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Taxing Others in the Age of Trump: Foreigners (and the Politically Weak) as Tax Subjects

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TAXING OTHERS IN THE AGE OF TRUMP: FOREIGNERS (AND THE POLITICALLY WEAK) AS TAX SUBJECTS[1]

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INTRODUCTION

Supporting a tax increase during the past couple of decades might sound the death knell for the career of a U.S. politician. Some attribute George H. W. Bush's presidential reelection campaign loss to violation of his "no new taxes" pledge.[2] Conflicting with the political toxicity of new taxes and tax increases is the relentless demand for revenue to operate government and fund the fulfillment of campaign promises. The fiscal discipline to eliminate the need for revenue increase rarely accompanies the political rhetoric committing to decrease taxes and never increase them again. For many politicians, the funding issue becomes a matter of decreasing funding for programs the politician disfavors and using the decreased funding for programs the politician favors.[3]

These conflicting goals of funding spending programs while reducing (or at least not increasing) taxes have encouraged development of "non-tax" revenue sources. User fees for governmental services that previously had been free or low-cost have proliferated.[4] Law enforcement agencies routinely use property

1. An earlier draft of this Article was presented at the Sanford E. Sarasohn Conference on Critical Issues in International and Comparative Taxation II: Taxation and Migration (Saint Louis University School of Law, Mar. 31, 2017) ("Sarasohn Conference").

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2. *Top 10 Unfortunate Political One-Liners: George H.W. Bush*, TIME, http://content.time.com/time/specials/packages/article/0,28804,1859513_1859526_1859516,00.html [https://perma.cc/3UL6-9E6R]. Bush lost to Clinton in 1992. Andrew Rosenthal, *THE 1992 CAMPAIGN: White House; Bush Says Raising Taxes Was Biggest Blunder of His Presidency*, N. Y. TIMES (Mar. 4, 1992), http://www.nytimes.com/1992/03/04/us/1992-campaign-white-house-bush-says-raising-taxes-was-biggest-blunder-his.html?pagewanted=all [https://perma.cc/NQ5W-42ZJ].

3. President Trump has marked various programs, including funding for the arts and scientific research, education, and Medicaid, for decrease and increased funding for the military. *See* OFFICE OF MGMT. & BUDGET, EXEC. OFFICE OF THE PRESIDENT, A NEW FOUNDATION FOR AMERICAN GREATNESS: FISCAL YEAR 2018, at 1–2, 10, 42–43 (2017). This absence of revenue dilemma currently confronts Trump's program to build a wall on the U.S. border with Mexico. *See* discussion *infra* note 22 and accompanying text.

4. For example, § 10511 of the Revenue Act of 1987 authorized imposition of user fees for private letter rulings from the IRS. Omnibus Budget Reconciliation Act of 1987, Pub. L. No. 100-203, § 10511, 101 Stat. 1330-284, 1330-446 (1987). The standard user fee for a letter ruling in 1990

forfeitures to supplement revenue from government tax allocations—a phenomenon observed in the numbers of forfeitures that are not accompanied by any prosecution.[5] At the state and local level, revenue-based policing with aggressive enforcement of misdemeanors has become commonplace.[6] Hotel and entertainment taxes capture revenue from nonresidents who do not vote locally.[7] Automatic increases of property tax from periodic value reassessments are politically more acceptable than a legislative vote or a referendum in states requiring a vote to increase a tax rate[8] because they do not attach specific political blame for the increase. When revenue falls short and tax increases seem better than spending cuts, income tax increases and steeper progressivity in income tax rates remains impractical. Regressive consumption taxes falling most heavily on the non-affluent and politically weak are the preferred choice for additional revenue.

In the ongoing anti-tax political climate, an ideal choice would be to impose and increase taxes on people who may not or do not vote, people who can be persuaded to vote against their economic interests,[9] and people who lack the political influence to confront and alter facially neutral tax legislation that disproportionally burdens people with similar non-politically dominant

was $300. Rev. Proc. 89-4, 1989-1 C.B. 767, 769. It was $5000 in the year 2000. Rev. Proc. 2000-1, 2000-1 C.B. 62. In 2017, it was $28,300. Rev. Proc. 2017-1, 2017-1 I.R.B. 82. *See generally* U.S. GOV'T ACCOUNTABILITY OFFICE, GAO-08-386SP, FEDERAL USER FEES: A DESIGN GUIDE (2008), http://www.gao.gov/assets/210/203357.pdf [https://perma.cc/YHV9-YC CY] (describing the growing importance of user fees as opposed to broad-based taxes).

5. *Asset Forfeiture Abuse*, AM. CIV. LIBERTIES UNION, https://www.aclu.org/issues/criminal-law-reform/reforming-police-practices/asset-forfeiture-abuse [https://perma.cc/5D8X-7DMZ] ("Owners need not ever be arrested or convicted of a crime for their cash, cars, or even real estate to be taken away permanently by the government.").

6. *See* Henry Ordower, Onésimo Sandoval & Kenneth Warren, *Out of Ferguson: Misdemeanors, Municipal Courts, Tax Distribution and Constitutional Limitations*, 61 HOW. L.J. 113, 116–17 (2018).

7. Logan E. Gans, *Take Me Out to the Ball Game, but Should the Crowd's Taxes Pay for It?*, 29 VA. TAX REV. 751, 767 (2010) (attributing popularity of hotel taxes to their imposition on tourists who have no local political power to resist them).

8. Several states, including Missouri and California, have amended their constitutions to require a vote of the electorate to any new tax or increased rate of an existing tax. MO. CONST. art. X, §§ 16–24; CAL. CONST. art. XIII A, § 3.

9. *See, e.g.*, Nate Cohn, *Who Pays More in Republican Health Plan*, N.Y. TIMES, Mar. 11, 2017, at A16 ("The people who stand to lose the most in tax credits under the House Republican health plan tended to support Donald J. Trump over Hillary Clinton . . . .").

characteristics. Critical tax research has exposed how many racial,[10] gender,[11] sexual orientation,[12] economic,[13] and other biases are embedded in facially neutral tax laws and how those biases generate systemic tax distribution inequities that overburden less affluent taxpayers and underburden more affluent and politically influential taxpayers.[14] Further, lack of standing precludes taxpayers who lack political force from challenging discriminatory tax provisions and non-discriminatory provisions that become discriminatory in their application.[15]

In the context of ambitious spending programs that President Trump promised during his presidential campaign,[16] this Article seeks to identify revenue sources that may be least objectionable to the President's political base because they impose taxes on people who differ in some material way from the membership in that base.[17] As critical tax scholarship has documented the

10. *E.g.*, Dorothy A. Brown, *Race, Class, and Gender Essentialism in Tax Literature: The Joint Return*, 54 WASH. & LEE L. REV. 1469, 1510 (1997); Dorothy A. Brown, *Race and Class Matters in Tax Policy*, 107 COLUM. L. REV. 790, 813 (2007); Dorothy A. Brown, *Teaching Civil Rights Through the Basic Tax Course*, 54 ST. LOUIS U. L.J. 809, 816–17 (2010); Lily Kahng, *Path Dependence in Tax Subsidies for Home Sales*, 65 ALA. L. REV. 187, 232–33 (2013) (addressing the inequalities in home ownership and the favorable tax laws that come with it and advocating to make homeownership more accessible to ameliorate race inequalities).

