



**Fix the Tax Treaty!** [www.fixthetaxtreaty.org](http://www.fixthetaxtreaty.org)

## Media Release

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### FATCA: EXPENSIVE YET INEFFECTIVE

#### The Law You Have Never Heard Of but are Paying Dearly For

FATCA costs to Australia are estimated to run a massive half billion dollars over the initial ten years<sup>1</sup>. Despite FATCA providing little to no benefit to Australia, recent information obtained from the ATO summarising Australian FATCA reporting to-date, raises questions as to the usefulness of this costly reporting even to the US end-user.

FATCA, the Foreign Account Tax Compliance Act, is a US law, passed as part of the Hiring Incentives to Restore Employment (HIRE) Act in 2010. By threatening non-US financial institutions with 30% withholding on US payments, the US Treasury used FATCA to compel 113 jurisdictions around the world to sign Intergovernmental Agreements (IGAs) and report local accounts held by “US Persons” to the IRS either directly or via the local tax authority. Australia signed an IGA with the US in 2014, and sent the first tranche of FATCA data in September 2015, covering 2014 year-end account balances. Since then, the amount of data going to the IRS has exploded as FATCA implementation gained momentum.

Data obtained via a Freedom of Information request from the Australian Taxation Office indicates that as many as 862,000 Australian financial accounts were reported to the United States IRS last year under the FATCA IGA. It appears that about two-thirds of the accounts were owned by Australian residents. The total value of accounts reported was as much as A\$216 billion of which A\$184 billion were denominated in AUD. If correct, this represents approximately 6% of the non-superannuation financial assets owned by Australian households and businesses. By complying with FATCA, Australia has exposed these accounts to potential US taxation.

Australia is not a large country. Imagine how much data is flowing into the IRS from the 113 jurisdictions that have signed FATCA IGAs. Given the terms of the IGAs, it is anticipated that many of the records sent

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<sup>1</sup> TAX LAWS AMENDMENT (IMPLEMENTATION OF THE FATCA AGREEMENT) BILL 2014 Explanatory Memorandum [http://www8.austlii.edu.au/cgi-bin/viewdoc/au/legis/cth/bill\\_em/tlaotfab2014510/memo\\_0.html](http://www8.austlii.edu.au/cgi-bin/viewdoc/au/legis/cth/bill_em/tlaotfab2014510/memo_0.html)

will be false positives<sup>2</sup>. The IRS must be drowning in FATCA data. Considering data uncertainties and errors, the IRS' constrained budget and the additional demands placed on the agency by the recently passed Tax Cuts and Jobs Act, this data is not something the IRS will be able to easily match electronically. Furthermore, most non-resident US citizens live in higher-tax jurisdictions such as Australia where their foreign tax credits will offset much of their US tax liability. For all but the largest accounts, it is simply not cost effective for the IRS do anything with data from non-resident taxpayers.

The US is unique among developed nations in taxing citizens and legal permanent residents regardless of where they live. US emigrants living in Australia are subject to US tax on their worldwide income. This "citizenship-based taxation" was unenforceable before FATCA as the US did not have a comprehensive list of US expatriates. Under FATCA, the US has engaged all of the financial institutions in the world to compile for it a list of US Persons to assist in the attempt to enforce taxation of non-resident citizens on their local income and investments. Once a US taxpayer has been brought into compliance via FATCA, all of her Australian assets, including superannuation, will be exposed to US tax rules. Retirees, in particular, are likely to owe tax to the IRS on their superannuation withdrawals. Allowing US taxation of Australian income earned by Australian residents, erodes the Australian tax base and economy.

Dr. Karen Alpert, Chairperson of ***Let's Fix the Tax Treaty!***, commented "*FATCA was forced upon Australia to facilitate a foreign government's tax grab into our economy. With Americans comprising less than 1% of Australian residents, the enormous balances reported appear excessive and questionable. What does Australia gain in return for permitting a reduction in our tax base as well as the massively added compliance costs imposed on banks, account holders and the ATO?*"

Further reference: <http://fixthetaxtreaty.org/2018/02/08/what-did-we-learn-from-our-ato-foi-request/>

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## About ***Fix the Tax Treaty!***

***Let's Fix the Tax Treaty!*** advocates for the Australian Government to renegotiate the underpinning legacy Australia – US tax treaties and intergovernmental agreements to reduce the costs to the Australian economy and provide a fair go for all Australians.

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<sup>2</sup> <https://www2.deloitte.com/content/dam/Deloitte/us/Documents/Tax/us-tax-false-positives-in-fatca-data-may-hamper-enforcement.pdf>