

April 16, 2015

Imperative to Revise The Australia-USA Tax Treaty; To Prevent Double Taxation of Australian Residents And To Incorporate US Respect For Australian Sovereignty.

The Honourable Kim Beazley, Australian Ambassador to the United States, and esteemed former leader of the Australian Labor Party.

Currently, the **US Senate Finance Committee** is accepting submissions in regards to tax simplification and fairness, and is copied on this letter. In my opinion, **there is nothing simple and fair about US tax rules in regards to Australian tax residents who are US persons.** No one in the US (or Australia) appeared to go through how the onerous and escalating US compliance would all work out through the tax treaty on the basis of simplicity or fairness; and the US Treasury is unfairly oblivious to its excessive compliance burden and excessive compliance penalties, as a communist government may be oblivious to the consequences on individuals of its policies. Another intension is to **illustrate to the US Senate how US tax policy and the Australian-US Tax Treaty represents infringement of Australian Sovereignty and lack of respect for Australia.**

Mr. Beazley, a primary intent of this letter is to provide you with some actionable and feasible steps to remedy US infringement and disruption of Australian domestic retirement and tax policy.

Word is out of a response from you about a request to exempt Australian superannuation in the tax treaty from US taxation; that you replied that tax treaties take a long time to revise and usually it is not done over a single issue. Reply was made to you that Superannuation has been in place since 1992 and is that enough time?

May I provide a point of information, that there are multiple areas where the tax treaty with America does not provide protection for Australian residents from double taxation, and that Superannuation is only one of the more glaring shortcomings of treaty "protections." In regards to Super: The Australian Government has a policy to encourage build up of retirement savings through Superannuation accounts to help Australian residents save for their retirement on a tax reduced basis. Part of this policy is the aim to reduce the potential for dependency on the Australian government pension for financial support in one's later years.

However, the tax treaty, by not saying otherwise, lets US tax policy treat these Australian Superannuation accounts for Australian residents as "unqualified pension funds" for US tax purposes; and to tax superannuation punitively to the extent that my **US/Australian tax advisor states that I should not make any after tax contributions to Super and that I should pull all the money out of Super at the earliest possible point and avoid the Australian tax free pension phase because of punitive US taxation.** Mr Beazley, please recognise that this is in **100% contradiction to what nearly all Australian based financial planners advise for Australians.** The point is, the US policy is not impacting Australian residents who are US persons just a little bit or marginally, but in a very dramatic way.

In my opinion, such upending of Australian government Superannuation policy for Australian tax residents by a foreign country is a direct intervention into the internal affairs and sovereignty of Australia; and shows deep, perhaps unintended, disrespect by the US for Australia and Australian law as a sovereign country.

The sovereignty infringement does not end with Superannuation, as the US has a number of taxes that Australia does not have and these flow straight on top and include taxation of family home, estate, and even Obamacare NIIT investment tax. **Please also recognise that Australian US persons may have Australian only family members and to allow US taxation of super, family home, estate, etc. is to undermine the financial security net of the family unit for these Australian families and Australian only family members.** These issues are subject of a human rights complaint with the UN against the US by members of The Isaac Brock Society and Maple Sandbox.

I believe one of the reasons the current tax treaty is in place, and was not questioned, was that most in the Australian government approving and ratifying the treaty were duped by the doublespeak of the treaty language about reducing double taxation. Tax is an obtuse topic for many and when the US system gets overlaid upon the Australian system it all gets unfathomable. (Or in reality, the treaty was probably approved as part of unofficial government policy to agree to what ever the US asks and to disregard everything else. The environment is different today with Australia signing onto the AIB over US objections). Some other countries such as Canada and the UK have some exemption for their retirement accounts in their tax treaties but not Australia!

Here is a big part of the conundrum: the way the US written tax treaty works is that each tax category is treated separately and for an individual category the tax paid to both countries shall be no higher than the highest rate of each country for that category of tax, with source country having first right of taxation. So lets say Australians pay much higher income tax in Australia with higher rates cutting in much earlier than in the US; by the treaty any extra Australian tax paid on Australian earnings above US rates may not be applied as a credit against US tax liability for taxes the US has but not Australia. This defies common sense belief of 'prevention of double taxation.'

