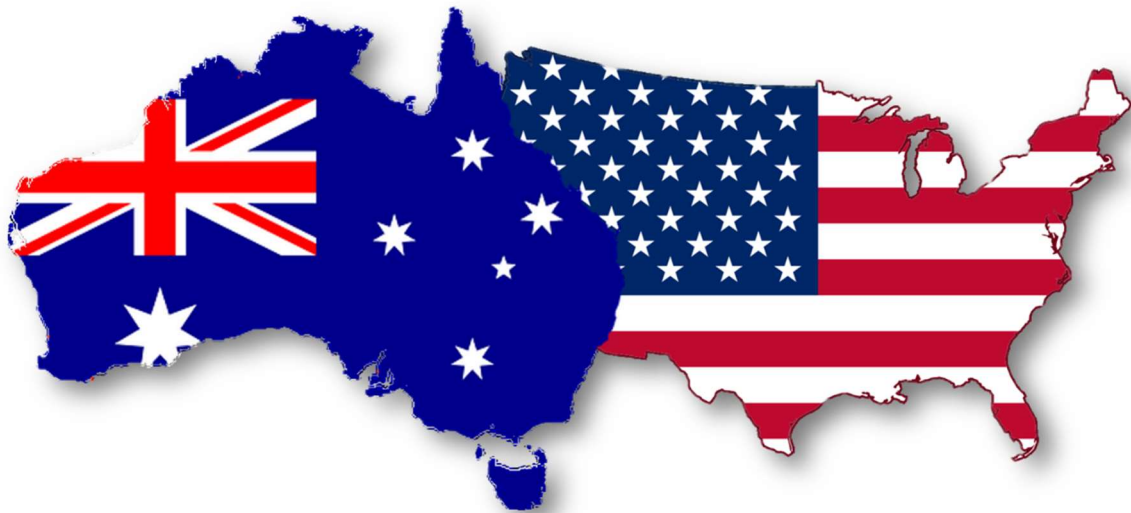


Strategy Roadmap

Let's Fix the Tax Treaty!



Rev No.	Date	Revision Purpose
A	21Dec16	Initial (incomplete) draft for FTT Review and feedback
1	31Jul17	Final Version for FTT Group Review and feedback
2	27Mar18	Move annual objectives to Appendix 1 and update with 2018 objectives; add Transition Tax / GILTI to Section 3.2.1; minor wording edits and updates

Executive Summary

Let's Fix the Tax Treaty! (FTT)¹ is an Australian focused advocacy group seeking to press the Australian Government for amendments to the Australia / US Tax Treaty and the FATCA IGA to eliminate penalties and discrimination against a subclass of Australian citizens and reduce the resultant costs to the Australian economy and all Australians.

Australia permits the United States to tax Australian-resident US persons (many of whom are also Australian citizens) on all income earned while living within Australia, eroding the Australian tax base by allowing the US to tax the Australian source income of Australian residents. This unique US practice of taxing on the basis of citizenship, not country of residence, leads to double taxation, considerable complexity and financial risks impacting up to 200,000 stakeholders within Australia. The US confers citizenship quite liberally based on both birthplace and parentage, and makes it both difficult and costly to relinquish unwanted citizenship

US extraterritorial taxation and control impacts all Australians. The current interplay between US tax rules and the Australia / US Tax Treaty discourages mobility of labour between our two countries. Australians who move to the US and obtain a “green card” (permanent residence status) are taxable by the US until that green card is formally returned (via form I-407), even if the green card has expired for immigration purposes. After eight years, green card holders are subject to the same harsh exit tax regime as citizens when they formally return their green card. Furthermore, Australian citizens resident and taxable in the US are taxed on their Australian assets accumulated before entry in the US, with all of the negative consequences to their superannuation and other Australian investments that affect US citizens who have immigrated to Australia. Eliminating the discriminatory effect of US law on Australian investments will promote more labour mobility and cross-border investment between the US and Australia.

Significantly, Australia currently allows the US to tax superannuation and Australian investments more punitively than equivalent US investments, which reduces the ability of dual citizens and Australian-resident US taxpayers to save for their retirement. Allowing the US to include superannuation assets (which are entirely earned in Australia) in the determination of the US exit tax further diminishes the retirement savings of these Australians. Consequently, the Australian government will be forced to make up the difference through increased Age Pension payments when these affected Australians are unable to self-fund their retirement.

This issue is not about tax avoidance or tax evasion, as affected persons are required to pay tax in their country of residence; in the case of Australian residents, at higher tax rate than in the US.

¹ www.fixthetaxtreaty.org

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

The purpose of this document is to detail the FTT advocacy strategy, including group structure and governance, key goals and objectives as well as annualised action plans.

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1 Introduction

1.1 Let's Fix the Tax Treaty!

Let's Fix the Tax Treaty! (FTT) is an Australian focused advocacy group seeking to press the Australian Government for amendments to the Australia / US Tax Treaty and the FATCA IGA to remove the discriminatory taxation of Australian investments, including superannuation, by the United States. Furthermore, we aim to ensure that those whose accounts are reported to the IRS under FATCA have the right to know what has been reported and to correct the FATCA report as necessary.

There are many groups within the United States, as well as around the world, working to influence the US to move away from their unique and unjust practice of citizenship-based taxation (CBT). However, effective international taxation requires cooperation from both countries. FTT seeks to affect change **within Australia** to address the many unfair and adverse impacts on impacted Australians.

As a grass-roots volunteer organisation, FTT seeks to

- 1) find solutions to the many adverse impacts resulting from the US practices of citizenship-based taxation,
- 2) target its efforts in our home country of Australia, and
- 3) provide a vehicle for organised collective action.

These efforts are being undertaken on the behalf of a diverse stakeholder group of impacted persons, estimated to be in excess of 200,000 persons² that includes:

- US citizens living in Australia, many of whom are dual citizens who have permanently immigrated,
- Children born while their Australian parents were living in the US,
- Australians who have acquired US Citizenship or Green Cards (residency permits) and have returned home,
- Children to the above who may also be considered US Persons as a result of their parentage,
- Australians currently living within the US, and
- Australian citizen spouses of any of the above.

The focus of this group is on how the tax treaty affects individuals, not businesses. However, there is no reason that these two stakeholder groups should come into conflict. FTT activities

² Latest ABS data at http://stat.abs.gov.au/Index.aspx?DataSetCode=ERP_COB shows 102,730 Australian residents born in the US as of 2015. Using the methodology in this shared worksheet (<http://tinyurl.com/zybtg5n>) provides an estimate of 79,412 Australian born children of US citizens. It is not possible to estimate the number of Australian-born naturalised US citizens residing in Australia. Additionally, the Australian embassy in New York estimates there are 200,000 Australians living in the US (<http://newyork.usa.embassy.gov.au/nycg/ANY1Wi09.html>).