11. *E.g.*, Stephanie Hunter McMahon, *Gendering the Marriage Penalty*, *in* CONTROVERSIES IN TAX LAW: A MATTER OF PERSPECTIVE 27 (Anthony C. Infanti ed., 2015); Nancy C. Staudt, *Taxation and Gendered Citizenship*, 6 S. CAL. REV. L. & WOMEN'S STUD. 533, 534 (1997); Nancy C. Staudt, *Taxing Housework*, 84 GEO. L.J. 1571, 1571 (1996) ("By providing only a limited childcare subsidy . . . the Tax Code provides financial incentives for women to work in the home after bearing children.").

12. *See, e.g.*, Patricia A. Cain, *Same-Sex Couples and the Federal Tax Laws*, 1 L. & SEXUALITY 97, 101–02 (1991); Patricia A. Cain, *Feminism and the Limits of Equality*, 24 GA. L. REV. 803, 803 (1990) (discussing the "feminist attraction" to sexual equality and Supreme Court decisions upholding state laws that were biased toward women); Anthony C. Infanti, *Deconstructing the Duty to the Tax System: Unfettering Zealous Advocacy on Behalf of Lesbian and Gay Taxpayers*, 61 TAX LAW. 407, 413, 435 (2008).

13. Henry Ordower, *Schedularity in U.S. Income Taxation and Its Effect on Tax Distribution*, 108 NW. U. L. REV. 905, 914 (2013) ("Not imputing income from the owner's use of her property creates a strong economic bias in favor of home ownership over home rental.").

14. *Id.* at 917.

15. Linda Sugin, *Invisible Taxpayers*, 69 N.Y.U. TAX L. REV. 617, 617, 631, 635–40 (2016) (recommending changes to standing limitations to allow taxpayers indirectly affected by discriminatory taxation to challenge its constitutionality).

16. *See, e.g.*, Michael C. Bender, *Trump Begins to Map Out $1 Trillion Infrastructure Plan*, WALL ST. J. (Mar. 8, 2017, 5:30 PM) https://www.wsj.com/articles/trump-begins-to-map-out-1-trillion-infrastructure-plan-1489012229 [https://perma.cc/9D82-942Q].

17. According to Andrew McGill, ninety percent of Trump's voters are conservative and white. He also found much support among those who were not college educated and older women. Andrew McGill, *The Trump Bloc*, ATLANTIC (Sept. 14, 2016), https://www.theatlantic.com/politics/archive/2016/09/dissecting-donald-trumps-support/499739/ [https://perma.cc/QN8H-BSWS]; *see also* Samantha Neal, *Why Trump's Base Differs from the Typical Republican Crowd*,

discriminatory taxation of those who are "other" because of their race, gender, or other characteristics, this Article identifies elements of tax structure that adversely impact those "others" who are or appear foreign. Part I considers taxing those who are neither citizens of nor residents in the United States. Part II identifies how existing tax structures burden immigrants and, in the case of unauthorized[18] immigrants, and, to a lesser extent, temporary authorized residents, deny those same taxpayers participation in the full range of societal benefits. Part III reviews current tax provisions that capture revenue from those who wish to escape the reach of the worldwide income tax and concludes the Article.

I. TAXING FOREIGNERS

A. Direct Taxes and Tributes

A politically perfect tax would burden only non-domestic interests. The U.S. electorate probably would applaud if the United States could supplement its revenue by imposing and collecting an income tax or a wealth tax on the worldwide incomes or the wealth of all citizens and residents of unfriendly countries such as Iran, North Korea, and Russia.[19] With its size and resources, Russia would provide the largest source of tax revenue of the three unfriendly countries.[20] A similar tax on the income or wealth of citizens of friendly countries may not be quite as popular, but the political constituency in the United States that would oppose such a tax might be relatively small. Absent conquest,[21] imposition of that tax is not lawful because the United States is neither the country of citizenship or residence of the taxpayer nor the country of source of

HUFFINGTON POST (Aug. 22, 2016), http://www.huffingtonpost.com/entry/trump-base-different-from-republicans_us_57ae4c2ee4b069e7e5057715 [https://perma.cc/H6UQ-JVEE] (identifying ways in which Trump supporters differ from traditional Republicans).

18. Thanks to Claire LaFont, this Article uses the convention of referring to immigrants and workers who enter or remain in the country without proper governmental authorization to do so as "unauthorized," rather than using the pejorative term "illegal." Claire LaFont, Tax Contributions of Unauthorized Immigrants: Leaving More in the Tax System than They Take Out 5 (Mar. 9, 2017) (unpublished comment) (on file with the Saint Louis University Law Journal and presented at the Sarasohn Conference).

19. Provided the individuals are not dual U.S. and country of origin citizens, of course. The United States already imposes its income tax on the worldwide income of its citizens and residents. Treas. Reg. § 1.1-1(b) (2017).

20. Russia has the eleventh largest gross domestic product in the world. *List of Countries by Projected GDP*, STATISTICSTIMES.COM (Apr. 23, 2017), http://statisticstimes.com/economy/countries-by-projected-gdp.php [https://perma.cc/ND9N-QB2S].

21. G.A. Res. 3314 (XXIX), U.N. Doc. A/RES/29/3314, at 142, 142–43 (Dec. 14, 1974) (reaffirming the prohibition against acquisition of territory by aggression and defining aggression).

the income producing activity.[22] Likewise principles apply to a wealth tax when the wealth is unconnected with the United States. Collection difficulty would render the tax impractical even if it were lawful.

