

Public Submission with request to withhold name from the Public, as I write as a private individual and not an organisation. I acknowledge your copyright.

Re: Expanding Australia's Tax Treaty Network. Submission in request for submissions "...and any other issues related to Australia's tax treaty network."

Treasury must act in the Australian interest in regards to the tax treaty with the U.S.

Thank you for this opportunity to comment on the tax treaty network.

I have lived in Australia since 1997. I have been told that one way to avoid U.S. double taxation on superannuation is take it all out on retirement and go for capital gains investments. This is completely the opposite of what Australian financial planners, the press, commercials, and other Australians say – build Super up and keep it for a tax free income stream in retirement. Unfortunately, Treasury has not protected this important Australian policy – Superannuation - from extraterritorial tax law for Australian residents and have thought this Australian sovereign issue a matter for the U.S. government.

My situation changed over the years as did the U.S. rules and I would be up for a prohibitive U.S. Exit Tax if I renounced U.S. citizenship. Prohibitive parts of the 40% Exit Tax on gains are that Australia would not provide credit for any U.S. tax paid on this tax, plus the double tax on the liquidation to pay for it and the liquidation.

I suggest that the tax Treaty with the U.S. (the Treaty) should be prioritised as:

1) Arguably **the Treaty allows the greatest double taxation of Australians compared to any other tax treaty.** The Australian government through neglect, in my opinion, allows the U.S. to claim a double tax overlay on Australian residents (who are US Persons) on Australian source income, investments, and Superannuation. While a key objective of these tax treaties is to mitigate double taxation, **Australia has done nothing to mitigate U.S. double taxation on Australian source.**

2) **The business, defence, technology, and trade relationship with America is one of Australia's greatest with any nation offering enormous benefits to Australia.** Then why has Treasury not pursued mitigating or blocking double taxation on Australian source to: a) block financial harm of resident Australians, b) remove discouragement of Australians from moving to the U.S. for the benefits of working in the U.S. as a U.S. tax resident, and c) remove discouragement of American talent from moving and working in Australia as Australian tax residents to the benefit of Australia?

A message I received in a letter from the office of the Australian Treasurer is that Treasury is aware of the simultaneous U.S. tax claim of Australian residents, who are US Persons, but they cannot do much about it because it is part of U.S. domestic law. **I disagree.**

The letter from Treasury suggested that the OECD standard treaty had no provision to block the double taxation of resident Australian Superannuation from another country. The following error is in the above statement:

An OECD standard treaty approach is NOT appropriate in the case of the Treaty with the U.S. :: because the U.S. is the ONLY country in the OECD that has citizenship based taxation and not only Residence Based Taxation based on actual country of residency. A different Australian approach, treaty, and yes some work is required.

The OECD treaty format works well to “mitigate double taxation” with all other OECD countries, such as you have an investment in those countries but are a resident of Australia. The existing Treaty works well with the U.S. similarly for Australian residents who have investments in the U.S.

Where the existing Treaty falls short is with consideration of tax claims by a foreign government of Australian source income, investments, structures, and Superannuation. As there is no blocking of any extraterritorial taxation, **double taxation is guaranteed on Australian source** (of Australian tax residents who are also U.S. persons).

In my opinion, Treasury also falls short by limiting its consideration of what it may do through the lens of the existing Treaty.

Australia may warn its citizens to protect them. There have been numerous warnings over the years of situations in foreign countries and situations in Australia such as covid. Yet there has been no consideration of how warnings, clarifications, or explanations may be helpful to Australians subject to U.S. double taxation.

Complete silence in public by Treasury contributes to a group of Australians not aware or only partially aware of the double tax and compliance under Australian law. As a result, they are less “in the know” to take measures to reduce harms of any double tax, double compliance, and U.S. penalties on their Australian source.

The ATO website, providing examples of super even for those who have nothing, violate their pledge of accuracy, in my opinion, by not having a footnote of the double tax overlay allowed under Australian law – the Treaty.

The Australian Constitution does not grant the Treasury the authority to discriminate against one group of resident citizens. We are all Australians. Australians pay lots of tax money spent by Australia to protect Australia and the Australian way of life. Yet somehow Treasury ignores the extraterritorial tax and compliance claims on one group of Australians. As an Australian resident I should be taxed the same as other Australians for money in Australia, no different than my Australian neighbours who may be from a range of different countries.

I believe Australians expect that when the government negotiates treaties with other countries that the government and Treasury will act in Australia’s interest.

Treasury has in the first instance backed the U.S. double tax law unquestioning its legitimacy on Australian soil. It sounds like defence of arrangements by agents of America.

No Treasury, America’s domestic law is completely disputable within the borders of Australia.

Part of what is hidden is that Treasury has ignored treaty management responsibilities, expected performance reviews of the Treaty aims, and public stakeholder involvement. **Where is an Auditor General** to ask pursue questions such as: why has Treasury done nothing to prevent the double taxation of Superannuation which has been in place decades; that Treasury does not get paid by the American government they get paid by the Australian tax payers so why does not their work reflect that; and Treasury should act in the Australian interest in the first instance. The flimsy excuse used previously by Treasury to do nothing is not authorised by the Australian Constitution nor is it in the interest of Australia.

Perhaps it may be said that previous administrations did not manage the responsibility properly for Australians who are US persons and the Treaty process. Here is a suggested way forward:

- 1) Seek Public submission by individuals on the Australian-U.S. Tax Treaty.
- 2) Contract an outside audit firm to review the Treaty of where it may guarantee double taxation and double compliance, and to quantify the harms to Australians of the existing Treaty. The outside firm may comment on the harms of the Treaty on Australian only family members resident in Australia.

ASIC requires responsibilities and directorships of companies. The ATO requires outside audits of public firms. The bigger the firm usually the more scrutiny. **Treasury should not be exempt from scrutiny including outside and internal scrutiny of how well they are supporting the aims of the Treaty.**

- 3) Publicise findings to the public and to Parliament.
- 4) Devise measures going forward. This could be warnings to Australians. This could be public statements to the U.S. that the double tax practice is wrong, and that America provides zero resident services to US persons in Australia in exchange for the claimed taxation as a simultaneous American resident.
- 5) Consider tax rulings by the ATO (the "competent authority" under the tax treaty): such as:
 - a) As a point of clarification, Australia interprets the Treaty that there shall be no U.S. taxation and compliance of Superannuation for Australian residents and residents in the U.S. They already paid tax and may be paying tax to Australia all without recognition of this tax paid with tax credits that will not be accepted by the U.S. It is one example of double taxation guaranteed. Plus, **the U.S. signed the tax Treaty with pledge to mitigate double taxation.**
 - b) Australian tax residents should not be considered simultaneously tax residents of the U.S. There should be no U.S. tax or compliance forms on Australian source income, investments, and structures for Australian residents.

I have attached a summary of areas of double taxation from the group Fix The Tax Treaty. This summary and group is a resource for review of the Treaty. For no other treaty is there an Australian group dedicated to fixing a treaty. Its another indication that the Australian-U.S tax treaty needs prioritisation. Any reply to my letter may be informally through the Facebook Group FixTheTaxTreaty.

Thank you for your consideration.

Regards, Private Citizen