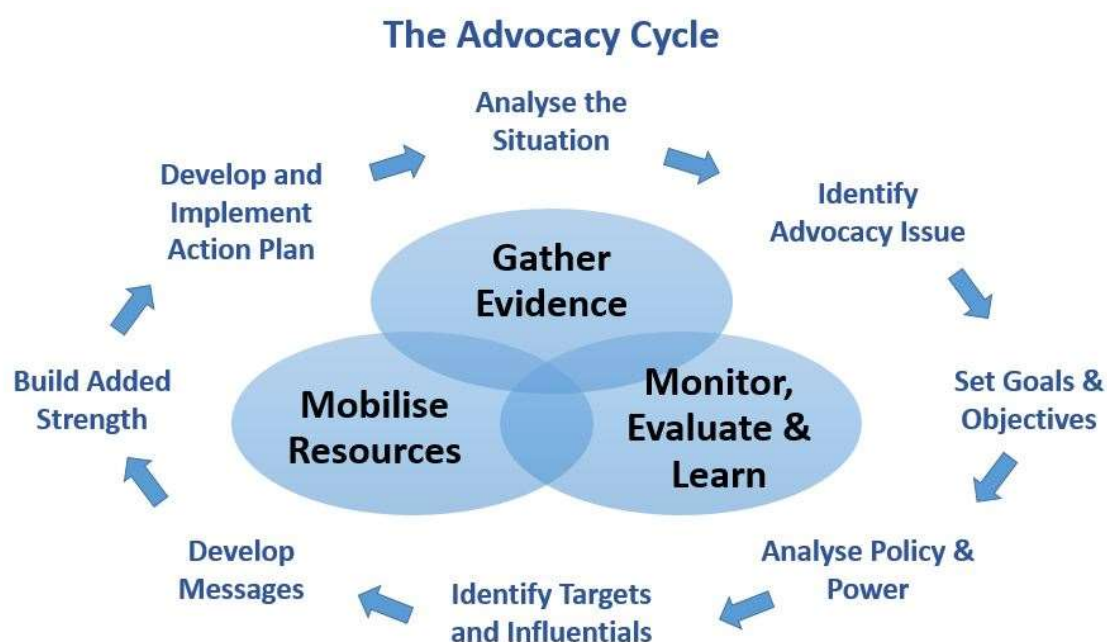
See also https://wiki.fixthetaxtreaty.org/doku/doku.php?id=wiki:contents:resources:numbers_stakeholders

will seek to avoid creating conflict as a matter of policy.

A good advocacy plan will help our group decide where to spend time and effort to achieve our goals and assist us to be as effective as possible with our limited resources. The plan will serve as a key reference document that is periodically updated as we progress towards achieving our goals.

Developing an Advocacy Strategy and Action Plan is a fairly straight-forward process (see Figure 1) that requires the group to consider a number of key questions:

- What is our (vision) goal?
- What are the specific objectives that will lead us to achieving our goal?
- What are our arguments and evidence?
- Who can we collaborate or partner with?
- Who do we need to influence?
- What are our messages? How will we deliver these messages?
- How will we approach this? Public / Private / Direct / Indirect?
- What key activities should be undertaken?
- What are our priorities and timings?
- How will we organise and manage our group?



After: <http://www.who.int/pmnch/media/events/2013/advocacy.pdf>

Figure 1 - The Advocacy Cycle

1.2 Document Purpose

The purpose of this paper is to map out the advocacy strategy for the FTT advocacy group and serve as a basis to agree and communicate:

- 1) Objectives, goals and priorities
- 2) Methods and initiatives
- 3) Targets
- 4) Messages
- 5) Action Plans

The document has been initially developed by the FTT Steering Committee but will be published for review and feedback from the wider stakeholder community.

It is envisioned that this document will be “evergreen” with amendments / extension made as required. Ideally, the document will be formally reviewed and refreshed on an annual basis by the Steering Committee with yearly objectives and action plans created as part of this process.

1.3 Document Structure

This document is divided into three main sections:

- 1) Group Structure & Governance – overview of how the FTT group is organised and run
- 2) Framing – this section seeks to analyse and frame the issue
- 3) Action Plan – activity focused plan, to be updated annually

A glossary and list of acronyms is included in Appendix 2 for those unfamiliar with terms used in this document.

2 FTT Group Structure & Governance

The overarching purpose of the **Let's Fix the Tax Treaty!** group is to educate and encourage our Australian elected representatives to take action to mitigate the problems that US extraterritorial taxation imposes on all of Australia through amendment of the Tax Treaty and/or FATCA IGA. This group aims to implement an organised campaign to achieve this objective using volunteer resources drawn from the community of impacted stakeholders.

While an active webpage and Facebook group will be instrumental in achieving our objective, not all of the strategising and governance can occur in an open forum. Equally, these tasks are too much for a single person. The solution is to form a steering committee, supported by standing roles / subcommittees and further supported by the overall membership in undertaking identified key activities (reference Figure 2 below).



Figure 2 – FTT Group Organisation

2.1 Steering Committee

The Steering Committee purpose is to provide organisation leadership for the FTT activities. Ideally, the committee will consist of five to eight individuals; i.e. *“Many hands make light work”*. Most of us will have full time jobs or other obligations that will limit the amount of time that can reasonably be expected. Karen Alpert, founder of this initiative, will serve as the Chairperson of the Steering Committee. Note that all Steering Committee members must be Australian residents or Australian citizens. While we would prefer that committee members use their real names, we understand that those who are avoiding notice of the IRS may wish to participate anonymously. See below for conditions of anonymous participation in the Steering Committee. This committee should be as diverse as possible covering a variety of skills and strengths.

2.1.1 Ongoing Responsibilities of all Steering Committee members:

- Assist in moderation of the Facebook Group and/or the website (at least one, both if desired)
- Comment on posts on both FB group and blog
- Video conference committee meetings (Skype, etc.) as needed - target weekly to fortnightly, activity dependent.

2.1.2 Anonymous Participation in the Steering Committee

Those who prefer to participate without exposing their real identity to public scrutiny should be willing to:

- Correspond with their Australian MP under their real name.
- Identify themselves to the rest of the Steering Committee (who agree to maintain the anonymity of these members).
- Participate as moderators and/or authors on the website (using a pseudonym) and identify themselves there as a member of the Steering Committee under their pseudonym.
- Meet with the Steering Committee via Skype or other internet chat/voice service.