While direct taxation of foreign citizens and residents may not be practical, indirect tributes may be another matter. During his presidential campaign, President Trump introduced the possible exaction of indirect tributes.[23] Trump argued then, and continued to argue during the NATO meeting in Brussels, that the United States should not be paying as large a share of the costs of maintaining the NATO alliance as it currently pays.[24] Trump insisted that other countries in the alliance should bear a greater portion of the monetary cost, especially in view of the United States continuing to provide military protective services widely.[25]

B. Tariffs and Border Adjustment Taxes

Tariffs also provide an opportunity to impose tax on foreign interests and President Trump may be seeking to capture the appeal of imposing taxes on foreigners with tariff proposals, part of his earliest presidential initiatives to target collection of revenue from non-U.S. activities. The proposal was to impose an import duty in the range of twenty to thirty-five percent on Mexican-manufactured automobiles and possibly other Mexican-manufactured goods.[26] The expressed goal of the tax was to encourage automobile manufacturers to shift manufacturing of those cars they will sell in the U.S. market to U.S. locations and out of Mexico.[27]

Representatives of the automobile industry observe that the profit margins on the smaller vehicles they currently manufacture in Mexico are small and those cars might generate little or no profit if they have to manufacture them in the

22. CHARLES H. GUSTAFSON, ROBERT J. PERONI & RICHARD CRAWFORD PUGH, TAXATION OF INTERNATIONAL TRANSACTIONS: MATERIALS, TEXT AND PROBLEMS 16–17 (4th ed. 2011).

23. Thanks to Matthew Lister, Visiting Assistant Professor at the Wharton School, University of Pennsylvania, for this suggestion as a comment during the Sarasohn Conference.

24. *See* Peter Baker, *Trump Says NATO Allies Don't Pay Their Shares. Is That True?*, N.Y. TIMES (May 26, 2017), https://www.nytimes.com/2017/05/26/world/europe/nato-trump-spending.html [https://perma.cc/7A4G-SPMA].

25. *See id.*

26. Jeremy Diamond, *Trump Floats 20% Tax on Mexican Imports to Pay for Wall, but Considering Other Options*, CNN POL. (Jan. 27, 2017, 11:02 AM), http://www.cnn.com/2017/01/26/politics/donald-trump-mexico-import-tax-border-wall/ [https://perma.cc/7JDJ-3BY4]. The discussion has shifted to a more general border tax on all imports or a border adjustment tax. Timothy M. Todd, *What Is a Border Adjustment Tax?*, FORBES (Jan. 17, 2017, 11:16 AM), http://www.forbes.com/sites/timtodd/2017/01/17/what-is-a-border-adjustment-tax/#4e56236a1d47 [https://perma.cc/3HJH-5DGE?type=image] (explaining how the border adjustment tax is part of the GOP's "A Better Way" Blueprint).

27. *How a Trump Tariff Could Sideswipe U.S. Auto Industry*, CHI. TRIB. (Jan. 24, 2017), http://www.chicagotribune.com/business/ct-trade-tariff-auto-industry-20170124-story.html [https://perma.cc/2PLP-X72L?type=image].

United States.[28] On the other hand, the additional revenue from the twenty percent tariff on foreign manufactured goods could be dedicated to the construction of the proposed border wall, another presidential initiative.[29] The tariff would give a market advantage to U.S. manufactured cars since the U.S. tariff would increase the price of foreign manufactured cars in the United States by up to twenty percent and non-U.S. manufacturers would pay, although not necessarily bear, the tax.[30]

Imposition of an import duty harkens to a pre-income tax era of federal taxation. Until the enactment of the Sixteenth Amendment,[31] the federal government was dependent largely on tariffs, although they began to wane as a revenue source beginning around 1900.[32] In recent years, tariffs have provided only about one percent of federal revenue.[33] As the importance of tariffs as a revenue source declined, imposition of tariffs became tied to protectionism by leveling the price of foreign and domestic materials and goods where the foreign producer could supply or produce materials and goods at a lower price than U.S. suppliers. The last decades have deemphasized tariffs further as international trade agreements removed barriers between domestic and foreign markets and eliminated tariffs except as penalty measures to prevent dumping of goods into the U.S. market at artificially low prices to eliminate U.S. competition.[34]

A tariff on Mexican-manufactured cars would introduce uncertainties into the market both in the United States and in Mexico. If Mexican-based automobile manufacturing remains in Mexico and pays the import duty to reach the U.S. market, the tariff successfully taxes foreign interests that may not vote in the United States. While the cost of the Mexican-manufactured cars will increase with the tariff, the Mexican manufacturer may be unable to pass the full tariff cost on to U.S. buyers. The manufacturer may bear part of the tax in the

28. *Id.*

29. Jeremy Diamond, *Trump Orders Construction of Border Wall, Boosts Deportation Force*, CNN POL. (Jan. 25, 2017, 11:44 PM), http://www.cnn.com/2017/01/25/politics/donald-trump-build-wall-immigration-executive-orders/ [https://perma.cc/6FF4-8R75].

30. *See* CHI. TRIB., *supra* note 27.

31. U.S. CONST. amend. XVI (the income tax amendment).

32. Tariffs produced more than half of all federal revenue until the income tax. In some of those years, tariff revenue approached 95% of federal revenue. U.S. BUREAU OF THE CENSUS, HISTORICAL STATISTICS OF THE UNITED STATES: COLONIAL TIMES TO 1970, PART 2, at 1106 (1975). *But see* Sarah Laskow, *Colonial America Was Built on Lottery Revenue*, ATLAS OBSCURA (Apr. 21, 2017), http://www.atlasobscura.com/articles/early-american-lottery-ticket-colonial [https://perma.cc/9RT5-R88A] (discussing historical evidence that many early infrastructure projects were funded with lottery revenues).

33. *See* Paul Solman, *Could a Higher Import Tariff Pay for Medicare and Get the US out of Debt?*, PBS NEWSHOUR (Jan. 5, 2012, 3:38 PM), http://www.pbs.org/newshour/making-sense/could-a-higher-import-tariff-p/ [https://perma.cc/UA9A-2E2A].

34. *See Understanding Antidumping & Countervailing Duty Investigations*, U.S. INT'L TRADE COMM'N, https://www.usitc.gov/press_room/usad.htm [https://perma.cc/RTQ9-Y44B].

form of a reduced return on invested capital and the Mexican workers may bear part of the tax in the form of reduced wages and benefits so that the tariff collects taxes from foreign manufacturers and their foreign employees, all of whom are not U.S. citizens and voters. Even if some of the Mexican manufacturers are subsidiaries of U.S. corporations, the owners and managers of which may be U.S. voters, the tax nevertheless enjoys the rhetorical advantage of not being a tax on U.S. taxpayers.[35]

To the extent the manufacturer can pass the tariff cost on to U.S. buyers, the tariff becomes an indirect tax on U.S. consumers. According to representatives of the U.S. automobile industry, the consumers of the Mexican manufactured cars are likely to be predominantly low- to moderate-income individuals who cannot afford the higher priced and more profitable SUVs and trucks that experience high U.S. demand.[36] The tariff becomes a regressive tax taking a higher percentage of the income of low-income individuals than of high-income individuals. The tax also may price some consumers out of the automobile market and, concomitantly, out of the employment market as well if they need cars to commute to their place of employment. But if Mexicans are the "other," i.e., foreign interests without U.S. political power, low- and moderate-income American workers also may be the "other" in the political and social scheme of American politics.[37]

