US tax

Americans abroad hit by Trump's new repatriation tax rules

Critics say individuals are being treated the same as big corporations

The state department estimates that 9m American citizens live abroad © Getty

Andrew Edgecliffe-Johnson in New York FEBRUARY 5, 2018

Expatriate Americans face unexpected tax bills on their overseas business interests under repatriation rules Congress designed to persuade the likes of Apple and Google to bring back to the US profits they had accumulated in lower taxed countries.

Tax experts in Washington, Tel Aviv and London told the Financial Times large numbers of their clients would be hit by a clause in the tax reforms signed into law by President Donald Trump in December.

The Tax Cuts and Jobs Act imposes a one-time "deemed repatriation tax" of 15.5 per cent on the profits businesses have accumulated overseas, whether or not they choose to repatriate them as Apple has with its pledge to bring $38bn back to the US.

Any individual US citizen or green card holder owning more than 10 per cent of a "controlled foreign corporation", or CFC, will be forced to pay this tax within eight years, according to an analysis by Charles Bruce, a former tax counsel at the Senate finance committee who now serves as legal counsel to American Citizens Abroad, an advocacy group in Washington. A CFC is an overseas business in which US shareholders control more than 50 per cent of the voting rights.

"The problem is, the way the law is worded treats every American citizen and green card holder in the world [operating through a foreign corporation] the same as Google," said Monte Silver, a US tax attorney and senior counsel at Eitan Mehulal Sadot in Israel. "There's going to be some sort of

Monte Silver Contact Details: MonteS@ems-legal.com uproar" as more expats and their advisers learn about their exposure, he predicted, but "the problem is expats have no political clout".

The state department estimated last year that 9m US citizens live abroad, but advisers said there were no reliable figures on how many taxpayers overseas will be caught by the new repatriation rules. "I know hundreds just in Israel," Mr Silver said.

Many self-employed Americans abroad created foreign corporations to avoid paying US social security, Mr Silver noted. One Washington-based consultant added that a high number of these were wealthy individuals who had never repatriated any of their offshore earnings.

In his analysis, Mr Bruce noted that many individuals caught by the repatriation tax would not have the cash on hand to pay it. Unlike US corporations, however, they could not claim a deduction on any dividend their foreign corporations distributed to cover the bill.

"At this point there is little that any taxpayers can do to mitigate the 'repatriation' tax — it is a corporate provision that sweeps up individual US taxpayers as well," said Richard Cassell, a tax partner at London law firm Withers, which has analysed the new law's impact on expatriate Americans.

Advisers said expats with foreign-sourced income would also not qualify for a deduction on pass-through income provided for some businesses by the new law.

Some groups advocating for Americans abroad hope that what appear to be unforeseen effects of the tax bill on expats will add impetus to their campaign to make Americans overseas subject to residency-based taxation, rather than citizenship-based taxation.

"The good thing about this is that it really highlights that the taxation of Americans overseas is just not right," Mr Bruce said. "The problem is that people don't think about Americans overseas . . . There's no congressman representing Americans in France."

Letter in response to this article:

Americans abroad have voting rights in the US / From Linda Carrington, Morristown, NJ, US

Monte Silver Contact Details: MonteS@ems-legal.com