2.2 Standing roles / Sub-Committees

In addition, each steering committee member will hold one of the following roles:

- 1) **Education/Blog Coordinator:** write or source one blog post per fortnight. Maintain website. (Karen Alpert)
- 2) **Legislative Action Coordinator:** develop strategic list of targets (in conjunction with steering committee); maintain Act section of the website; maintain list of legislators contacted. (Vacant)
- 3) **Allied Action Coordinator:** A list of potential allies (i.e. superannuation industry) and key players will come out of the strategy document. Coordinate contact with these people (either write letters or arrange to have letters written by appropriate group members) (Vacant)
- 4) **News/Media Coordinator:** post links to relevant news articles on both the blog and FB group as they appear. Manage FTT Wiki and Media Kit. Serve as contact point for media enquiries, forwarding them to the appropriate person(s); proactively write to media (possibly letters to editor) (Carl Greenstreet)
- 5) **Membership:** Facebook page maintenance, group engagement / development, member services (Caroline Day)

Each coordinator can recruit members from the greater group to form subcommittees as needed. This list will be reviewed for gaps once the strategy document is complete and the group's targets, activities and key actions are defined.

2.3 Dispute Resolution

If any member of the Steering Committee feels that someone is not meeting the responsibilities laid out in this document, they should discuss this in private with the Chair of the Steering Committee. At the sole discretion of the Chair, a Committee member who is not meeting the responsibilities laid out in this document can be removed from the Steering Committee.

3 Framing

The purpose of this section is to analyse the problem and explore the following key issues:

- 1) What needs to specifically be changed to achieve our three key objectives? What is the priority for these changes?
- 2) What specific groups and organisations are directly accountable for the required changes? What are their current policies in relation to our issues?
- 3) Who (by name / role / organisation) do we specifically want to target to affect change? What do they know about our issues? What is their position on these issues? Who might be able to influence them?
- 4) Who might effectively influence these targets?
- 5) Who are our potential partners & alliances?
- 6) What is our messaging?

3.1 Issue³

Australia permits the United States to tax Australian-resident US citizens on all income earned while living within Australia. The US practice of taxing on the basis of citizenship, not country of residence, leads to double taxation (where the same income is taxed by both countries, in some instances *without* an offsetting foreign tax credit), considerable complexity and financial risks impacting up to 200,000 stakeholders within Australia. This unique practice drains significant capital from the Australian economy in the form of both punitive taxes and excessive compliance costs, undermines both Australian sovereignty and domestic policy and clearly discriminates against a subset of Australians. In addition, Australians residing within the US face complex and often harsh tax treatment of their Australian assets even if these assets were obtained prior to relocating to the US (for example, Superannuation and Australian managed funds).

No other country on the planet practices citizenship based taxation in the same way as the US. While Eritrea attempts to tax non-resident citizens, the Eritrean Diaspora Tax is a flat 2% of income.⁴ The US, however, treats all citizens as tax residents of the US and applies the same rules to residents and non-residents, even when these rules characteristically and intentionally discriminate against assets held outside of the US. Every other country taxes based on a combination of residence and income source. That is, residents of a country are subject to tax, often on their worldwide income. In addition, income earned inside the country by non-residents is also subject to tax. In *“Human Rights at the Border of Tax Sovereignty,”* Professor Allison Christians argues that citizenship-based taxation is not justified based on normative rationales of the right of a state to tax.⁵ Taxing non-resident citizens is contrary to international practice, arguably violates the Universal Declaration of

³ This section is a brief summary of the issues. A comprehensive Issues Paper will be available on the website (in preparation).

⁴ There are other issues with the Eritrean Diaspora Tax that have resulted in its condemnation by the United Nations per UN Resolution 2023 (2011). (<http://www.securitycouncilreport.org/atf/cf/%7B65BFCF9B-6D27-4E9C-8CD3-CF6E4FF96FF9%7D/Somalia%20S%20RES%202023.pdf>)

⁵ Christians, Allison, *Human Rights at the Borders of Tax Sovereignty* (February 27, 2017). Available at SSRN: <https://ssrn.com/abstract=2924925>

Human Rights⁶, and infringes on the sovereignty and tax base of the countries where US citizens live. Furthermore, the US confers citizenship liberally, applying both *jus soli* (automatic citizenship to those born in US territory, regardless of the citizenship of their parents) and *jus sanguinis* (citizenship based on parentage, regardless of place of birth) based on both birthplace and parentage. For those with unwanted US citizenship, the process of relinquishing that citizenship incurs an administrative fee of US\$2,350 /person and requires an in-person visit to a US Consulate. In addition, to exit the US tax system requires filing with the IRS and a potential exit tax.

For Australian-resident US taxpayers (which include Australian citizens born in the US, some former green card holders and those born in Australia who obtained US citizenship either through their parents or by naturalisation), there are several areas of double taxation that need to be addressed in the tax treaty. US tax law routinely treats anything outside the US (i.e. “foreign”) as toxic and a potential vehicle for US tax avoidance. This includes managed investments, small businesses, and “foreign” trusts and corporations. One solution is that the tax treaty could require that neither country discriminate against these structures. Superannuation is another area where the existing treaty requires urgent amendment. More recent US tax treaties with other nations have provisions that treat pension fund contributions as deductible when computing tax of a US citizen resident in another country, and stating that earnings inside the fund are not taxable by the US until paid out to the beneficiary.

In addition to the problems faced by Australian-resident US taxpayers, there are also issues faced by Australian citizens and former Australian residents who are now US residents. The current tax treaty causes problems for them in two main areas. First, if they accumulated superannuation while resident in Australia, that superannuation account, including the investment income generated inside the account, is potentially taxable in the US (generally without a credit for the 15% tax paid inside the fund). Second, if they invested in managed funds while living in Australia (and before becoming a US taxpayer), these legacy investments will be punitively taxed by the US under the Passive Foreign Investment Company (PFIC) rules.