Manufacturers may succumb to the tariff pressure and relocate their manufacturing operations to the United States.[38] Workers in the Mexican automobile industry will lose employment, and the United States will lose a source of foreign revenue. Gains in employment for U.S. workers in the automobile industry will follow,[39] but unless those U.S. workers accept

35. Rather, it is a tax on Mexican products. Patrick Gillespie, *40% of a Mexican Import Is American*, CNN MONEY (Jan. 26, 2017, 2:08 PM), http://money.cnn.com/2017/01/26/news/economy/mexico-united-states-inputs-40/index.html [https://perma.cc/RXD8-4J4J]. Participation of the shareholders and managers of the U.S. corporation in the U.S. political process may render the tax somewhat less than fully ideal, but the non-U.S. tax rhetoric is likely to prevail.

36. *See* CHI. TRIB., *supra* note 27.

37. *See supra* notes 10–16 and accompanying text (discussing tax distribution).

38. Although Carrier agreed to leave some operations and jobs in Indiana in response to Trump's request, it just relocated a different part of operations to Mexico; consequently, there was a loss of long-term U.S. jobs. Nelson D. Schwartz, *Trump Saved Carrier Jobs. These Workers Weren't as Lucky*, N.Y. TIMES (Apr. 23, 2017), https://www.nytimes.com/2017/04/23/business/economy/indiana-united-technology-factory-layoffs.html [https://perma.cc/VJ24-STVQ]. For the earlier coverage, see Nelson D. Schwartz, *Trump Sealed Carrier Deal with Mix of Threat and Incentive*, N.Y TIMES (Dec. 1, 2016), https://www.nytimes.com/2016/12/01/business/economy/trump-carrier-pence-jobs.html [https://perma.cc/34MB-XYSV].

39. However, increased U.S. employment may be unneeded currently because workers are unavailable. Patricia Cohen, *Jobless Rate at 10-Year Low as Hiring Grows and Wages Rise*, N.Y. TIMES (May 5, 2017), https://www.nytimes.com/2017/05/05/business/economy/jobs-report-unemployment.html [https://perma.cc/YR8Z-DSTZ].

Mexican-level wages, the net gain in U.S. employment will be smaller than the net loss in Mexican employment because, as the balance between wages and cost of automation shifts in favor of automation, manufacturers are apt to increase automation in their U.S. plants to keep their products at a price acceptable in the small car market. Moreover, the loss in Mexican employment will drive some Mexican workers to seek to cross the border illegally in search of employment in the United States. That movement will increase border pressure and escalate the U.S. cost of border enforcement. If successful in crossing, the displaced Mexican workers will compete with U.S. workers in some labor markets in which employers will accept unauthorized workers. The Mexican workers may find that the opportunities to work without proper documentation are likely to increase during a labor shortage as they continue to accept lower wages than their U.S. counterparts.

Even if Congress does not impose the tariff that President Trump proposed during and after his presidential campaign, the tariff discussion may have become instrumental in bringing a border adjustment tax proposal to the fore in the national debate. A border adjustment tax, as currently discussed, is fundamentally a destination-based cash-flow value-added tax that ultimately might replace the corporate income tax.[40] President Trump did not include a border adjustment tax in recent proposals and has rejected such a tax expressly.[41] A destination value-added tax would tax all goods sold for use in the United States.[42] Goods produced in the United States for sale outside the United States would not be subject to U.S. tax.[43] The congressional discussion has focused on imposing the tax on imported goods for U.S. consumption but not domestically

40. Alan Auerbach & Michael Devereux, *The Case for a Border-Adjusted Tax*, N.Y. TIMES (Mar. 6, 2017), https://www.nytimes.com/2017/03/06/opinion/the-case-for-a-border-adjusted-tax.html?_r=0 [https://perma.cc/55YQ-BUEX]. Republicans in the House of Representatives have proposed adopting this tax in place of the current corporate tax system.

> [The tax] would be levied on the domestic cash flows of all businesses operating or selling here. . . . This would mean introducing 'border adjustments' to the current system – exempting exports from tax, but taxing imports. . . . The border adjustments would strongly discourage the shifting of profits and activities offshore and eliminate incentives for corporate inversions.

Id.

41. Jonathan Curry, *Trump Dismisses Border Adjustability, Eyes Interest Deductibility*, TAX ANALYSTS (May 13, 2017), http://www.taxanalysts.org/content/trump-dismisses-border-adjustability-eyes-interest-deductibility [https://perma.cc/7MN5-3E3A].

42. Alan J. Auerbach et al., *Destination-Based Cash Flow Taxation* 6 (Saïd Bus. Sch. Working Paper Series, Paper No. 1, 2017).

43. *Id.* "For example, if a US manufacturer sells steel to a French automobile producer which uses the steel to produce automobiles sold back to the United States, US application of the destination-based tax would not tax the sale of steel but would tax the automobile imports." *Id.* at 18.

produced goods for U.S. consumption,[44] thereby favoring domestic production. To the extent that the tax would reach both domestic and foreign produced goods, the domestic producer still might enjoy a competitive advantage if the base for the tax permits a deduction for domestic expenses of production but taxes imported goods on their gross sales price. While there is concern that such a cash-flow tax would violate World Trade Organization agreements to which the United States is a party,[45] studies are to the contrary.[46]

C. Restricting Investment Incentives

In addition to addressing tariffs, President Trump also has criticized existing multilateral, international cooperation agreements and treaties.[47] Presumably his criticism eventually will lead to tax treaties as well as development, military, and trade agreements even though U.S. tax treaties historically have not been multilateral.[48] Various provisions of the Code[49] exempt foreign investment in the United States from U.S. taxation.[50] Modification of those provisions offers an opportunity to tax foreigners while not increasing taxes on U.S. citizens and residents. For example, interest on deposits in U.S. financial institutions and interest paid on portfolio debt received by non-U.S. persons is exempt from the U.S. withholding tax.[51] Repeal of those exemptions would enable the United

44. Michelle Cottle, *Who's Afraid of a Big BAT Tax?*, ATLANTIC (Feb. 21, 2017), https://www.theatlantic.com/politics/archive/2017/02/border-adjustment-tax-congress/517287/ [https://perma.cc/H2HG-XCCN].

