

## Can the Obama Administration make things even worse for Overseas Americans and the Swiss? Yes they can!



Jonathan Lachowitz, CFP® | Financial Planner | Investment Advisor

Feb 5, 2010

LinkedIn



As the Obama Administration goes from health care reform to tax code changes for 2011, I'd like to start right off by saying thank you to my fellow New Englanders for firing another shot heard around the world when on January 19, in an extraordinary election, they voted for a Republican Senator (for the first time in almost 50 years), Scott Brown, to replace the late and great Senator Edward Kennedy from Massachusetts. The implications could be dramatic and damaging to the "change" agenda in Washington. Democracy, or more accurately, a Representative Republic, does allow the people's voice to be heard, and November 2010 will see a number of close races in the US Congress.

Sadly for over the 5 million overseas Americans and the many more US residents who have dependents outside of the US or overseas accounts due to family ties in other countries, their voice is hardly listened to in the corridors of power in Washington DC. As a result, tax filing and just trying to do the right thing in the eyes of the IRS are about to get a whole lot more difficult when it comes to complying with the US tax code, if the Obama Administration has its way. The US Government is admirably trying to deal with tax cheats who hide their undeclared income overseas (and in Delaware). The current US laws and reporting requirements on the books, while being strong enough to deal with international money laundering, drug trafficking, terrorism as well as tax evasion, are set to get even stronger on the tax side. Is this necessary? The US government seems to continuously ignore the affects they have on ordinary law abiding citizens who happen to live

outside the US, resident aliens in the US or US based persons simply trying to take care of overseas dependents by assisting them with their financial affairs.

In early February, Big Brother released the “General Explanations of the Administration’s Fiscal Year 2011 Revenue Proposals”. In case you don’t have the stomach to read all 149 pages of legal text; pour yourself a strong drink, remove all sharp items from your proximity, and please take a seat. I have provided a list of the some of the highlights for your consumption. Over 20% of the document is dedicated to “reforming” the US International Tax system and there are some components that should make the Swiss cantonal governments who host American companies nervous about their longevity in Switzerland.

### **1. MAKE REPEATED WILLFUL FAILURE TO FILE A TAX RETURN A FELONY – Page 115**

Proposal: Any person who willfully fails to file tax returns three out of any five years (and has an aggregated tax liability of over \$50,000 to the US), would be subject to a new criminal penalty and upon conviction would be subject to not more than 5 years in prison and not more than \$250,000 in fines.

What this may mean for you: If you have been living outside of the US for a long time and been unaware of your filing requirements for your US tax returns, you need to start filing your US tax returns, NOW. If you do not, you risk your freedom and savings because you may well be caught in the same net as the tax cheats that the IRS is really after.

### **2. REQUIRE DISCLOSURE OF FOREIGN FINANCIAL ASSETS TO BE FILED WITH TAX RETURN – Page 58**

Proposal: Any US person who holds over \$50,000 in foreign assets would have to list all of these foreign assets, account numbers, name and address of institution, etc with their annual tax return. This is in **addition to the FBAR reporting**, and failure to report would be subject to a penalty of up to \$10,000.

What this may mean for you: More compliance and reporting obligations each year when filing your annual tax return; you will have to report all financial assets (and contracts) held outside the US, subject to how the IRS designs the new forms. No additional taxes are levied but more opportunities for a penalty arise. While it is not clear from the text, I am presuming that this means listing of real estate and other “real” assets in addition to business ownership, foreign shares, bank accounts and perhaps even cash and other personal items.

### **3. REQUIRE REPORTING OF CERTAIN TRANSFERS OF ASSETS TO OR FROM FOREIGN FINANCIAL ACCOUNTS – Page 62**

Proposal: A US Person would be required to report, on their tax return, any and all transfers of money or property between a US account and foreign account if the cumulative value of such

transfers is over \$50,000. The same reporting would be required for any entity (business, trust, etc) that is more than 25% owned by a US person. The proposal would be effective December 31, 2012.

What this may mean for you: If you are regularly transferring money between the US and an overseas bank, of more than \$50,000 in aggregate per year, you will have to report every transfer on your tax return in that year, lots more paperwork for many people. Perhaps the IRS is not receiving enough information that nobody looks at. Within only a few years, the maximum family benefit from Social Security will be over \$50,000, so I can just imagine all of the retirees overseas having to report all of these details or risk the wrath of one of the hundreds of new IRS auditors...Where is the common sense here? Read on...

#### **4. REQUIRE THIRD-PARTY INFORMATION REPORTING REGARDING THE TRANSFER OF ASSETS TO OR FROM FOREIGN FINANCIAL ACCOUNTS AND THE ESTABLISHMENT OF FOREIGN FINANCIAL ACCOUNTS – Page 63**

Proposal: To “complement” (This is their word not mine) the above proposal, all US institutions who receive or send more than \$50,000 overseas in a given year would have to report the name, address, tax id number and amount of transfers in an information return to the IRS; the same applies if the US institution establishes a foreign bank, brokerage or other account.

What this may mean for you: The US will not be involved in anymore global banking crises in the future because all of their banks (kind of like their cigarette companies) will ring fence their operations between US domestic and international or just plain move their operations outside of the US to more favorable jurisdictions. The reporting requirements will further burden the system with this new 1099-DUMB form and one can imagine that only in extreme cases or under audit will the data ever be reviewed.