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

⁶ <http://isaacbrocksociety.ca/2014/07/28/human-rights-complaint-on-behalf-of-all-u-s-persons-abroad-has-now-been-submitted/>

3.2 Key Goals & Objectives

Let's Fix the Tax Treaty! group aims to achieve the following overall key goals and objectives within the next two to five years:

1. **Australian government to engage with the USA to remedy the deficiencies in the Australia / US tax treaty to mitigate the negative consequences of US CBT on Australians and the Australian economy.** This can be done through both mutual agreement and renegotiation of new treaty terms.
2. **Australian Government to amend the FATCA IGA to require reporting on only non-resident account holders so that Australian residents are not denied financial services due to their country of origin, and that adequate privacy protections are in place.** Failing an amendment to the IGA, the Australian government should use lack of promised reciprocity by the US to pressure the US to come to the table to negotiate the tax treaty and/or re-negotiate the FATCA IGA.
3. **Australian Government to require appropriate disclosure:** Banks should provide statements for awareness and verification when data is sent to ATO, and the ATO should verify transmission of data to the IRS at an aggregate level; ATO should fix website to inform US Persons that they will be double taxed. ATO to clarify policy on how they might use the data collected on only a subset of taxpayers.

These objectives are distinct and separate in that they require action by different policy makers and changes to different legal instruments.

3.2.1 Planning for Change - What Needs to Change?

The over-arching objective is that Australian-source income of Australian Resident individuals should be taxable only by Australia.

The following sections provide further detail on specific issues, listing the specific items that require change and assigning priorities.

3.2.1.1 Tax Treaty

Problem	Detailed Description	Priority (H/M/L)
Superannuation	<p>Taxation treatment of Superannuation is unclear and not addressed in the current tax treaty. There are a variety of ways that Superannuation can be reported on a US tax return. These range from completely tax free (as the equivalent of Social Security) to fully taxable including appreciation inside the fund (as a foreign grantor trust). Indications are that the IRS is currently pushing the unfavourable grantor trust interpretation, at least in some circumstances.</p> <p>The Treaty should clarify the treatment of Superannuation commensurate with Australian domestic public policy and in such a way not to disadvantage those who have a mandatory obligation to invest into Super.</p>	High

Problem	Detailed Description	Priority (H/M/L)
Saving Clause	<p>The saving clause allows the US government to impose direct taxation on some Australian citizens and residents. It denies those who are US citizens the use of treaty provisions except for a limited set of specified provisions. Due to the action of the saving clause, an individual can be taxed under resident tax rules by both the US and Australia.</p>	High
PFICs	<p>Australian managed funds, listed investment companies (LICs), real estate investment companies (A-REITs), and exchange traded funds (ETFs) are all treated as Passive Foreign Investment Companies (PFICs) for US taxpayers. PFIC treatment results in punitive taxation of these investment vehicles, up to the point of being confiscatory in application. Part of the rationale behind this punitive treatment was to prevent US resident taxpayers from using “foreign” investments to defer taxable income. But, any of these investments that is registered for sale to retail investors will be required by Australian law to distribute all income and realised gains currently, just like the American equivalent.</p> <p>The treaty should include a clause that states that Australian investment structures that are sold to retail investors are not to be considered “foreign corporations” under the PFIC rules. Furthermore, the treaty should stipulate that retail investments in one country should not be more punitively taxed in another country than their own similar domestic investments.</p>	High
Transition Tax and GILTI	<p>The 2017 US tax reform bill (Tax Cuts and Jobs Act, Pub. Law 115-97) imposed a one-time transition tax on the retained earnings of foreign corporations owned by US Persons. While Congress never considered the impact of this tax on tax residents of other countries, the compliance industry is busy looking for victims. See this video for an explanation of the transition tax.</p> <p>Tax reform also imposed an ongoing tax (starting in 2018) on Global Intangible Low Taxed Income (GILTI). The way GILTI has been defined, most controlled foreign corporations will find that some of their active Australian-source business income has now been re-defined as US-source income, immediately taxable in the US whether distributed to shareholders or not. While Australia’s high corporate tax rate may insulate affected Australian corporations somewhat, the complexity of the associated</p>	High

Problem	Detailed Description	Priority (H/M/L)
	<p>foreign tax credit rules could create a US tax liability on top of Australian taxes paid. Where the US taxes undistributed income of Australian corporations, they are draining capital from Australia due to the resulting double taxation.</p> <p>The treaty should specify that the undistributed income of Australian corporations cannot be deemed distributed to US shareholders and that this provision will not be invalidated by the saving clause.</p>	
Sale of principal residence	<p>Capital gain on the sale of a personal residence is taxable in the US (with a US\$250,000 exemption per person). This gain is computed as if the purchase and sale were in US dollars, potentially leading to currency “phantom gains”. In addition, the US will tax any US\$ gain on the discharge of a mortgage on the property. Note that, since the residence is a personal use asset, losses are not allowed. The Tax Treaty should seek to align treatment of the sale of a personal residence with Australian taxation policy.</p>	High
Effective nationality / Accidental Americans	<p>There is a principle under international law that dual citizens have an “effective nationality.” Where a dual citizen has closer ties to Australia than the US, this principle should limit the extraterritorial reach of US tax law. The case of Accidental Americans illustrates this principle in the extreme. Accidental Americans were born in the US to Australian parents and returned to Australia as young children. They have no ties to the US, they may not even have a US passport or social security number. Yet, due to their place of birth, the US insists on the right to tax them for the rest of their life or until they pay US\$2,350 to renounce their US citizenship (the highest fee for renunciation by any country by a factor of six) and to pay an exit tax in some circumstances.</p>	Medium
Impediments to using Australian legal structures (trusts and companies)	<p>SMSFs, Family trusts, Australian Corporations and other legitimate Australian legal structures require complex and extensive disclosure under US tax law, with punitive penalties (generally starting at US\$10,000) for failure to file information forms. Furthermore, structures that are effective for Australian tax planning may be disregarded for US tax. The Tax Treaty should provide for “effective nationality” and limit the US tax treatment of these structures for Australian nationals.</p>	Medium

Problem	Detailed Description	Priority (H/M/L)
Unemployment benefits	The US taxes Australian unemployment benefits and other Centrelink benefits (except the Age Pension and Disability Pension). The Tax Treaty should seek exemptions to US taxation of Australian domestic social welfare and support payments.	Low
NIIT (Net Investment Income Tax)	Enacted as part of Obamacare, NIIT is a flat 3.8% tax on investment income for US taxpayers whose income exceeds a threshold determined by filing status. NIIT applies to all investment income, regardless of source, and cannot be offset by foreign tax credits. For those affected (generally high-income earners), this is a clear case of double taxation. The treaty should seek a claw-back provision.	Low
Gift and Inheritance Tax	While Australia has no inheritance or gift taxes, the US does. For US citizens, worldwide wealth is taxed on death (with an exclusion of about US\$5.5million). For estate tax purposes, it does not matter where in the world the asset is located, or whether it was owned prior to becoming a US taxpayer. Tax is based on the value of all assets at death. Also need to clarify potential US estate tax on US investments owned by all Australian citizens where applicable exclusion amounts are far lower. The Tax Treaty should provide for “effective nationality” and align inheritance taxation for Australian nationals with domestic policy.	Low