In Australia you pay much higher tax on your earnings and GST and you pay all these taxes, but wait the US wants to tax more. The US just may call a certain tax by a different name and bam it flows on top of all taxes owed, as double taxation. A good example is "Superannuation" that by US tax law is an "unqualified pension fund." There is no US credit for the Australian 15% super contributions tax or Australian 15% earnings tax. Superannuation represents a complete failure of tax treaty "protections" and recognition of taxes paid in the other country – a clear case of double taxation. And for Australia there is no credit against Australian tax for US taxes paid on Super as the account and its earnings are Australian source (not "foreign" source). Nor does Australia allow Australian residents withdrawals from Super to pay the US tax liabilities on the account. So a good year in the markets become a bad year as the tax on the annual gain in super at the US marginal tax rates will apply in my case, and the money to pay this liability must be found/taken from elsewhere.

Here are some actionable steps for you:

1. Write to the ATO with 'point of information' that their website is substantially misleading in regards to tax treaties wrongly stating in a blanket way "that **they prevent double taxation.**"
<https://www.ato.gov.au/General/International-tax-agreements/In-detail/Tax-treaties/What->

[are-tax-treaties-/](#) Also Austrade: <http://www.austrade.gov.au/Invest/Doing-business-in-Australia/Investor-Guide/Running-a-business/Understanding-Australian-taxes> There is no footnote or note about the Australian-US tax treaty! Surely, you may have heard of London Mayor Boris Johnson (lived in US only years 1-5) getting chased by the US IRS for payment of capital gains on his home in London. US taxation of London Mayor Boris Johnson on top of and in disregard of the relatively high UK taxes and VAT is illustrative in a similar way that: any **Australian residents do not get double taxation “prevented,” they may get it “reduced,” but for certain they may get it guaranteed.** That is where the ATO website is misleading, providing bad tax information and playing up to the misconception that: if you live in a relatively high tax country such as Australia, you are protected by a tax treaty that ‘prevents’ double taxation, and that Australian US persons have nothing to worry about. The ATO is not helpful to bringing about treaty remedies based on simplicity, fairness and protection of Australian sovereignty. The ATO has/will hurt Australians who are US persons in a negligent way by pretending and stating nothing to worry about. Meanwhile the ATO is complicit in FATCA reporting on accounts of all Australians who are US persons to the US IRS to pursue with potentially bankrupting compliance fines for not reporting their Australian “foreign” accounts and income. Here is a good one for you to think about: The Canada-US Tax treaty states that Canada will not help the US IRS pursue US tax debts against Canadian citizens resident in Canada. So clearly there has been more nous on the Canadian side in negotiating their treaty.

a. Write to the ATO to amend substantially misleading information on the ATO website along the following lines:

- i. Footnote: In the case of the Australian-US Tax Treaty, while double taxation is reduced for Australian residents there may be substantial US tax liability on superannuation, the sale of the family home, estate, and other taxes the US has but not Australia, with no tax credits allowed against Australian tax liability for Australian source income and assets. Additionally, there are substantial US penalties for not reporting to the US Financial Crimes Unit Australian accounts of \$US10,000 value or more, or regularly filing US income tax returns even if no US tax is owed and even if one has \$0 in US based assets and income. Expert tax advice should be consulted by Australian US persons including Greencard holders resident in Australia, and Australian citizens resident in the US.

