Newsweek

Why Americans Abroad Are Giving Up Their Citizenship

By *Barbara Stcherbatcheff*
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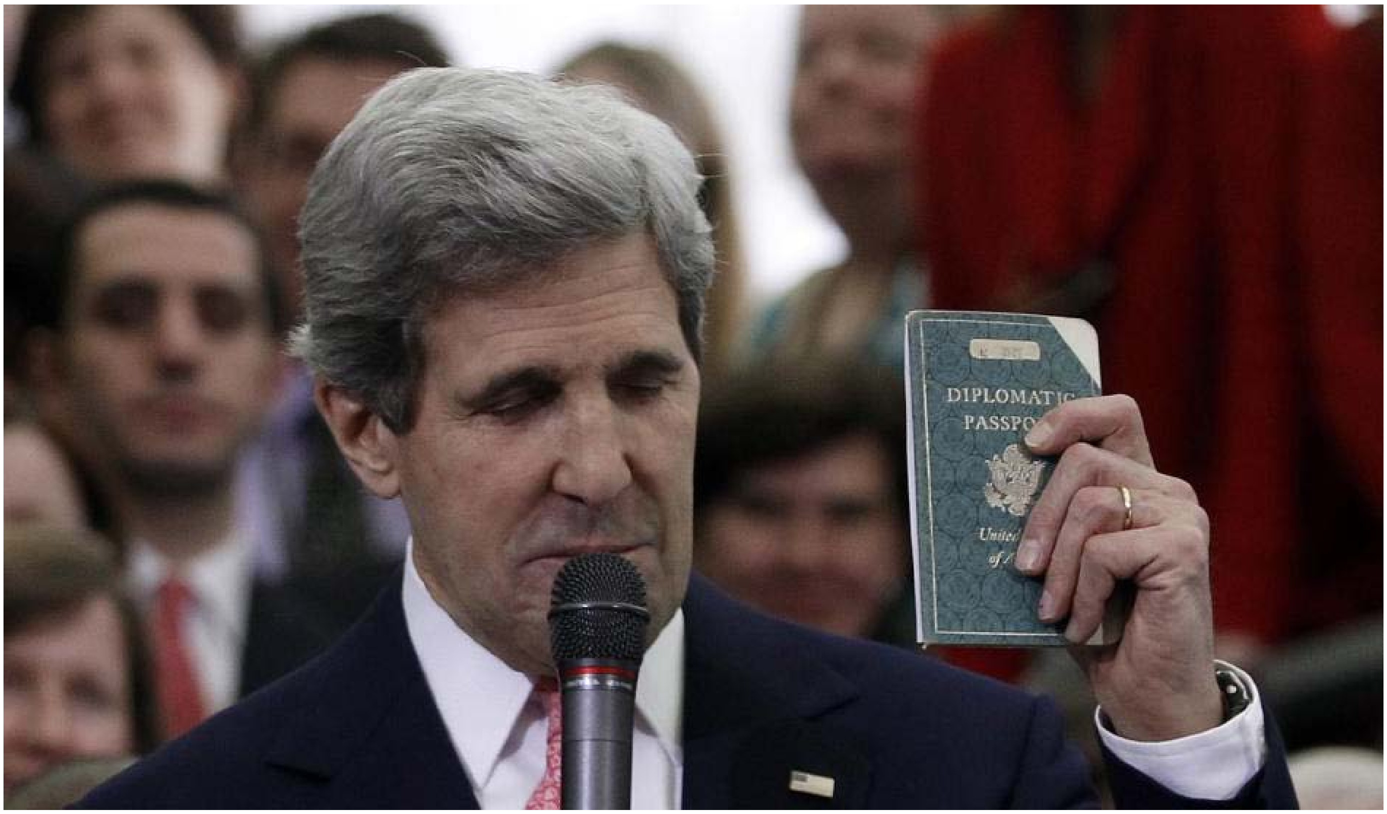

John Kerry, the U.S. Secretary of State, holds his diplomatic passport Gary Cameron/Reuters

The number of Americans giving up their citizenship surged to 3,000 in 2013 – three times more than the previous year. And that figure is set to increase further as strict new rules affecting U.S. citizens living and working abroad swing into action next month.

Those rules – part of Fatca (the Foreign Account Tax Compliance Act) - compel foreign banks and other financial institutions to provide information to the Internal

Revenue Service about Americans holding accounts. It is worded to catch as many non-compliant U.S. taxpayers as possible - those who might be stashing away money in foreign bank accounts.

But Americans complain that it is overcomplicating their tax returns, jeopardizing their jobs and, in some cases, making it impossible to obtain a simple bank account.

“U.S. citizens abroad are being treated more like criminals than ambassadors. And now thousands of Americans are forced to give up their passports with no or little tax return benefit to the U.S. Treasury,” says Elaine Knuth, an American author who has lived abroad for more than 20 years, most recently in Qatar.

The United States is the only industrialized country in the world to tax the income of its citizens based on nationality rather than residency. Citizens who earn below $97,600 annually can claim an exclusion, but the complexity of the tax laws means that most expats need the help of an accountant – a yearly expense that can easily run into the thousands even when no taxes are owed.

The extra red tape and regulatory burden of Fatca compliance is now hindering the careers of U.S. citizens abroad, says Virginia La Torre Jeker, a U.S. tax attorney in Dubai.