3.2.1.2 FATCA IGA

Problem	Detailed Description	Priority (H/M/L)
Reporting on Australian residents	Under the FATCA IGA, Australian residents with US indicia are identified by their financial institution to be reported to the IRS. Prior to FATCA, the US practice of citizenship based taxation was unenforceable, especially with regard to those with few or no US ties. Reporting on Australian residents has forced Australian financial institutions to identify US taxpayers for the IRS, even when the affected individuals have no ties to the US other than place of birth or parentage.	High
Lack of reciprocity	One of the inducements for Australia to sign on to the FATCA IGA was reciprocal information reporting on US	Medium

Problem	Detailed Description	Priority (H/M/L)
	accounts of Australian residents. The US Congress has yet to pass legislation to enable the IRS to collect this information from US banks. Furthermore, the detail of information to be provided by US banks is much less than that provided by Australian banks. At a minimum, reciprocity should be demanded as a condition of ongoing compliance with the IGA. The IGA allows for a re-visiting of the agreement should the promised reciprocation fail to eventuate.	
Reporting of accounts below the US\$50,000 threshold	While the IGA only requires reporting of accounts in excess of US\$50,000, financial institutions can report lower balance accounts at their option. Furthermore, under the CRS guidelines, financial institutions are to report all accounts, regardless of balance. This, in conjunction with the lack of notification to account holders, creates uncertainty among the affected Australian residents. Low value accounts will be fully taxed in Australia already. The net revenue to the US from tax on low value accounts is negligible. ATO should discourage Australian Financial Institutions of low value accounts and strip this data out of reports provided to the IRS.	Medium
Denial of certain types of accounts	Some financial institutions have denied Australian citizens/residents the ability to open certain types of investment and/or superannuation accounts. This seems to be limited to Australian subsidiaries of international banks. The Australian Government should prohibit financial discrimination on the basis of national origin.	Low

3.2.1.3 Disclosure

Problem	Detailed Description	Priority (H/M/L)
Lack of notification	Currently, there are no notification requirements from either the Financial Institution or the ATO that information is being provided to the US about a person	High
Inability to correct errors	The lack of detailed disclosure of any information provided means that there is no mechanism to identify and correct errors. Currently, it also appears that the ATO is circumventing FOI protections by refusing FOI	High

Problem	Detailed Description	Priority (H/M/L)
	requests from reported individuals without prior consultation with the US IRS	
Privacy Protocols	Privacy protocols are unclear and Privacy Impact Assessment recommended by the Australian Privacy Commissioner was not undertaken.	High
Security Protocols	Security protocols for data exchange unclear. The IRS is treated as a trusted entity, in spite of a history of poor data security. ⁷	High
Discriminatory Disclosure to ATO	Through FATCA reporting, the ATO is gaining more information on a subset of Australian taxpayers (US Persons) than it has access to for other Australian taxpayers. What are ATO policies / regulations regarding access and the use of this information?	Low

3.2.2 Policy & Power

The purpose of this section is to identify the Australian organisations or groups that are directly accountable for making the required changes to achieve our FTT group objectives. For the most part, the required change actions need to be undertaken by specific governmental bureaucracies and may not necessarily require political / legislative intervention. This observation is important in that it suggests that it may not be necessary to “politicise” this issue or even seek broad political support from our elected representatives or the general voting public to achieve our group aims. Furthermore, if we can establish a defensible “business case” detailing the concrete costs to the Australian economy of acquiescing to US taxation of Australian residents, we may be able to motivate the accountable bureaucracies to assign resources to address the problem.

It is also important to differentiate between **Targets** (accountable persons or decision makers) and **Influencers** (those who do not have the power to bring about the desired change but may be effective in persuading targets to make the required changes). For example, media organisations, a key Influencer, cannot directly achieve our group aims, but may play a key role in motivating Targets.

Taxation policy has three components: 1) Policy objectives and approval, 2) Policy research and development and 3) implementation. The key organisational bureaucracies accountable for Australian action on the tax treaty and FATCA are:

⁷ [One security breach reported last year](#), which ended up including data on over 700,000 taxpayers was actually an [ongoing problem first reported in February 2015](#). Identity theft using IRS data is common with [two recent cases](#) involving [IRS employees](#).

- 1) **Specific elected Australian Governments officials** accountable for setting policy objectives and approving policy development outcomes:
 - a. [Treasurer](#)
 - b. [Minister for Revenue and Financial Services](#)
 - c. [Minister for Small Business](#)
- 2) **Treasury** – accountable for developing and researching policy options to be implemented in the tax treaty and FATCA
 - a. Corporate and International Tax Division
 - b. International Tax Treaties Unit
- 3) **ATO** – accountable for implementation of tax policy (FATCA, etc.)

3.2.3 Targets

To be successful in achieving group objectives, we need to identify specific key persons and groups that we must engage with to affect our desired change. Primary targets are the policymakers/offices/etc. that have the power to make the change we are advocating for. If we cannot successfully influence our primary targets, we then should choose secondary targets. A secondary target is the person/group/etc. that we can influence, who can then, in turn, influence our primary target. Targets must be specific (e.g., a person, or named newspapers, departments, committees, etc.).

The following section lists identified Targets, organised by area. This is a work in progress and will be further updated as necessary. Treasury will have the main responsibility for the Tax Treaty. While the FATCA agreement would have been negotiated by the Tax Treaty unit at Treasury, implementation will be through the ATO. Detailed contact information and organisation charts are available in the FTT wiki (available to wiki editors only).