2. **Pursue treaty change to simplify its impact, elevate fairness, and to protect Australian sovereignty.** Your legacy may benefit, and you may suggest to the current Labor Party Leader Bill Shorten to make this issue a point of Labor Party differentiation with US Policy locksteppers in the Liberal Party. What do we know about changing the treaty? I believe it is a good assumption that the US will likely reply to a treaty change request along the lines of: “my way or the highway.” After all the US is special and kind of assumes all countries of the world should obey US law and laws of other countries are less important than US laws. So here are some “hardball” suggestions. Some or all may be pursued:

- i. On simplification, fairness, and respect for Australian sovereignty grounds Australia requests agreement and tax treaty change with the US that Superannuation, personal home, estate, Australian tax free threshold, any additional tax above Australian tax rates, Obamacare NIIT Investment tax, and \$5 million asset exemption from US taxation for Australian residents – to be codified in a new tax treaty else:
1. Australia will levy \$US2 billion a year for US use of facilities and information from Pine Gap and other intelligence gathering facilities. It does not matter if there is an existing agreement this new usage fee will just be on top. If they don't want to pay then cut the power!
 2. Australia will levy \$US1 billion a year for use by US military of Australian bases , as in the current arrangement in the Northern Territory.
 3. Australia will not speak out against the infringement of nations into the internal affairs/sovereignty of another nation, in support of US policy. There is a faction in Australia that thinks Australia follows the US too blindly.
 4. Does Australia really need to buy 72 F-35 fighters? Why is military spending that assumes a never ending mining boom not questioned? Perhaps reducing the number purchased will help provide more funds to help Australians instead of helping support US industries.
 5. Australia will not allow US ships with nuclear weapons in Australian territorial waters (New Zealand did this). This would make Labor's Coalition buddies The Greens quite happy.
 6. In regards to 1 and 2, Australia does have a widening budget deficit and growing debt and these would help. Australia has lots of 'relationship capital' with the US allowing Australia to speak out for its own interest, without tipping the relationship. Often in years past when the US speaks out on the world stage there are only a few countries that support the US. Australia has been very faithful sending troops to support America in many conflicts. And how many counties and "allies" are helping bomb ISIS in the Mideast? Australia is one of a few counties there. And what did Australia do after 911 (think about this US Senate Committee)? Australia evoked the ANZUS mutual defence treaty publically. Kim Beazley there is room for some opposition to US policy that infringes on Australian sovereignty. A simple firm request for respect of Australian sovereignty by incorporating (i) above in the tax treaty would suffice.

To the Senate Finance Committee: I am an example of a 'US mini ambassador' miffed by US policy in regards to US compliance and taxation requirements of US persons tax resident overseas. I get \$0 in US government services for the double taxation without representation, yet with excessive compliance and potentially excessive compliance penalties. The US Revolution was a war against citizenship based taxation imposed by a foreign overseas power. The US policies toward US citizens overseas are not much different. Yet the Democrats have proven themselves to be Communist (un-American) in regards to their FATCA law and tightening regulations on US persons overseas. Lately the Republicans have proven more agreeable towards loosening and removing the US policy noose on US persons living overseas, with many long time Democrats overseas out to strongly support Republicans on the single issues of repeal of FATCA and changing citizenship based taxation to residence based taxation. I quote Republicans Overseas submission to the Senate Finance Committee:

We should have policies that encourage successful Americans and their children to retain their American citizenship, rather than driving them away from America.

To Kim Beazley: Australia should do much more to prevent the US tax dysfunction and over complication from disadvantaging Australians living in Australia. Indeed an overriding aim of the Australian-US Tax Treaty should be simplification, fairness, and respect for Australian sovereignty. Not only the treaty fails in these regards but also the Australian FATCA IGA, in my opinion. **It is clear that while the US likes to trumpet the freedom Americans enjoy, Australia provides much greater freedom for its citizens especially freedom to live and work in other countries, and freedom to leave Australia. As a result Australia enjoys heightened influence in the counties of the world. America should follow the example of Australia and all other OECD nations and adopt Residence Based Taxation.**

I believe that you are familiar with The Master Nationality Rule, that the laws of the country of residence overrule all others. The Australia-US Tax Treaty needs revision to reflect this accepted international convention.

Thank you for your consideration,

Regards @JCDoubleTaxed

(While believed to be Australian and byzantine US tax compliant, true identity not disclosed because of US state sponsored financial terrorism of its own citizens, unconstitutional so says www.fatcalegalaction.com)