comments@irs.gov](mailto:pra.comments@irs.gov)

***RE: American Citizens Abroad Comments on OMB 1545-1004 (Form 8821 and Form 8821-A)***

Dear Mr. Garcia,

[American Citizens Abroad, Inc. \(ACA\)](#) is pleased to respond to the [IRS request for comments on OMB Number: 1545-1002 \(Forms 8821 and 8821-A\)](#) regarding the “*Information Collection Tool Relating to the Return by a Shareholder of a Passive Foreign Investment Company or Qualified Electing Fund.*” We hope our comments provide value.

ACA is a leading advocacy organization bringing to the attention of the Congress and Administration the issues of U.S. citizens living and working overseas. Headquartered in Washington, D.C., ACA is a non-partisan, non-profit (section 501(c)(4)), with a 45-year history of advocating on behalf of the community of U.S. citizens living and working overseas. Alongside ACA is its sister charitable (section 501(c)(3)) research and educational organization, [American Citizens Abroad Global Foundation \(ACAGF\)](#).

U.S. citizens generally assume that accumulating funds in a retirement account or a mutual fund is a good idea. For taxpayers living overseas, however, that proposition is not a sure thing given the possible tax consequences. The Passive Foreign Investment Company (PFIC) rules, which impact foreign mutual funds, some foreign retirement accounts and foreign businesses earning investment income, are notorious for their unintended consequences and in particular for U.S. citizens living overseas who are investing, running businesses or may be required by local laws to invest in foreign pension plans.

We understand that the motivation behind the punitive PFIC rules was to stop wealthy taxpayers from deferring U.S. income tax by investing in foreign investment companies. (Although the legislative intent is, itself, dubious given other types of investments allow for deferral of U.S. tax without such punitive treatment.) What resulted was a cascade of little understood, unclear and overly complex rules subjecting investments in foreign investment companies to a range of special U.S. tax laws that would not apply if the investments were in U.S. investment companies. The complexities and penalties of PFIC rules, therefore, present special problems for U.S. citizens living abroad.

Firstly, Americans abroad are often mandated by local statutes to hold pension accounts registered in their countries of residence. They are, therefore, forced into investments that can attract punitive PFIC treatment.

Further, like their U.S.-resident counterparts, Americans abroad seek investment opportunities to provide for their future and that of their families. However, acquiring shares in U.S. investment companies requires a U.S. residential address, effectively locking out access for Americans living abroad.



Therefore, unlike their U.S.-resident counterparts, investment companies registered abroad may be the only investment vehicles they are eligible to acquire. These commonly fall under the PFIC tax rules designed with harsh penalties to dissuade U.S. investors. For the unsuspecting American abroad investing – perhaps accidentally - in PFICs, the punitive tax treatment can be disastrous. At the least, earnings can be reduced by the time spent calculating taxes and by penalties. At worst, the entire fund could be lost to taxes and penalties. These adverse consequences, however unintended, surely go far beyond what Congress intended.

#### UNINTENDED ADVERSE CONSEQUENCES

PFICs have been singled out for particularly harsh treatment to the point that most U.S. investors would not invest in a PFIC if they knew what the tax consequences would be.

- Shareholders in PFICs are required to prepare the inordinately complex Form 8821 to disclose the investments and document the calculation of tax owed, a disclosure known to take 48 hours to prepare. This is clearly an intolerable burden.
- Companies that are not foreign investment companies are affected by the PFIC rules, particularly when they take on the (passive) income characteristics of a foreign investment company (as some operating businesses do, especially in the start-up phase).
- Exchanges of PFIC shares are taxed under the PFIC rules that would otherwise not be subject to tax. Gifts of stock in a PFIC are subject to income tax on the deferred gain on the difference between the stock's fair market value and the transferor's basis in the stock.
- Transfers of PFIC stock upon the death of the shareholder are taxable under the PFIC rules.

The PFIC rules can bring about unjust and financially devastating results for Americans abroad and are full of traps for the unwary. ACA supports relief from the PFIC rules and, more broadly, reforms to the taxation of Americans living and working abroad.

#### TAXATION AND AMERICANS ABROAD

The Taxpayer First Act has identified U.S. citizens living and working overseas as an underserved community, and the IRS is working to create systems and provide support to these taxpayers. This cannot come fast enough for the [estimated 3.9 million U.S. citizens living and working abroad](#). Tax filing for U.S. citizens living and working outside the U.S. is complex, costly and confusing, results in onerous taxation of foreign investments considered PFICs, involves duplicate reporting regimes like the Foreign Account Tax Compliance Act (FATCA) Form 8938 and the Financial Bank Account Report (FBAR)(FinCEN Form 114), is unfair with regard to the application of certain tax credits for non-residents (Child Tax Credit and Earned Income Credit), exposes filers to double taxation with the Net Investment Income Tax (NIIT) and now with the possible disallowance of FTCs, and involves wading through many regulations that overlap with U.S. corporate international tax.

This is just a sampling of the problems on the individual side of reporting, not taking into consideration the filing requirements for small business operations run by U.S. citizens overseas that need to deal with the Transition Tax and Global Intangible Low-Taxed Income (GILTI) regimes (and are denied access to



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programs available for small businesses through the U.S. tax code such as the Employee Retention Tax Credit and Paycheck Protection Program).

#### RESIDENCE-BASED TAXATION

ACA has throughout its 40-plus year history advocated for the adoption of residence-based taxation (RBT) and has produced key documents and research that support the move to RBT, which can be made revenue neutral and tight against abuse. ACA was the first organization to develop a side-by-side analysis that indicates where in the current tax code changes could be made in a move to a system of taxation based on residence (excludes from U.S. taxation foreign earned income). ACA has fielded two research projects on the subject with District Economics Group (DEG), Washington, DC-based economic consulting firm – one in 2017 and one in 2022 that provide valuable information on the income, assets and taxation of U.S. citizens living and working overseas. This data, one of a kind, supports our position that RBT can be adopted and no one will be any worse off, the U.S. Treasury would not lose revenue and the provisions would be protected against tax abuse.

For more information, please visit the ACA website <https://www.americansabroad.org/>.

Thank you for your invitation to provide comments and your attention to this important subject.

Respectfully,

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