3.2.3.1 Tax Treaty

Primary Target Name / Organisation	Position on Issue	Level of Knowledge of Issue	Partner with connections to influence Target
Scott Morrison – Treasurer; Kelly O’Dwyer Minister for Revenue and Financial Services		Kathryn Davy has replied to Treasury correspondence on behalf of Treasurer	
The Treasury – Corporate and International Tax Division Kathryn Davy – Principal Adviser, (Greg Wood works in this division)			

Primary Target Name / Organisation	Position on Issue	Level of Knowledge of Issue	Partner with connections to influence Target
Greg Wood, Treasury, Manager of International Tax Treaties Unit		High; Government employee responsible for developing policy and implementation options	
Australian Competent Authority APA/MAP Program Management Unit Public Groups and International Australian Taxation Office GPO Box 9977 BRISBANE QLD 4001		This is the organisational unit that would rule on double taxation under Article 24 of the treaty.	
Minister for Small Business, Michael McCormack	Secondary – will be interested in tax impediments to Australian businesses expanding in the US		
Minister for Foreign Affairs – Julie Bishop	Secondary		

3.2.3.2 FATCA IGA

Primary Target Name / Organisation	Position on Issue	Level of Knowledge of Issue	Partner with connections to influence Target
Treasury contacts listed above will also be responsible for negotiating and/or amending the FATCA IGA.			
ATO International Deputy Commissioner – Mark Konza		This appears to be the area of the ATO responsible for administering FATCA and CRS	
ATO Superannuation Deputy Commissioner – James O’Halloran	secondary		

3.2.3.3 Disclosure / Privacy Issues

Primary Target Name / Organisation	Position on Issue	Level of Knowledge of Issue	Partner with connections to influence Target
Privacy Commissioner – Mr Timothy Pilgrim (retiring 24Mar18); Angelene Falk, Acting Australian Privacy Commissioner)	Unknown	Unknown	
ATO International Deputy Commissioner – Mark Konza	Unknown	Unknown	
ATO Tax Counsel Network	Unknown	Unknown. This is the area of the ATO that responded to FOI requests about FATCA data	

3.2.4 Influencers

Influencer Name	Position on Issue
AmCham - Neils Marquardt – Former US consul general Sydney, former CEO of AmCham	Supportive; has publically spoken about the need to reform US CBT practices
Media (authors of previous sympathetic/critical articles) <ul style="list-style-type: none"> • Australian Financial Review – Agnes King, Tony Boyd, Shaun Drummond, Sally Rose, Georgia Wilkins, Nassim Khadeem, • Australian Business Review – Ben Butler, ABC News – Stephen Long, • Sydney Morning Herald – Hugh Hamilton, Julie Power 	Mostly unknown; Julie Power supportive (has written several articles on our cause)
Civil Liberties Australia	Unknown but have published articles on FATCA.
American Australian Association	Unknown

3.2.5 Partners and Alliances

Partner Name	Position on Issue
Let's Fix The Tax Treaty! Facebook Group	Advocacy group launched 13 August 2016 to represent Australians impacted by USG citizenship based taxation practices (both US expats in Australia and Australian expats in the US). Aims to to press for amendments to the Australia/US Tax Treaty and the FATCA IGA to eliminate discrimination

Partner Name	Position on Issue
	against a subclass of Australian citizens that is also disadvantageous to all Australians
Online Advocacy groups	
American Expatriates FB Group	Led by Keith Redmond, this public FB group's mission is to “ <i>inform, educate and provide current information regarding United States government policies: FATCA, CBT, US Citizenship law, passport revocation, and any American law directly impacting Americans living overseas & associated populations</i> ”
Isaac Brock Society	The Isaac Brock Society consists of individuals who are concerned about the treatment by the United States government of US persons who live in Canada and abroad. Large, world-wide and active group.
Purple Expat	International advocacy group, led by Greg Swanson, seeking replacement of US Citizenship Based Taxation with Resident Based Taxation
Civil Liberties groups	
Civil Liberties Australia	Advocates for Civil Liberties rights; unknown if they would support our cause

See Appendix 4 for further information on potential partners and alliances.

3.2.6 Key Message Themes

There are many strong arguments in support of amending and improving the current Australia / US Tax Treaty to mitigate the many harmful aspects of the existing treaty.

These arguments can be grouped into three key themes where US extraterritorial taxation and control:

1) Harms the Australian economy, taxation base and business interests

- Extracts revenue from the Australian economy (tax payments, compliance expenditure, etc.) into a foreign economy through double taxation or through undesired side effects due the misalignment of taxation policy, approach and legislation between countries. Problematic Australia – US taxation areas include superannuation, gift, inheritance, sale of principal residence, ongoing high compliance costs, etc.
- Allowing foreign countries to tax Australian Source Income represents a leakage of capital from Australia.
- Application of punitive taxes over normal financial activities that, in some cases, can become nearly confiscatory in scale (ie. PFICs)
- Disproportionate penalties where penalties can greatly exceed tax owed
- Currency treatment can lead to taxable “phantom” gains

- FATCA implementation costs to Australian banks estimated at AUD255m for implementation and AUD22.7m per year⁸ and will be borne by all Australian bank customers and shareholders, not just customers of US origin
- Deliberately disadvantages and discourages affected Australian residents from using Australian financial services industry for normal retirement and investment activity

2) Undermines Australian domestic policy and sovereignty and is imperialistic in practice

- Current approach undermines Australian domestic policy and laws, making some Australian aspects subordinate to US tax policy. US taxation of Superannuation is a clear example of this but there are many others including US taxation of redundancy benefits or Centrelink payments such as income support, etc.
- Any money paid to the US as tax on superannuation will reduce the ability of the affected individuals to save for a self-funded retirement. The resulting shortfall will be made up by increased entitlement to Australian government benefits such as the Age Pension
- The US dictated FATCA legislation to Australia by holding an “economic gun” to the Australian banking system through a threatened 30% business withholding tax
- FATCA established the extraterritoriality of US tax law, i.e. USA priority over the law of any country in the world, including Australian domestic laws
- Lack of reciprocity by the US Government, despite unbinding promises in the intergovernmental agreement.

3) Violate basic human rights and privacy tenets afforded to other Australians

a) Discriminatory US CBT / FATCA practices

- Breach of Civil Liberties; i.e. *“the right to equal treatment under the law and due process”*
- As documented on the Isaac Brock Society website, a complaint against Citizenship Based Taxation has been submitted to the United Nations Human Rights Council.⁹
- On the US side, the National Taxpayer Advocate has repeatedly stated that treatment of “international taxpayers” violates the IRS’ own “Taxpayer Bill of Rights” and needs urgent legislative attention. These statements have been virtually ignored by Congress and the IRS.¹⁰

⁸ https://en.wikipedia.org/wiki/Foreign_Account_Tax_Compliance_Act#Implementation_cost and <https://www.legislation.gov.au/Details/C2014B00107/Explanatory%20Memorandum/Text>

⁹ <http://isaacbrocksociety.ca/2014/07/28/human-rights-complaint-on-behalf-of-all-u-s-persons-abroad-has-now-been-submitted/>

¹⁰ https://wiki.fixthetaxtreaty.org/doku/doku.php?id=wiki:contents:us_tax:cbt#taxpayer_advocate_reports