45. Tim Worstall, *GOP and Trump Beware - EU Planning WTO Case Against Border Adjustment Tax*, FORBES (Feb. 14, 2017, 9:42 AM), https://www.forbes.com/sites/timworstall/2017/02/14/gop-and-trump-beware-eu-planning-wto-case-against-border-adjustment-tax/#37a490b1c376 [https://perma.cc/24DZ-JRE9].

46. *See generally* Elena Patel & John McClelland, *What Would a Cash Flow Tax Look Like for U.S. Companies? Lessons from a Historical Panel* (Office of Tax Analysis, Working Paper No. 116, 2017), https://www.treasury.gov/resource-center/tax-policy/tax-analysis/Documents/WP-116.pdf [https://perma.cc/DW3V-XDRY].

47. *See, e.g.*, Max Fisher, *Trump Prepares Orders Aiming at Global Funding and Treaties*, N.Y. TIMES (Jan. 25, 2017), https://www.nytimes.com/2017/01/25/us/politics/united-nations-trump-administration.html?_r=0 [https://perma.cc/TVR8-MG2A] (showing criticisms focused largely on multilateral agreements and international agency funding); *see also* Baker, *supra* note 23.

48. The United States was about to participate in multilateral tax treaty discussion prior to Trump's election. Kevin A. Bell, *Stack: U.S. to Participate in Multilateral Tax Treaty Discussions*, BLOOMBERG BNA (Oct. 2, 2016), https://www.bna.com/stack-us-participate-m57982059086/ [https://perma.cc/6W6F-QETJ].

49. I.R.C. (2012).

50. *See* I.R.C. §§ 871(a), 881(a) (2012) (imposing a thirty percent withholding tax on fixed, determinable, and periodic income from sources in the United States and paid to non-U.S. taxpayers); I.R.C. §§ 871(h)–(i), 881(c)–(d) (exempting portfolio interest and interest on deposits from the withholding tax).

51. I.R.C. §§ 871(h)–(i), 881(c)–(d).

States to capture a withholding tax on interest payments from the United States and U.S. payers to non-U.S. persons. The United States could renegotiate its bilateral tax treaties to discriminate by country of citizenship and exempt interest payments to foreigners from some countries but not others. Similarly, renegotiation of tax treaties could increase withholding taxes on dividends and royalties that are commonly subjects of reduced withholding taxes for non-U.S. persons from treaty countries.

Currently, gain from the sale or other disposition of corporate stock and other investment property, except real property,[52] traded in U.S. markets remains exempt from U.S. taxation because the property is sourced at the residence of the owner.[53] Accordingly, as non-U.S. persons selling shares in U.S. corporations, their gain on sale is not incurred in the United States and not subject to U.S. tax. A simple change in that sourcing rule would attribute the source to the property's physical location in the case of tangible property and could define the physical location for intangible investment property where the issuer of stock or securities is located rather than the residence of the owner of the securities. All stock issued by U.S. corporations would be deemed to be located in the United States so that sale of stock in a U.S. corporation would have its source in the United States and be subject to U.S. tax. Tangible properties like precious metals would have a physical location wherever they are when sold. A sale on a U.S. spot market would occur in the United States regardless of the residence of the seller, and the gain would be taxable in the United States. Despite departure from traditional sourcing rules, sourcing gain from corporate shares where the corporation is located is supportable since its dividends are sourced by corporate location and the value of shares, and hence gain on the shares, is a function in part of the corporation's retained earnings,[54] i.e., funds the corporation could have distributed as dividends but did not. The foreign shareholder extracts those retained earnings through the sale of the shares.[55]

The changes the previous paragraphs suggest impose the U.S. income tax on taxpayers who cannot vote in the United States. Those non-U.S. persons would appear to be ideal, non-political targets so long as the United States follows the path of isolation that the President seems to favor.[56]

52. I.R.C. § 897(a)(1) (2012) (treating gain from U.S. real property as effectively connected with a U.S. trade or business so that it is sourced and subject to tax in the United States).

53. I.R.C. § 865(a)(2) (2012).

54. The measurement of dividend paying ability for tax purposes is earnings and profits under I.R.C. § 312(a), which is computed differently from the accounting concept of retained earnings.

55. Arguably, taxable gain from corporate shares should reduce the corporation's earnings and profits as the distribution of a dividend already does.

56. Charles Krauthammer, *Trump's Foreign Policy – Isolationism & 'America First' Is Not in the Country's Interest*, NAT'L REV. (Jan. 26, 2017, 8:00 PM), http://www.nationalreview.com/article/444321/trumps-foreign-policy-isolationism-america-first-not-countrys-interest [https://per

As with tariffs, however, alterations in the rules are not without risk to the U.S. economy. Foreign investors might eschew U.S. investments and invest in countries with more favorable tax rules. Among the largest investors in U.S. government debt are foreign investors who may become disinclined to purchase additional government and corporate debt.[57] And in response to sourcing rule changes, tax planners are likely to create foreign intermediaries or mirror products similar to American depository receipts for shares of foreign corporations traded in the United States. The foreign investors could trade interests in those intermediaries and mirror products instead of the underlying U.S. securities so that there would be no sales of U.S. shares by foreigners. Enactment of a broad mark-to-market realization rule,[58] to substitute for the current sale or exchange rule of realization and inclusion,[59] would preclude substitution of mirror shares or intermediaries to avoid the U.S. tax on gain, but mark-to-market inclusion violates longstanding tax principles and may be unconstitutional.[60] Foreign countries also are likely to reciprocate and tax U.S. persons on their investments in those countries. Whether the United States would gain or lose from the shifting of foreign investment away from the United States and U.S. investment to the United States is uncertain, but the shift probably would make the United States a less significant participant in the global economy than it is today.

II. TAXING (IM)MIGRANTS

While taxing foreigners has great appeal—especially in an anti-tax climate—the preceding section suggests that taxing foreigners may prove impractical and, even if possible, rife with political and economic uncertainty.

ma.cc/GS5C-HMCT] ("No more, declared Trump: 'From this day forward, it's going to be only America First.'").

57. Approximately, $6 trillion of U.S. treasury debt is held by non-U.S. persons, including foreign governments. FED. RESERVE BD., DEP'T OF THE TREASURY, MAJOR FOREIGN HOLDERS OF TREASURY SECURITIES (2017), http://ticdata.treasury.gov/Publish/mfh.txt [https://perma.cc/ZN4Z-LTMV]. That amount is nearly one-third of the national debt of the U.S. *Historical Debt Outstanding - Annual 2000 - 2015*, TREASURYDIRECT, https://www.treasurydirect.gov/govt/reports/pd/histdebt/histdebt_histo5.htm [https://perma.cc/4B8Z-RFWH].

