New American President, same tax stress globally?

International Tax | Tax voice



07 September 2016

David Treitel outlines the challenges and concludes that the one certainty is that whoever wins the Presidential race the US tax system is unlikely to become less complicated

With 2017 now just months away, which President would you like? Trump or Clinton? Which candidate might provide a “nicer” US tax system in the future?

While neither candidate nor party has any clear tax proposals today, three main themes are emerging in the administration of US tax. Firstly, US citizens and green card holders globally continue to receive “FATCA letters”, warning them (and in effect their advisers) to become US tax compliant. Secondly, what is known in in the US as the United States Internal Revenue Service (IRS) “Future State Initiative” (or “Making Tax Digital” in the UK), promises idyllic service improvements through increasing engagement with taxpayers online. Thirdly, the IRS publishes frequent news reports explaining that the US tax system is itself a victim of significant criminal activities. Looking at these three topics as a whole, many Americans living outside the US report that the current state of the US tax system gives rise to significant levels of stress; both in relation to tax return forms, the conduct of the

IRS and data security and privacy.

Following considerable lobbying, this sense of controlled anger from Americans abroad is just starting to feature on the agenda back home. Perhaps modestly positively for Americans overseas (and arguably simply to garner votes from Americans abroad), recent months have seen proposals being published during the 2016 Republican National Convention arguing for a complete repeal of FATCA; and at the 2016 Democratic National Convention requesting that US law is changed so that “law-abiding Americans living abroad are not unfairly penalized” by FATCA.

Whilst these tentative early proposals seem unlikely to result in any legislative changes, US politicians are having to start thinking about policies that appeal to Americans abroad only because citizens of the US and US green card holders are taxed worldwide, on everything, forever. This obligation to comply with annual US tax and information return filing frequently comes as a surprise, especially to individuals who had left the US during childhood. Even as adults, US persons frequently move abroad for marriage, education and job opportunities, while some simply acquire US citizenship by birth overseas to a US parent.

The first time that many such people hear about US tax filing is when they receive a “FATCA letter” from their bank or financial institution. These letters frequently lead to immediate feelings of anxiety and can trigger more intense levels of depression. Thankfully the IRS have established processes in place to help people catch up where US returns have never been filed, filing has lapsed, or returns that have been filed have incorrectly omitted foreign income.

Under US law until a return has been filed for any year, the statute of limitations remains open for that year. On this basis, the law might suggest that every unfiled return should be completed today. Given, however, that there is frequently little or no tax involved for someone living overseas, the IRS currently offer “Streamlined Filing Compliance Procedures”, which are a simplified process for US taxpayers who have not filed complete returns in recent years and who have non-US income and assets. In most circumstances, this should result in no penalties.

Essentially, American taxpayers overseas are helped to catch up by the IRS so long as they:

1. Have lived outside the States for at least one of the three most recent calendar years for which a US tax return was due

2. Prepare and file at least three years of amended or late tax returns
3. Include any relevant payment of tax with the returns
4. Write a declaration “in red” on the first page of each return, announcing that the documents are filed under these procedures
5. File six years of late or corrected Return of Foreign Bank and Financial Accounts (FBARs)
6. Include a signed declaration certifying that any past omissions “resulted from non-wilful conduct”
7. Summarise clearly within this declaration reasons why the “non-wilful conduct is conduct that is due to negligence, inadvertence, or mistake or conduct that is the result of a good faith misunderstanding of the requirements of the law”. (Wilful conduct by contrast is defined broadly as a voluntary and purposeful violation of a known legal duty.)

While the Streamlined Filing Compliance Procedures make catching up with US tax form filling relatively painless for many, current IRS Future State Initiative proposals potentially overlook the needs of many Americans abroad. Part of the struggle in trying to get the IRS to engage digitally with Americans globally (according to American Citizens Abroad (ACA), a non-profit organization), is that there is no reliable figure for the total number of US citizens residing outside of the US. Because no-one knows how many exist, where they live, their ages and indeed many US citizens overseas do not have a good command of the English language, ACA argues that “these Americans need more than automation and will continue to require human intervention”.

Beyond just trying to figure out how to digitally engage with taxpayers globally, a major current headache for the IRS today is taxpayer identity theft; where criminals file false tax returns using valid names and US social security numbers. IRS Commissioner John Koskinen recently announced, for example, that just in the four months from January to April 2016 the IRS stopped fraudulent refunds totalling $1.1 billion that had been claimed on more than 171,000 tax returns and also suspended for review a further 36,000 suspicious tax returns.

One certainty today – whoever wins the Presidential race – is that the US will continue to raise tax. That tax system is unlikely to become less complicated or any kinder to Americans globally. Overall, raising more tax globally while combatting fraud are doubtless themes that will recur under any future President. Based on past experience, it seems certain that Americans outside of the US will still be lobbying

for a “nicer” system right up to the day that Trump or Clinton leaves office