- Clear and ongoing discrimination against a group of Australians goes against numerous anti-discrimination acts at both Australian and Federal level:¹¹
 - Acts generally prohibit treating someone unfavourably because of a personal characteristic such as race, where one aspect of the definition of race is national origin and nationality; Acts also prohibits requests for information where the information will be used to disadvantage that person, for example where Financial services being denied to Australians of US Origin (one example is ING Living Super not being offered to Australian residents of US origin)
 - ‘Indirect’ discrimination is also unlawful. This is where a condition or measure is applied to everyone and seems reasonable, but has the effect of discriminating against a particular race.

b) Inadequate privacy provisions

- Information gathered on a specific group of Australian residents and given to a foreign government.
- Privacy Impact Assessment (PIA) was not done by Treasury Department despite recommendation from Privacy Commissioner and it is unclear whether OAIC recommendations¹² were adopted.
- Data security concerns
- Unclear ATO policy on what guidelines / processes are in-place for internal ATO use of reported FATCA data as this level of financial information is not available to ATO for the majority of Australian taxpayers.
- No right of notification / disclosure / verification for reported persons
- Apparent reluctance to disclose to affected persons regarding what information is being provided, potentially violating FOI laws. Refusal by ATO to provide gathered information to affected individuals under FOI request without prior consultation with US IRS.

c) Emotionally damaging – fear, anger

- Attempting to mesh two dissimilar and highly complex tax systems leads to ongoing fear and anxiety in the face of the often-punitive nature of “foreign taxation” coupled with the prospect of high penalties in the event of getting it wrong.
- Many persons feel trapped in the system due to the high cost of expatriation and the possible application of financially devastating exit taxes that are applied on the value of assets upon relinquishment, not when the individual left the US.
- Affected persons typically feel persecuted and afraid for just trying to live a normal life and save for their retirement. *Our Stories* on the FTT website

¹¹ https://www.humanrights.gov.au/sites/default/files/GPGB_quick_guide_to_discrimination_laws_0.pdf

¹² <https://www.oaic.gov.au/engage-with-us/submissions/intergovernmental-agreement-to-implement-fatca>

illustrates how a number of Australians have been adversely affected; many fearing they will lose their savings due to either IRS penalties or the exit tax. Some have already paid a significant portion of their net worth to the US government and/or professional advisors. Others feel that no one truly understands their predicament.

- Our elected Australian representatives typically have “given a deaf ear” to our issues, abdicating their accountabilities towards their constituencies by saying that this is a matter between the affected individual and the US Government. This leads many to feel that, in practice, there are sub-classes of Australians citizenship, where some citizens are subject to different rights.
- Affected persons are often unwilling to exercise their democratic rights to affect change out of fear for the IRS. Consequently, many participants on various online forums for this population prefer to remain completely anonymous and are unwilling to tell their stories due to fear of persecution.

4 Annual Objectives and Action Plans

To assist in achieving the overall group goals, the FTT Steering Committee will set annual objectives and action plan and provide these to the larger group for feedback and comment. Note that these objectives may need to be scaled to fit the available volunteer group resources.

Appendix 1 summarises the 2018 objectives (“Scorecard”) and Action Plans. Refer to FTT website for the [2017 annual report](#) including a summary of outcomes versus 2017 objectives.

Appendix 1: 2018 Objectives (Scorecard)

Our 2017 focus was on building the foundations upon which we intend to build activity, momentum and scale over the coming years. Key milestones along the way included publishing our Strategy Roadmap, creating and implementing a Wiki framework for knowledge capture and ongoing membership development and support.

During 2018, we intend to focus on **making the case for change**.

The 2018 Scorecard Objectives are summarised in table below, listing the key areas of activity as well as the desired outcomes. Further objective details follows the table.

No.	Objective Area	Desired Outcomes (YE-2018)
1	Policy Maker Engagement	<ul style="list-style-type: none"> Position (“White”) Paper developed and sent to policy makers for feedback Appropriate policy makers contacted
2	Media Engagement	<ul style="list-style-type: none"> Minimum two media campaigns completed
3	Negotiating Strategy Framework	<ul style="list-style-type: none"> Negotiating strategy documented (confidential – will not be widely shared)
4	Freedom of Information (FOI) Campaign	<ul style="list-style-type: none"> Phase 1 FOI campaign completed (Treasury – still in progress) Phase 2 follow-up campaign commenced Individual FATCA disclosure FOI campaign conducted
5	Knowledge base development (refer to Appendix 3)	<ul style="list-style-type: none"> Active Wiki Editors (contributors) recruited Polish current wiki pages (fill in FixMe’s) Overall structure and coverage reviewed to develop longer-term Wiki plan
6	FTT Community Development	<ul style="list-style-type: none"> Group awareness and support broadened Improved group engagement (volunteerism as measure) FB Group Size increased by 50% (600 members) Blog site traffic increased 20% Two new members of Steering Committee added
7	Alliances	<ul style="list-style-type: none"> Alliance partners identified, prioritised and engaged

2018 Action Plan Details, by Objective

1. Policy Maker Engagement

- White (issues) paper drafted and peer reviewed (*status: in preparation; key objective*)
- Finalised white paper sent to selected Policy Makers for comment & feedback, cc Snr policy makers, Treasurer, etc.

- White Paper to be used in media campaigns

2. Media Engagement

- Minimum two media campaigns conducted
- Q1 2018 Status
 - ✓ First campaign conducted: ATO FATCA FOI results [blog](#), [media release](#) & [article](#)
 - ✓ Karen Alpert published in The Conversation “*GOP tax law snubs US expats and ‘accidental Americans’*” [article](#)

3. Negotiating strategy framework

- Negotiation Strategy documented by year-end 2018; including
 - Objectives / Must-haves / Nice-to-haves / Trade-offs
 - Required supporting data identified
 - Common Ground Identification
 - Opponent’s position analysis
- Confidential Document – will be used by Steering Committee but not distributed publicly

4. FOI campaign(s)

- Phase 1 FOI campaign completed
 - Status: Treasury FOI request still in progress (since Nov 2017); iterating requests to avoid “practical refusal” due to too broad request identifying too many documents
- Phase 2 follow-up campaign commenced
 - Preliminary campaign ideas
 - Per Tax Treaty “substantial changes” requirements, has US formally notified Australia of US tax legislative changes over past 10 years? Use recent tax reform (Tax Cuts and Job Act 2017) as example
 - Planning documents for FATCA 5-year review (required 5-years after Mar14 implementation, per Regulatory Impact Statement)
 - Information on whether ATO is receiving reciprocal FATCA data from the IRS, per IGA
 - US FOI requests
 - Seek aggregate summary of FATCA data, by country
 - How many Form 5471s and other key forms filed by individual taxpayers?
- Individual FOI campaign - FATCA disclosure
 - Arrange mass individual FOI requests to better determine exactly what data is being sent to IRS, whether it follows IGA (is data being reported on accounts with <\$50k threshold?) and form view on accuracy
 - Kick-off campaign with blog post calling for participants; provide
 - “model” request for participants
 - Step-by-step instructions on what to do
 - How to deal with potential ATO threats to seek IRS permission (disclose to IRS that FOI data is being sought)