58. I.R.C. § 1256(a)–(b) (2012) (limited mark-to-market for commodities and other positions); I.R.C. § 475(a) (2012) (mark-to-market for securities dealers). Mark-to-market means a "contract held by the taxpayer at the close of the taxable year shall be treated as sold for its fair market value on the last business day of such taxable year (and any gain or loss shall be taken into account for the taxable year)." I.R.C. § 1256(a)(1).

59. I.R.C. § 1001(a)–(c) (2012) (measuring gain or loss on sale or other disposition of property and including the gain or loss in income).

60. Henry Ordower, *Revisiting Realization: Accretion Taxation, the Constitution, Macomber, and Mark to Market*, 13 VA. TAX REV. 1, 94 (1993). Even if constitutional, the mark-to-market rule may be unworkable unless it applies to U.S. as well as foreign owners, and U.S. owners may find it a high price to pay for taxing gain of foreigners.

Other possible targets for taxation enable politicians to avoid the political pitfall of increasing taxes on one's constituents. For example, taxing immigrants, whether their presence in the United States is authorized or unauthorized, and temporary residents is neither impossible nor illegal. Immigrants voluntarily subject themselves to the taxing jurisdiction by entering and residing in the taxing country and, in the case of the United States, may not vote until and if they become citizens.[61] As a class, immigrants and temporary residents form a politically low risk target group on which to impose a disproportionally high tax burden.

Immigration pressures, like the ongoing refugee crisis from the war in Syria, motivate legislatures to modify tax structures to shift part of the economic cost of immigration to segments of the immigrant class who have the wherewithal to contribute.[62] And as increasing numbers of economic and political refugees find their way to countries with generous welfare systems,[63] progressive income and estate/wealth tax-based systems have given way to diminished progressivity in those taxes and increased reliance on regressive taxes—value-added taxes and wage-based payroll taxes (including social security), for example.[64] The regressive taxes impose a disproportional tax burden on low wage citizen workers and economic refugees.

61. In federal elections, noncitizens may not vote, but some countries do permit resident noncitizens to vote. Peter Spiro, *Noncitizen Voting Makes Sense. Why Don't Liberals Agree?*, BLOOMBERG (June 19, 2013, 5:00 PM), https://www.bloomberg.com/view/articles/2013-06-19/noncitizen-voting-makes-sense-why-don-t-liberals-agree- [https://perma.cc/N2T5-588J].

62. *See* Ryan Bubb, Michael Kremer & David I. Levine, *The Economics of International Refugee Law*, 40 J. LEGAL STUD. 367, 386–87 (2011) (addressing how imposing a tax on economic migrants and refugees diminishes the economic incentive to migration). And, Denmark, for example, enacted legislation in 2016 permitting the seizure of cash and jewelry from asylum seekers as they enter Denmark. *Here's How Denmark's Famed 'Jewellery Law' Works*, LOCAL (Feb. 5, 2016) (Den.), http://www.thelocal.dk/20160205/heres-how-denmarks-controversial-jewellery-law-works [https://perma.cc/CCU7-3MGW]. Given the broad reach of the tax definition the Supreme Court adopted in *National Federation of Independent Business v. Sebelius*, 132 S.C. 2566, 2595 (2012) (holding shared responsibility payment is a tax), such a border payment would be classified as a tax despite the limited number of individuals it would affect.

63. William Saletan, *Business as Usual*, SLATE (Sept, 10, 2015, 9:57 AM), http://www.slate.com/articles/news_and_politics/foreigners/2015/09/europe_s_migrant_crisis_is_explained_by_economic_globalization_smuggling.html [https://perma.cc/2ZZ5-AGHP].

64. Henry Ordower, *Retreat from Progressive Taxation in the Swedish Welfare State: Does Immigration Matter?* 5 (St. Louis Univ. Legal Studies Research, Working Paper No. 18, 2014), https://papers.ssrn.com/sol3/papers.cfm?abstract_id=2468813 [https://perma.cc/D9PZ-GBHH] ("[T]he correlation between the shift from progressive to regressive taxes and changes in immigration patterns and resulting cultural diversification in Sweden is remarkable."); Kyle Pomerleau & Kevin Adams, *Sources of Government Revenue in the OECD, 2016*, TAX FOUND. (July 7, 2016), https://taxfoundation.org/sources-government-revenue-oecd-2016/ [https://perma.cc/G99H-KLDY] (showing percentages of revenue by tax type in 2013).

Economic refugees, those fleeing their home country because they are unable to support themselves and their family,[65] as opposed to economic migrants, those with an adequate living standard in their home country but seeking a higher living standard,[66] tend to be lower to moderate-income individuals. They accept low wage employment when they enter the receiving country, especially those who are unauthorized workers, as Mexicans and Central Americans in the United States frequently are. Political refugees, on the other hand, often enter legally and are likely to be better educated on entry than many economic refugees. Their wages assimilate to the wages of the domestic workers with comparable skills more rapidly than unskilled illegal immigrants.[67]

The United States and other countries welcome temporary economic immigrants with needed skills under special entry regimes.[68] Such immigrants tend to be relatively highly compensated and are less vulnerable to regressive taxes than are lower income, unskilled immigrant workers. In addition, programs for well-to-do investors who have considerable resources to invest provide an accelerated route to admission to many countries and often accelerated citizenship routes.[69] Such programs raise investment capital and tax revenue from the investment in the economy of the resident country and, in a worldwide tax system like the United States has, the new residents' income from all sources.

The United States subjects all its citizens, whether or not resident in the United States, and, with limited exceptions for students, teachers, athletes, and foreign government or agency personnel, all residents,[70] whether their residence in the United States is authorized or unauthorized, to tax on their income from

65. *What Are Economic Refugees?*, PROJECT ECON. REFUGEE, http://www.economicrefugee.net/what-does-economic-refugee-mean/ [https://perma.cc/4U8U-SSEX].

66. Jan Semmelroggen, *The Difference Between Asylum Seekers, Refugees and Economic Migrants*, INDEPENDENT (Aug. 18, 2015), http://www.independent.co.uk/news/world/europe/the-difference-between-asylum-seekers-refugees-and-economic-migrants-10460431.html [https://perma.cc/E2C5-GG5Y].

67. *See* Animesh Giri, *From Refuge to Riches? An Analysis of Refugees' Wage Assimilation in the United States*, INT'L MIGRATION REV. (Ctr. for Migration Studies, New York, N.Y.), July 25, 2016, at 28–30, http://onlinelibrary.wiley.com/doi/10.1111/imre.12285/full [https://perma.cc/Y6TD-M29G] ("The difference in wages may also arise from the choice of residential location. Non-refugee immigrants are more likely to have larger networks and, as such, be more likely to locate themselves in close proximity to enclaves of other similar immigrants.").

