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US FATCA LAW - HELP

Manager,

I am putting my concerns in writing after being invited to do so after speaking to a staff member at the office of the Australian Treasury.

1. Foreign Tax Compliance Act (FATCA)

I am writing to you about a new United States (US) law, the Foreign Tax Compliance Act (FATCA), which will impact every Australian including Dual Australian/Americans and US Green Card Holders. FATCA will require worldwide Foreign Financial Institutions to identify U.S. account holders and report their banking details to the U.S. Internal Revenue Service. [1]

2. Citizenship based taxation

The US taxes its citizens based on citizenship which is called citizenship based taxation. US citizenship based taxation taxes its citizens and green card holders on their worldwide income regardless of where they live [2]. In other words an Australian/American could potentially pay US taxes on Australian earned money when they do not live or derive any income or benefits from the US. It is a transfer of Australia's wealth to the US through double taxation!

3. Report of Foreign Bank Accounts Information Form

To comply with the US Internal Revenue Service (IRS) all the foreign accounts (accounts held in Australia by Australian/American and joint accounts held by Australians who live in Australia) must be reported to the IRS. This form is an information gathering form. Failure to fill out the form may result in fines of (\$100,000) one hundred thousand dollars per unreported account [3]. This fine would apply even if no tax is owed to the US from the account. This fine would take my life savings and leave my family homeless. The ATO knows of all my family's accounts and the IRS could finemy family \$100,000 per account for the past six years even though no US taxes are owed. This will effect all Australian/Americans, even poor people and pensioners etc.

4. Example of how the IRS fines Americans Abroad who could be Australians living in Australia.

It has been stated in media that FATCA is about catching the big tax cheats and the IRS is after the big tax cheats.

The IRS has introduced some voluntary disclosure programs to have people report their foreign bank accounts and to bring people into compliance. These programs have penalties.

Here is a quote from the IRS frequently asked questions webpage about how to fine one such taxpayer.

" Taxpayers who are foreign residents and who were unaware they were U.S. citizens. Example 1: The taxpayer was born in the U.S. to

parents of foreign citizenship. She grew up in a foreign jurisdiction, unaware that she had been born in the U.S. She has a \$60,000 account in the foreign jurisdiction. She has never filed U.S. returns or FBARS. She became aware she was a U.S. citizen when she had to get a birth certificate in order to obtain a passport from the foreign jurisdiction where she resides. She is entitled to the reduced 5% offshore penalty. Subsequent to learning of her U.S. citizenship, taxpayer took no action with respect to her foreign accounts that would disqualify a U.S. taxpayer from the 5 percent penalty under paragraph 1, above "[4]

If the IRS is after tax cheats why is a person who did not even know they were a US citizen being fined for not filing an information gathering form? what happens to Dual Australian/Americans when the IRS learns through FATCA that the Dual Australian/American has not filed FBARS? Must we sell our primary residence and become homeless for not filing an information form? Pensioners and poor people will have to sell their meager assets to pay the IRS fine simply for not filling in a form.

5. Violating local laws; eg: privacy, is not 'reasonable cause' not to file an IRS information form

As part of the US tax return Dual Australian/Americans who live in Australia must provide the IRS with a laundry list of foreign assets on an information form. If this information form is not filed there is a \$10,000 penalty increasing up to \$50,000 if the reason for not filing the form was not due to 'reasonable cause.' The IRS website states that "the fact that a foreign jurisdiction would impose a civil or criminal penalty on the specified person (or any other person) for disclosing the required information is not reasonable cause." [5] The IRS expects a person to subject themselves to potential criminal penalty to file an information form. Can this be considered fair treatment?

6. Renouncing US citizenship

My family would like to renounce our American citizenship. However, there is a 30% exit tax applied to one's total wealth including Superannuation if you have not filed 5 years worth of past tax returns and information forms even if you owe no US tax. [6] If the Australian Government removed the ability for my family to hold US Citizenship there would be no exit tax. My family wishes the Australian Government remove our American Citizenship through law as it is nothing but a financial nightmare!

Sincerely,

A very worried Australian/American, and their Family,

[1] [www.irs.gov/Businesses/Corporations/Foreign-Account-Tax-Compliance-Act-\(FATCA\)](http://www.irs.gov/Businesses/Corporations/Foreign-Account-Tax-Compliance-Act-(FATCA))

[2] [www.irs.gov/Individuals/International-Taxpayers/U.S.-Citizens-and-Resident-Aliens-Abroad](http://www.irs.gov/Individuals/International-Taxpayers/U.S.-Citizens-and-Resident-Aliens-Abroad)

[3] [www.irs.gov/pub/irs-pdf/f90221.pdf](http://www.irs.gov/pub/irs-pdf/f90221.pdf)

[4] [www.irs.gov/Businesses/International-Businesses/2011-Offshore-Voluntary-Disclosure-Initiative-Frequently-Asked-Questions-and-Answers](http://www.irs.gov/Businesses/International-Businesses/2011-Offshore-Voluntary-Disclosure-Initiative-Frequently-Asked-Questions-and-Answers)

[5] [www.irs.gov/irb/2012-08\\_IRB/ar10.html#d0e1974](http://www.irs.gov/irb/2012-08_IRB/ar10.html#d0e1974)

[6] [www.irs.gov/Individuals/International-Taxpayers/Expatriation-Tax](http://www.irs.gov/Individuals/International-Taxpayers/Expatriation-Tax)