5. Knowledge base development

- Active Wiki Editors (contributors) recruited – target four
- Improve current Wiki pages (fill in “Fix-Me’s”, etc.)
- Overall Wiki structure, content and coverage reviewed to with the intent to document longer-term Wiki development plan

6. FTT Community Development

- Improved group engagement (volunteerism as measure)
- FB Group Size increased by 50% (600 members)
- Blog site traffic increased 20% over YE17
- Year End feedback report issued (Jan 2019): 2018 actual performance vs objectives plus 2019 objectives & actions
- www.fixthetaxtreaty.org website redesign and refresh (stretch target)

7. Alliances

- Alliance partners identified, prioritised and engaged
- ✓ Status: review conducted and additional potential alliance partners identified (not being made public, at this stage)

Appendix 2: Glossary & List of Acronyms

Also refer to FTT Wiki at <https://wiki.fixthetaxtreaty.org/doku/doku.php>

Acronym	Meaning
Accidental Americans	Claimed by the US as citizens, Accidental Americans have virtually no connection to the US. They were either born in the US to foreign parents and moved back home when they were very young, or they were born outside the US to one US parent and have lived their life as a citizen and resident of their country of birth.
AFI	Australia Financial Institutions (often referred to as Foreign Financial Institutions in US FATCA documentation)
A-REIT	Australian listed Real Estate Investment Trust
ATO	Australian Tax Office , Australian bureaucracy responsible for taxation reporting, collection and compliance
ETF	Exchange Traded Fund – a managed fund that is traded on the stock exchange.
FATCA	Foreign Account Tax Compliance Act is a 2010 United States federal law to enforce taxation requirements for United States persons, including those living outside the U.S.
FB	Facebook
FFI	Foreign Financial Institutions , see AFI
FOI	Freedom of Information ; Per the Freedom of Information Act 1982 , Australians are provided a legally enforceable right of access to government documents including granting individuals the right to see what information government holds about them, and to seek correction of that information if they consider it wrong or misleading.
FTC	Foreign Tax Credit - for Australian source income, taxes paid to Australia will offset any US tax payable. Most people with mainly employment income will find that the FTC fully offsets their US taxes (so they have zero balance due in the US).
FTT	Let's Fix the Tax Treaty! Organisation
IGA	Intergovernmental Agreement ; generally the basis for implementing FATCA. Note this agreement is not a treaty in a strict sense as generally does not require full government ratification & approval on the US side.
IRS	Internal Revenue Service , US bureaucracy responsible for taxation reporting, collection and compliance
LIC	Listed Investment Company – a listed company in the business of investing in other companies and unlisted assets.

NIIT	Net Investment Income Tax – enacted as part of the Affordable Care Act (ObamaCare), this is a 3.8% US surtax on net investment income which cannot be offset by Foreign Tax Credits (leading to double taxation).
PFIC	<u>Passive Foreign Investment Company</u> - for purposes of United States income tax, US persons owning shares of a passive foreign investment company (PFIC) are subject to extremely strict, onerous and complex tax regulations that, in effect, make it prohibitive to invest in mutual fund type investments outside the USA.
Superannuation	Often referred to as Super, this is Australia’s government-mandated retirement savings scheme.
SMSF	Self-Managed Super Fund

Appendix 3: Evidence Base Requirements

Presently, there is little awareness by government, policy makers or the general public of the issues caused to Australians through the US practices of Citizenship-based taxation. Consequently, to affect change, we will first need to educate policy makers and influencers such as the media. To do this, it will be important to create a **defensible evidence base** in support of our position.

There are many advantages of having a well-considered evidence base, including:

- Readily available, documented and clear factual support for our cause
- Common knowledge source
- Clear (single) messages rather than risk of confusing mixed facts and figures
- media and policy maker engagement kit development

This evidence base can take a number of forms including

- 1) Wiki (<https://wiki.fixthetaxtreaty.org/doku/doku.php>) – online educational source with hyperlinked references,
- 2) White Papers and original research – well thought-out and researched position papers on specific elements of the issue, etc.

Evidence generation should consider the following (modified, after [Unicef Advocacy Toolkit](#)):

1. Is the evidence grounded in solid research, preferably undertaken by experts?
 - Clear evidence – scale, severity, impact on lives
 - Based on research and rigour
 - “killer” statistics
2. Does the evidence highlight the root causes of the problem?
3. Does the evidence provide convincing solutions to the problem?
 - Feasible solutions ... Reliable & relevant
4. Is the evidence complimented with qualitative analysis when it is quantitative, and vice versa?
5. Is the evidence complimented by human impact stories that highlight the personal and human dimensions of the problem
6. Can the evidence be easily disseminated?
7. Is the evidence timely?

Appendix 4: Partners & Alliances

List of Potential Partners & Alliances (will be added to / amended over time)

Anti-discrimination Groups	Potential support based on argument that people of American origin are being discriminated against because of race? 1991
Privacy advocates such as EFA and the Pirate Party	https://pirateparty.org.au/ https://www.efa.org.au/ - these may be a stretch, but they might be interested in fighting FATCA based on the privacy issue
Superannuation and investment / finance industry	http://www.superannuation.asn.au/ http://www.smsfassociation.com/ http://www.industrysuperaustralia.com/
Australian expats in the US	Brett Evans at Atlas Wealth - financial planner specialising in expats
Australian civil liberties groups such as Civil Liberties Australia , NSW Council for Civil Liberties , QLD Council for Civil Liberties , SA Council for Civil Liberties , others?	Numerous Groups w/in Australia whose purpose it is to champion Civil Liberties. Our cause is a breach of "the right to equal treatment under the law and due process" and a case of clear discrimination against a group of Australians Unclear if and how these groups coordinate and whether they will individually or collectively support our cause. Some groups such as NSWCCCL have gone as far as legal support for formal challenges.
MPs / political potential allies based on US connections	potential/unconfirmed: Rebekha Sharkie, Andrew Leigh (need to populate list - look on Australia page on Brock)
Sydney Americans Group	Led by Ben Gaupo
Americans in Brisbane Meetup	