68. *Temporary (Nonimmigrant Workers)*, U.S. CITIZENSHIP & IMMIGR. SERVS. (Sept. 7, 2011), https://www.uscis.gov/working-united-states/temporary-nonimmigrant-workers [https://perma.cc/48S7-N32Q]. See worker classifications H-1B (specialty occupations) and L1-A (intra-company transfers of skilled workers and managers), for examples. *Id.*

69. *See generally* Leila Adim, *Between Benefit and Abuse: Immigrant Investment Programs*, 62 ST. LOUIS U. L.J. 121 (2017); Allison Christians, *Buying In: Residence and Citizenship by Investment*, 62 ST. LOUIS U. L.J. 51 (2017).

70. A resident includes individuals admitted to the United States for permanent residency and individuals who satisfy a substantial presence test. I.R.C. § 7701(b)(1)(A)(ii), (b)(3) (2012).

all sources worldwide.[71] For income that has its source outside the United States, the United States generally cedes initial taxing jurisdiction to the foreign country in which the income has its source by crediting the foreign tax against the U.S. tax.[72] The burdens of paying U.S. tax need not correlate with identifiable benefits derived from the United States.[73]

U.S. employees are subject to withholding taxes on their wages.[74] Unauthorized workers, however, may not recover withholding in excess of their tax liability[75] because they use social security numbers that are not theirs or they simply do not file the income tax return necessary to claim the refund. While unauthorized workers who have individual taxpayer identification numbers[76] may claim a refund of withholding in excess of their tax liability, they are ineligible for the earned income credit that authorized U.S. residents may claim.[77] As the Trump administration enhances border and immigration enforcement activities and its efforts to deport unauthorized workers,[78] it seems likely that increasing numbers of unauthorized workers intentionally will not claim tax refunds to which they are entitled out of fear that the IRS and local taxing authorities will share information with federal immigration authorities.[79]

Both legal temporary residents and unauthorized workers pay social security taxes but are likely never to participate in the benefits from the social security

71. Treas. Reg. § 1.1-1(b) (2017).

72. I.R.C. § 901 (2012) (credit for foreign taxes). The credit is nonrefundable; that is, it is limited in amount to the U.S. tax that would have been imposed even if the foreign tax is greater than the U.S. tax. I.R.C. § 904(a) (2012).

73. Cook v. Tait, 265 U.S. 47, 56 (1924) (holding the government has the power to tax citizens on all income without identification of direct benefit). Similarly, residents benefit generally from the government.

74. I.R.C. § 3402(a)(1) (2012) (tax withholding on wages).

75. I.R.C. § 31 (2012) (refundable tax credit for withholding on wages in excess of tax liability).

76. *See generally Individual Taxpayer Identification Number*, INTERNAL REVENUE SERV. (Sept. 6, 2017), https://www.irs.gov/individuals/individual-taxpayer-identification-number-itin [https://perma.cc/4XJN-APS2] (recognizing an alternative tax identification number for individuals who are not eligible for social security numbers).

77. I.R.C. § 32(c)(1)(E) (2012) (requiring an identifying number to claim the credit); I.R.C. §32(m) (defining the identifying number as a social security number only); Francine J. Lipman, *The "ILLEGAL" Tax*, 11 CONN. PUB. INT. L.J. 93, 100 (2011) ("[U]ndocumented immigrants are subject to income taxes at a higher effective rate" in part because they "do not qualify for the refundable earned income tax credit . . . ."); LaFont, *supra* note 18, at 3.

78. Nicholas Kulish, Caitlin Dickerson & Ron Nixon, *Immigration Agents Discover New Freedom to Deport Under Trump*, N.Y. TIMES (Feb. 25, 2017), https://www.nytimes.com/2017/02/25/us/ice-immigrant-deportations-trump.html?_r=0 [https://perma.cc/9W25-FX8Y].

79. *Cf.* Farah Stockman & J. David Goodman, *Trump Immigration Policies Pose Conflict for Police in 'Sanctuary Cities,'* N.Y. TIMES (Feb. 24, 2017), https://www.nytimes.com/2017/02/24/us/sanctuary-city-trump-immigration-detainers.html [https://perma.cc/6RCG-84FY] (addressing the concern that undocumented residents will not communicate and work with their local police if they fear that the police are cooperating with federal immigration authorities).

system at retirement age because, in the case of unauthorized workers, they remain in the United States and are ineligible for benefits or, for both temporary workers and unauthorized workers, they no longer are in the United States and fail to claim benefits or otherwise fail to meet the participation criteria.[80] In addition, immigrants pay state and local sales taxes, excise taxes, and property taxes.[81]

III. TAXING NEW FOREIGNERS AND DOMESTIC "BAD HOMBRES"[82]

Taxing expatriating individuals and entities, that is individuals and entities who or which are becoming foreigners,[83] also has considerable appeal. Such individuals and entities are nearly as attractive as foreigners, almost as politically non-controversial, and perhaps more enticing as tax subjects than immigrants who may become voters eventually. Such individual tax subjects will not vote in the future (although, if they are sufficiently wealthy, they may be willing to participate using campaign funds in the U.S. electoral process) and entities do not yet vote even though they may participate in the political process without restriction.[84] Similarly, taxing those who evade taxes by secreting their investments and investment income offshore[85] escapes the ire of the anti-tax movement because the activity may seem reprehensible in contrast to the lawful exploitation of tax planning opportunities (a.k.a. loopholes). Instead, hiding assets is unambiguously illegal and not the routine underreporting of small amounts of income or claims of excess deductions that often are socially

80. Noncitizens generally cease to receive social security benefits when they depart the United States, however, under specific circumstances and reciprocal agreements, such noncitizens may continue to claim benefits. *Can Noncitizens Living Outside the United States Receive Social Security Benefits?*, SOC. SEC. ADMIN. (Sept. 14, 2017), https://faq.ssa.gov/link/portal/34011/34019/Article/3843/Can-noncitizens-living-outside-the-United-States-receive-Social-Security-benefits [https://perma.cc/L7QG-LFWV].

81. *Undocumented Immigrants' State & Local Tax Contributions*, INST. ON TAX'N & ECON. POL'Y (Mar. 2, 2017), http://www.itep.org/immigration/ [https://perma.cc/BDK8-3RPE].

82. Reference is to President Trump's comment in the third presidential debate. *Donald Trump: Deport "Bad Hombres" – Video*, GUARDIAN (Oct. 20, 2016, 4:46 AM), https://www.theguardian.com/us-news/video/2016/oct/20/donald-trump-bad-hombres-us-presidential-debate-las-vegas-video [https://perma.cc/PF6F-TBVL].

