The citizenship policy of the US for its citizens abroad could easily be brought in line with what the rest of the world does, except Eritrea -- taxation based on residence if it is true that the US wants to alleviate what is happening to innocent people as the IRS casts its wide net of penalty for non-compliance.

What the US citizenship-based taxation is doing to innocent people who have chosen make their lives elsewhere, having earned all of their wages and paid taxes to that country chosen for themselves and their families, is immoral and an imperialistic overreach of the US.

I am affected personally as I cannot use in my retirement planning, as “real Canadians” the Canadian Tax Free Savings Account as the US considers it a foreign trust, the same way it considers the Canadian Registered Education Savings Plan in which parents are offered a means of saving for their children’s education. The US makes our own country discriminate against us in the country we have chosen to live in, raise our children in, work in, pay our taxes in, be good citizens of, etc.

My biggest concern is that the Canadian disabled population who happen to be dual Canadian/US citizens, many of them “Accidental Americans” who have lived in Canada all or most of their lives, are being very much discriminated against by the IRS of the USA. Holders and Beneficiaries of Registered Disability Savings Plans, until this is addressed in the Canada / US Tax Treaty\*, last revised on September 21, 2007, <http://www.fin.gc.ca/treaties-conventions/USA_1-eng.asp> are not getting full benefit of these plans, which are in many cases used as pension plans for the better futures of disabled Canadians.

\* Protocol Amending the Convention Between Canada and the United States of America With Respect to Taxes on Income and on Capital Done at Washington on 26 September 1980, as Amended by the Protocols Done on 14 June 1983, 28 March 1984, 17 March 1995 and 29 July 1997

Can you advise me if the information below is incorrect?

*As far as we know, the IRS will most likely consider RDSP’s a foreign trust requiring the standard reporting requirements (i.e. IRS form 3520/3520A and quite likely IRS form TD F 90-22.1 under the FBAR requirements) for U.S. citizens and residents that are RDSP plan holders. Unlike RRSP’s/RRIF’s held by U.S. citizens that are afforded a tax deferral under Article XVIII(7) of the Treaty, RDSP’s are not yet eligible plans for such tax deferrals for U.S. citizens or residents. As a result, RDSP plan holders and beneficiaries that are U.S. citizens or residents will not benefit from the tax deferral currently enjoyed by Canadian RDSP plan holders.*

*More importantly, the U.S. reporting requirement in itself may make it too difficult for U.S. citizens to be plan holders or beneficiaries of RDSP’s. Adding the RDSP to the agenda for Canada-U.S. Income Tax Convention discussions is critical for RDSP beneficiaries who are American citizens.*

*Tax & Estate Planning
Mackenzie Financial Corporation
180 Queen St. W., 16th Floor
Toronto, Ontario M5V 3K1*

Since starting this nightmare, I have spent in excess of $20,000 for coming into and staying in compliance, owing the US IRS zero in five of the six years and $1,380 last year as I received a Disability Tax Credit in Canada, which is not recognized by the US. I became the holder of a Registered Disability Savings Plan (RDSP) for my son, upon its inception, as it was such a wonderful benefit for those in the disabled community to save for their retirement. I also obtained for him a Tax Free Savings Account. My son, born in Canada, raised in Canada, never registered with the US, never having lived in the US, has never filed US tax returns or FBARs. Because these are considered foreign trust accounts by the US, any passive gains (i.e. Canadian Disability Savings Bonds and Grants and actual gain in investment) I as the Holder and my adult son as the Beneficiary (when he is 60) are subject to $10,000 per account per year of non-reporting.

I have engaged a new Tax lawyer in Calgary (my estate planning lawyer had been consulting with a US Tax lawyer in New York State, but I was getting very little useful advice so I asked that I be given my bill to date, and I have no idea what that will be). The estimate for the work to be done on my case now will be about $20,000, which will be for essentially the same audit that the IRS would do because my Net Worth statement would have me coming dangerously close to being defined as a “covered person” by the US and subject to the exit tax and to amend any filings that do not have all the required IRS forms – and you don’t even want to hear about that. I am 68 years old, retired, have worked very hard in Canada to provide for my children and to be a contributing member of Canadian society. My retirement funds are being drained (I also have a TFSA which is not advisable to have as that further makes US persons in Canada second-class citizens, tax wise). This work will be done before I reschedule my first appointment with the US Consulate in Calgary, the one where I will be advised that it is not a good idea to give up the benefits of my US citizenship. Because of my supposed US citizenship I have a millstone around my neck – and I could have bank accounts closed when FATCA comes to town – it’s already happening to US persons in other countries. Because of my son’s (and my daughter’s) birth to US citizens in Canada, they are “Accidental Americans”. My daughter will deal with her situation, but my son has a developmental disability that precludes him from understanding the importance of such a decision as renunciation of citizenship, but I’ve been told by the Calgary US Consulate that even with a court order I cannot renounce my son’s US citizenship for him. (And, for him to renounce, if he had the perceptual capability, he would have to apply for a US social security card, then would have to file five years of back US tax returns and FBARs, before he would have the “right to renounce his US citizenship”.)