“I have clients telling me that their employers will no longer consider them for certain higher-level positions – for example, any that require signature authority over financial accounts or the establishment of foreign entities in the business which are held in nominee status by a corporate officer," Jeker says. "Many are concerned they may lose their positions due to the Fatca factor."

The 2013 IRS Tax Payer Advocate report to Congress characterized Fatca as a confiscatory, punishing legislation. For example, even when there is no intention of error, taxpayers face severe punishment. The standard penalty for unintentionally failing to file a tax return is $10,000. But the penalty for intentionally failing to file is far more.

"I went to this U.S. expat meeting, and they warned me about all these fines – thousands of dollars or even jail time – if I do anything wrong," says Sandy Opravil, an Indiana-born housewife who now lives in Switzerland. "I could become a criminal by mistake. It was presented in such a terrifying way. So I needed to decide who I am and where I live."

Opravil eventually relinquished her U.S. citizenship in February 2014. "The bank told us, 'When your mortgage comes up for renewal, we can't guarantee we'll still be doing business with Americans.' The message was pretty clear – you're in an insecure position. Since I've been here for 30 years and all my ties are here, I decided to renounce my citizenship and live in one country."

Employing a U.S. citizen now presents a significant compliance risk for businesses outside the U.S., says Robert W. Wood, a tax attorney with Wood LLP and a tax columnist for *Forbes*. "I have had clients comment that being an American executive overseas is now less attractive than being non-American," says Wood. "American status may be a strike against a person in a job contest or contest for a promotion."

Ignorance about Fatca is getting Americans into trouble. "There are people out there who are breaking the law without knowing they are breaking the law," says David

McKeegan, co-founder of Greenback Expat Tax Services. “The IRS doesn’t write things in a way that most people can understand it.”

Only about 35 percent of Americans hold a passport – a statistic that underscores how travelling, let alone living, outside of the U.S. is an unfamiliar concept to most citizens.

“I think U.S. legislators are unfamiliar with the concerns of Americans living overseas,” says Marylouise Serrato, executive director of ACA (American Citizens Abroad). “There’s an idea in the public mind that they are a bunch of wealthy people looking to evade taxes. But we can attest that they are a much broader demographic.”

The suspicion directed at Americans overseas is hardly a new phenomenon. “I remember 15 years ago, members of Congress were publicly claiming, ‘Americans living overseas don’t pay their taxes,’ says Elaine Knuth. “Sadly, it seems there’s a pervasive feeling that Americans living overseas are disloyal.”

Renouncing a U.S. passport sounds drastic, but the chances that U.S. legislators will ease the burden on expats are slim. Indeed, many believe that the hassles are only set to get worse.

With approximately 7.6 million Americans living overseas, the expatriate community would constitute the 13th largest U.S. state by population size – just behind Virginia. But their voice in Congress is non-existent. Some political groups, such as ACA, have lobbied on behalf of expats, calling for the U.S. to introduce residence-based taxation (RBT) like other developed countries, but few politicians have listened.

“Not one single congressman is going to stick out his or her head for Americans working overseas. It is a waste of their political powder,” says Knuth.

In January, the Republican National Committee passed a resolution calling for the repeal of Fatca. But many view this move as largely symbolic. “Any repeal effort faces the danger that it could be perceived as enabling tax evasion,” says Wood.

Others agree that Fatca is here to stay. “A law that hurts millions of little people will stay on the books as long as there is this prevailing belief that they are going to increase tax revenues as a direct result,” says Knuth.

But will it increase tax revenues? Not necessarily. The compliance cost of Fatca to financial institutions alone has been roughly estimated at $8 billion a year, approximately ten times the amount of tax revenue estimated to be raised ($792m). Strangely, Fatca was not subject to a cost/benefit analysis by the Committee on Ways and Means.

More important, critics claim the law won’t stop tax cheats. “The true ‘tax cheats’ will not be caught up in the net of Fatca. Instead it will be normal citizens who now cannot even conduct normal everyday affairs,” says Knuth. “Those with real criminal energy and resources to evade taxes do not have their money sitting idly in the banking system, but in the legitimate economy of non-profit foundations, health clinics, clubs, restaurants and hotels.”

As of May, 33 countries had signed up to the FACTA agreement, and another 34 jurisdictions reached “agreements in substance”.

The extent to which the rest of the world has caved into the demands of American lawmakers has bewildered some experts.

“The U.S. has done a very good job of positioning itself,” says Wood. “I suppose that many foreign banks and foreign countries are worried about being frozen out of the U.S. market. I believe that it is seen as a very large club."

For those who have already renounced, some congressmen are determined to make returning even for a visit as difficult as possible. The 2013 Ex-Patriot Act ("Expatriation Prevention by Abolishing Tax-Related Incentives for Offshore Tenancy" Act) said that any expatriate presumed to have renounced his or her citizenship for tax avoidance purposes should be barred from coming to the U.S., and taxed on his or her American investments at 30 percent.

The proposed law ultimately died in the Senate Finance Committee, but it strikes comparisons with the Reich flight tax (*Reichsfluchtsteuer*) of 25 percent that the Nazis imposed on emigrants trying to flee Germany in the early 1930s.

Giving up citizenship – whether you've lived abroad for only a few years or decades – is for most people an emotional decision involving some loss of identity.

"It was really sad. I didn't expect to be that sad," says Sandy Opravi. "Because a few people hide money, everyone else gets persecuted."