83. I.R.C. § 877A(g)(2) (2012) (defining "expatriate" as a U.S. citizen who relinquishes citizenship or a long-term U.S. resident who ceases to be a lawful permanent resident).

84. Citizens United v. FEC, 558 U.S. 310, 361, 371–72 (2010) (holding that corporations have First Amendment rights to participate in the electoral process with candidate advertising). Expatriation for tax reasons is a far more nuanced topic than this Article leaves room to explore. For example, expatriation smacks of disloyalty bordering on tax evasion but also provides tax reduction proponents fuel for arguments that taxes are too high and drive important economic participants into exile.

85. Foreign Account Tax Compliance Act (FATCA), I.R.C. §§ 1471–1474 (2010) (compelling disclosure of American citizens' and residents' offshore accounts in order to tax the income produced by those accounts under the U.S. principle of worldwide taxation).

acceptable in many communities.[86] And the United States continues to tax the worldwide income of U.S. citizens and green card holders who live outside the United States but retain their right to return to the United States for their permanent residence.[87]

The expatriation tax applies to citizens who renounce their U.S. citizenship and permanent U.S. residents who relinquish their right to reside in the United States. The tax combines a current tax on unrealized gain and realized, but unrecognized, gain in the taxpayer's property[88] with a continuation tax on the taxpayer's deferred compensation through a withholding tax[89] similar to the tax on the fixed and determinable periodic income of nonresident aliens and foreign corporations receiving income from sources in the United States[90]

The tax on expatriated entities[91] disregards the expatriation and continues to tax the income of certain corporations following their expatriation if pre-expatriation owners continue to hold eighty percent of the ownership interests in the entity.[92] In addition, the expatriation tax operates as a continuation tax on some or all the gain recognized by the expatriated entity for ten years following expatriation.[93]

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86. *See generally* Henry Ordower, *Perspectives on the Tax Avoidance Culture: Legislative, Administrative, and Judicial Ambiguity*, *in* THE ROUTLEDGE COMPANION TO TAX AVOIDANCE RESEARCH 26 (Yulia Epifantseva & Nigar Hashimzade eds., 2018).

87. The United States remains an outlier in world taxing systems by taxing the worldwide income of its citizens and residents. Treas. Reg. § 1.1-1(b) (2017).

88. I.R.C. § 877A(a), (h) (2012) (mark-to-market inclusion for appreciated property; termination of deferral for other deferred items). The inclusion in I.R.C. § 877A(a)(1) is subject to the exclusion of an inflation-adjusted $600,000. I.R.C. §877A(a)(3)(A). Some commentators argue the expatriation tax may be unconstitutional. Henry Ordower, *The Expatriation Tax, Deferrals, Mark to Market, the Macomber Conundrum and Doubtful Constitutionality*, 15 PITT. TAX REV. (2017) (unpublished at the time this Article was edited); William Thomas Worster, *The Constitutionality of the Taxation Consequences for Renouncing U.S. Citizenship*, 9 FLA. TAX REV. 921, 941 (2010). A similar French expatriation, where the French resident was charged a tax on an unrealized increase in the value of securities upon transferring his residence outside of France, has been held to violate the freedom of establishment clause of the Treaty Establishing the European Community. Case C-9/02, Hughes de Lasteyrie du Saillant v. Ministère de l'Économie, des Finances et de l'Industrie [Hughs of Lasteyrie du Saillant v. Ministry of the Economy, Finance and Industry], 2004 E.C.R. I-2431, ¶¶ 1–2, 40, 45, 48, 69.

89. I.R.C. § 877A(d)(1) (imposing a thirty percent withholding tax on other deferred compensation income).

90. I.R.C. §§ 871(a), 881(a) (2012).

91. I.R.C. § 7874(a) (2012) (imposing a tax on inversion gain and continuing to tax certain entities).

92. I.R.C. § 7874(b) (treating a foreign corporation as a domestic corporation if it is an eighty percent surrogate U.S. corporation); I.R.C. § 7874(a)(2)(B) (defining surrogate as an acquired U.S. entity in which former shareholders continue to own at least sixty percent of the stock that they owned in the acquired domestic corporation).

93. I.R.C. § 7874(a)(1) (taxing the inversion gain); I.R.C. § 7874(d)(2) (defining inversion gain).

In recent years, the United States has sought to discover foreign diverted and secreted income of U.S. persons by imposing penalties[94] on those who secrete their income offshore and sanctions on financial institutions and others that facilitate the secretion.[95] The IRS initiated an offshore voluntary disclosure program enabling taxpayers who secreted assets offshore to disclose their offshore investments and receipts, pay the tax due, and become subject to reduced civil penalties and free from criminal prosecution for tax evasion.[96] Through its 2009 initiative, the IRS collected more than $10 billion.[97] Not everyone applauds the success of the Foreign Account Tax Compliance Act ("FATCA"). Some constituency to repeal FATCA certainly exists.[98]

CONCLUSION

This Article discussed some of the ways in which foreign interests become intentional or incidental subjects for the production of revenue in the current anti-tax political climate. The Trump administration seems likely to seize upon additional opportunities to tax non-U.S. interests in order to raise revenue to fund Trump's campaign promises, including increased military spending, infrastructure projects, a border wall, and corporate and individual tax reductions while avoiding the political toxicity of increasing taxes on U.S. voters who wield political influence.

94. I.R.C. § 6038D(c)–(d) (2012) (imposing a penalty for failure to report foreign financial accounts).

95. I.R.C. §§ 1471(a), 1472(a) (2012) (imposing a thirty percent withholding tax on foreign financial institutions and others receiving payments from U.S. investments otherwise exempt from the tax).

96. *Offshore Voluntary Disclosure Program Frequently Asked Questions and Answers 2014*, INTERNAL REVENUE SERV. (Aug. 27, 2017), https://www.irs.gov/individuals/international-taxpayers/offshore-voluntary-disclosure-program-frequently-asked-questions-and-answers-2012-revised [https://perma.cc/CGK6-CD5K].

97. *Offshore Voluntary Compliance Efforts Top $10 Billion; More than 100,000 Taxpayers Come Back into Compliance*, INTERNAL REVENUE SERV. (Oct. 21, 2016), https://www.irs.gov/uac/newsroom/offshore-voluntary-compliance-efforts-top-10-billion-more-than-100000-taxpayers-come-back-into-compliance [https://perma.cc/AD9X-WA4N].

98. Press Release, U.S. Sen. Rand Paul of Ky., Sen. Rand Paul Introduces Bill to Repeal FATCA (Apr. 6, 2017), https://www.paul.senate.gov/news/press/sen-rand-paul-introduces-bill-to-repeal-fatca [https://perma.cc/KZ5K-CKBS].