Dear (MP name here),

Thank you for your assistance in the past … (removed personally identifiable introductory paragraph).

We would like to speak with you or a staff member at your office to share our concerns. We will put some key points into writing in this letter to get the discussion started.

You may have noticed news articles recently reporting that the number of people renouncing their US citizenship in 2015 again hit an all-time record ([story on 9news.com](http://www.9news.com.au/world/2016/02/11/11/26/record-number-of-americans-giving-up-their-us-citizenships)). Additionally, in September 2015 the Australian Tax Office sent data on over 30,000 Australian bank accounts with an average balance of more than A$160,000 to the IRS ([article in The Australian](http://www.theaustralian.com.au/business/economics/ato-hands-over-bank%20details-to-us-internal-revenue-service/news-story/31129a8375c08fa00835675be08e2e4e)). Given this backdrop, we believe this is a good time to make sure Parliament is aware of the effects this US tax grab is having on Australian citizens and residents. The main issues we would like to emphasise are:

1. This affects all Australians, not just those defined by the US as ‘US Persons’. The original Australian FATCA implementation [legislation](http://www.austlii.edu.au/au/legis/cth/bill_em/tlaotfab2014510/memo_0.html) estimated the cost of implementation at A$482.68million, or A$6,270 for each of the approximately 77,000 US citizens resident in Australia. Banks will pass these costs on to all customers in the form of higher account fees and/or lower deposit interest. And, to the extent that the Australian government allows the US to drain capital from the Australian economy through taxation of superannuation accounts and punitive taxation of managed fund investments in Australia, the ‘US Person’ victims of this tax grab will be more likely to need to rely on the social safety net funded by the Australian taxpayer. All persons opening bank accounts in Australia are now asked whether they are a US citizen, whether they have any connection to the US or not. Is this creating a new ‘tainted’ class of people?

2. The FATCA data transfer represents a violation of privacy and a risk of identity theft. Just last week the IRS reported that [hackers stole online PINs of 100,000 taxpayers](https://nakedsecurity.sophos.com/2016/02/11/pin-stealing-irs-attack-affecting-100000-taxpayers/); this news report is hardly unique. And, once the IRS has the data, the [US FATCA legislation does NOT restrict the data to use only for tax compliance purposes](http://motherboard.vice.com/blog/the-us-surveillance-dragnet-extends-to-foreign-bank-data-too). The data can be shared with other branches of the US government without a warrant or notification to the taxpayer involved.

3. Now that the US has bullied most of the rest of the world into signing on to FATCA IGAs, the US refuses to sign on to the Common Reporting Standard (CRS) that the rest of the world has developed in response to FATCA. While the CRS has its own problems, it has the benefit of requiring reporting only on non-resident accounts. Since the US has not agreed to CRS, it has now become one of the top tax havens in the world, as reported by [Bloomberg](http://www.bloomberg.com/news/articles/2016-01-27/the-world-s-favorite-new-tax-haven-is-the-united-states), [Forbes](http://www.forbes.com/sites/robertwood/2015/11/03/u-s-ranks-as-top-tax-haven-refusing-to-share-tax-data-despite-fatca/) ([twice](http://www.forbes.com/sites/robertwood/2016/01/27/the-worlds-next-top-tax-haven-is-america/)), and [Business Insider](http://www.businessinsider.com.au/the-us-is-becoming-a-tax-haven-2016-1).

4. The US system of [citizenship based taxation is an anomaly in the developed world](http://papers.ssrn.com/sol3/papers.cfm?abstract_id=3D2717367). While we understand from your earlier enquiries on our behalf that the Treasury is aware of the problem with double taxation of superannuation, it is disappointing that, almost 24 years after the superannuation system was enacted, this deficiency in the treaty has not been fixed. Superannuation is not the only source of double taxation for Australian citizens and residents claimed by the US. The US imposes tax on capital gains from the sale of a personal residence, which is not taxed in Australia. In addition, the US imposes a very punitive Passive Foreign Investment Company (PFIC) regime on investments in Australian managed funds, REITs and ETFs (and other managed investment products). If an investment is classified as a PFIC, the tax on any gain can easily be 100% of the gain or more. Some US tax preparers are classifying superannuation funds as Foreign Trusts filled with PFICs for US tax reporting – a treatment that will result in a confiscatory level of US tax. Outside of superannuation, any Australian who is claimed as a US taxpayer will be unable to invest in Australian managed investment products. This is clearly an extraterritorial imposition of US law, which acts contrary to the interests of Australian residents and citizens.

5. Many of the Australian citizens claimed by the US as US taxpayers may not even be aware that they should be filing with the IRS. The US grants citizenship to anyone born on US soil – including the children of Australians in the US temporarily for work or study. Many of these children will have moved back to Australia at a very young age and will have few, if any, connections to the US. The US also claims the right to tax some Australian-born children of US citizens (the rules are complex).

6. Renouncing US citizenship to become free of US‘taint’ is expensive. The US Department of State charges US$2350 for renunciation or relinquishment of US citizenship. But this is only the beginning. In order to cleanly exit the US tax system, a person must be fully compliant with US taxes for 5 years, as well as meeting tests relating to income and net worth. Failure to meet all three of these requirements results in the imposition of an Exit Tax computed on the unrealised gain as if all assets were sold on the day prior to renunciation – including assets earned and accumulated while resident in Australia. While an exemption is allowed for the first US$650,000 of gain on property, *there is no exemption on the current value of the renunciant’s superannuation balance*. The full value of superannuation, less any contributions and/or income previously taxed by the US, will be taxed as if received in cash. For long-term Australian residents, the Exit Tax will make renunciation impossible. Homeowners in Melbourne and Sydney nearing retirement with average superannuation balances may have trouble getting below the net worth limit. The financial toll of becoming US tax compliant and renouncing citizenship will mean that Australian citizens with a US taint will be more likely to need to rely on the Age Pension even after saving diligently in the superannuation system. This cost will be borne by all Australian taxpayers.

**Where to go from here:**

Our main objective is to ensure that members of Parliament and the Senate are aware of this issue and the costs of US exceptionalism to both the individuals affected and the country as a whole. We would welcome your advice on how best to achieve this goal.

As you are probably aware, no country feels the impact of FATCA and US tax law more than Canada, where there are at least 1 million US expatriates. There is currently a crowd-funded lawsuit in Canada that claims that the FATCA IGA signed by the Canadian government violates the Charter Rights of Canadian citizens. Additionally, a member of the opposition in Canada recently [tabled a series of questions](http://isaacbrocksociety.ca/2016/01/22/bravo-mp-dusseault-for-keeping-the-pressure-up-on-fatca/) in the Canadian Parliament about the data sent by the Canadian Revenue Authority to the IRS under FATCA. While many of those questions are specific to Canada, questions about data security, privacy, reciprocity, and implementation costs should be asked in all countries that have agreed to implement FATCA. We would welcome discussing whether it is possible to ask the
Australian government similar questions regarding the data submitted by the ATO under FATCA.

**Our situation:**

(paragraph outlining our personal situation removed)

We are not ‘US citizens’ whinging about US policies. We are Australian citizens, concerned about US intrusion into Australian affairs, and the one-way nature of US tax imperialism. We have learned a lot about
this issue over these two years. We would like to share that knowledge with you. We hope that by educating Australian lawmakers about the injustices of this US grab for tax revenue, our government will do a better job of protecting Australian sovereignty from the bullying of the US government in future.

Sincerely,