I have to renounce my citizenship once and for all for these reasons:

* I do not want a dual citizenship with two allegiances – I lived in Canada for decades believing I had relinquished my US citizenship when I took my Oath of Canadian Citizenship in 1975 – not so.
* I have lived in Canada since 1969, have lived my life as a Canadian, raised my family in Canada, worked in Canada, paid my taxes to Canada, been a good citizen of Canada and have always intended to be only Canadian.
* I do not wish to continue the stress and expense of administration of compliance with responsibilities of citizenship in two countries.
* I do not want to pass on to anyone in my family or to any executor the stress and expense of administration of compliance with responsibilities of citizenship in two countries.
* Because of health concerns (I have Crohns Disease / am ileostomate), why would I ever want to live in the US where I would have no health care insurance or benefits because of pre-existing conditions?

Discuss renunciation of adult son with US Consulate for these reasons:

* Besides being born in Canada, raised in Canada, schooled and worked in Canada, received disability benefits given by Canada, never registered with the US, never received any benefit from the US, he cannot carry out the responsibility of a citizenship in the US (by reason of perceptual capacity) nor will he ever have the funds to comply with the responsibilities of US citizenship. Absurdly, for him to have the RIGHT to renounce his US citizenship if he did indeed have the perceptual capacity to make the important decision of renunciation of citizenship, he would have to apply for a US social security number, back file at least five years of US returns (for which he would owe $0.00, plus Foreign Bank Account Reports (FBAR) as his financial accounts are over $10,000 with his RDSP and for which there are potential huge penalties,. (I, as his mom and the Holder of his RDSP, am taxable to the US for the Grants and Bonds that the Canadian Government has contributed to his RDSP since it was opened in February 2008.)
* He is already discriminated against because his benefits to the Canadian Registered Disability Savings Plan are negated from that of a Canadian without a US connection.
* Because of health concerns (besides developmental disability, he has asthma and hereditary hemochromatosis), it is makes no sense for my son to ever live in the US where he would not have the health care insurance or benefits he has in Canada.

Mine is certainly not the only family affected by this injustice – and the hurtful and insulting labelling of myself and the approximately 1,000,000 other hard-working, Canadian tax-paying ‘US persons’ in Canada as TAX EVADER. It is mind-boggling what this is doing to families who are affected. In fact, polls show that most people in Canada are ignoring the whole issue, hoping that it will not affect them or they won’t be caught. They are then having to make a decision never again to cross the Canada/US border to see aging relatives or for any other reasons -- for fear of arrest on US soil. Either that or they are getting their lives in order at great financial and emotional cost to be able to renounce US citizenship. The US continues to tax on citizenship rather than residence as 99% of the rest of the world. It is immoral and absurd.

The US has not done its job in properly informing its US citizens abroad of their responsibilities – it let all this slide for decades. Is there no precedent for not previously getting the word out? We have no IRS service in Canada. I have gotten very little advice – other than my questions are beyond the scope of their expertise and they advice me to consult with a tax accountant or lawyer when I have contacted anyone at the IRS, with a whole lot of hassle. I am doing so, drawing from my retirement savings – many people do not have such savings to fall back on.

My children and others born to US parents abroad are innocent victims. They should not be drawn into this overreach by the US. They did not choose to be born to US parents and should have a choice whether or not they wish to be US citizens. Why is this not the case? It’s draconian.

I would really like to know if Commissioner Shulman has responded to the TAD that the TAS sent. We are thankful for the TAS and the report that has gone to Congress. We are waiting for further instruction from the IRS as promised by the US Ambassador to Canada. What has come so far has not done an iota of good for me and my family. Where is the justice?