The IRS will try to match your reporting with the US institutions reporting, they will likely fail because they use different exchange rates, there will be double counting and you will be more likely to be flagged for an audit. It will become more and more difficult to justify being overseas because of the time and cost of doing your tax return. Many of you will either give up your citizenship or return to the US. Companies outside the US will only hire US citizens to work outside the US under exceptional circumstances. For all of the talk about wanting to create more job, this administration seems to want them only to be on US soil.

Just in case you are still reading, thinking about the title of the article, and wondering how all of this affects the “Swiss”, I have not forgotten. When asking real estate investors living in the Arc Lemanic if they can ever envision real estate prices having a sharp decrease, the naïve say “no”, the wise say “yes”, if too many of the foreign companies move away. Well, let me be the first to warn you that President Obama’s Administration is concerned about the high price of housing in Switzerland and is going to try and give some relief.

**5. DEFER DEDUCTION OF INTEREST EXPENSE RELATED TO DEFERRED INCOME – Page 39...FOREIGN TAX CREDIT REFORM: PREVENT SPLITTING OF FOREIGN INCOME AND FOREIGN TAXES – Page 42**

Proposal: Interest expenses that are properly allocated to foreign source income would now have to be deferred until such income has to be reported in the US. “For purposes of the proposal, foreign-source income earned by a taxpayer through a branch would be considered currently subject to US tax, thus the proposal would not apply to interest expense properly allocated and apportioned to such income.”

What this may mean for you: If you are not working in the legal department of a US company or as an expat for a US firm, this probably means very little to you. For US corporations that have overseas operations, there have been some arrangements where overseas branches were set-up, the profits of these branches were taxed in low tax jurisdictions (e.g. many Swiss cantons), and they were not taxed in the US until the profits were brought back to the US. So, the company’s set-up “corporate” banks to finance internal operations, leaving many of the profits overseas. Additionally, the interest expenses from these inter-company loans also became deductible in current years, building up even more profits in the internal bank overseas.

Another likely effect of the interest rules is that this is going to drive more US corporate borrowing outside the US, hurting the US banking industry. US Corporations that generate interest expense in the US, related to foreign operations, won’t want to defer that interest expenses, instead they will likely choose to borrow from an overseas bank so the US entity can generate even more foreign tax credits, lowering the income tax receipts in the US; a likely unintended consequence of these new rules.

The “corporate” tax issues will certainly be better dealt with in a tax journal by an international tax attorney. The only reason I included it here is because I believe that if this becomes law, we may see several American companies move part or all of their Swiss operations to a lower cost country (which may be the US), unless they can find other ways to keep profits from being taxed in the US. If this happens en masse, we may finally get some relief in the housing situation in the Suisse Romande. Make no mistakes, this is another battle in the on-going Swiss American economic warfare.

It would be nice if our friends and elected officials in the Administration would actually read, research and act upon the suggestions of such noted international tax attorneys as Paula Singer and her articles “Common Sense Tax Reform”, January 5, 2009 Tax Notes Journal or Tax Reform for Americans Abroad in Tax Notes International May 25, 2009 page 673. None of these proposals, many of which would simplify the tax code and make US individuals and companies more competitive overseas and at home, seem to have been considered.

If you are a member of the US government or IRS reading this article, please have a sense of humor. Those of us living overseas for a long time and who have been trying our best to comply with the 4

ever increasing complexity in the reporting burdens (often resulting in no taxes owed) are losing hope in our system and humor is about the only way to deal with this insanity. The cost of compliance is often so much higher than the tax owed but the worst part is that the law abiding, tax filing Americans overseas, of which there are many, feel under attack, unrepresented and lumped into the same boat as the tax cheats who the IRS is chasing. Please make a distinction. Most overseas Americans dislike people who evade taxes just as much as the government, it raises the cost for everyone else, but we would appreciate the understanding that more thoughtless regulation punishes the innocent, decreases US competitiveness and drives people away from the USA. There has to be a better way and current law certainly gives the government enough tools to do its job.

For individual Americans, the message is clear, file your tax returns and don't try to evade taxes, the penalties are already severe and likely to get worse. More importantly, as individual citizens, you can influence your government. Remember, all of these are **proposals** (the full text of which [can be read here](#)) and this article only deals with a few selected topics. Eventually these proposals must work their way through the Congress for approval; there is still time to make amendments. If you still have any energy left, you may consider joining the efforts of [American Citizens Abroad](#) in Geneva or writing directly to your representatives in Congress to try and lessen the collateral damage on the overseas American community. Is it any wonder that the current wait to get an interview to give up US Citizenship in Bern has increased to almost 12 months?

---

[Jonathan Lachowitz, CFP®](#) is a Certified Financial Planner™ professional in the United States and Switzerland and was previously a board member of the Swiss Financial Planning Organization. With his experience and research in a variety of Cross-Border Financial Planning topics, he guides hundreds of highly successful clients in making sound personal and professional choices. At White Lighthouse, Jonathan is dedicated to serving his clients while growing with a team of exceptional individuals.