Thank Ross Ross.Vasta.MP@aph.gov.au

From: Vasta, Ross (MP)
Sent: Thursday, 7 April 2016 10:26 AM
To: Lindgren, Joanna (Senator)
Subject: BONNER CONSTITUENT - (JD)- RE: US-AUSTRALIA TAX TREATY

Dear Senator

I have recently met with my constituent, Mr (JD) of (Australia).

Mr (JD) has shared with me his concerns about the US-Australia Tax Treaty, specifically about the requirement that US citizens living in Australia are still required to pay tax to the US while also paying tax to the Australian Government.

I have attached (JD) original message to me outlining his concerns about the US-Australia Tax Treaty.

(JD) has requested assistance with his campaign to initiate a parliamentary inquiry into the Tax Treaty. I have advised (JD) that you may be able to assist him in this regard.

I kindly request that you contact (JD) at your earliest convenience on(tel) or (email) to discuss this issue and possibly take further action on his behalf.

Thank you for your time and assistance on this matter it is greatly appreciated.

Yours sincerely
Ross

P.S - Don't forget to visit my website www.rossvasta.com.au or like my Facebook page www.facebook.com/rossvastamp to keep up-to-date with Federal matters and community events in Bonner.

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From: Jak Dac
Sent: Tuesday, 1 March 2016 10:26 AM
To: Vasta, Ross (MP)

I seek your attention to resolve unjustifiable gaps in The US – Australian Tax Treaty that permit US double taxation of Australian residents as if they live in the US.

Australian Residents, who are US persons, and their Australian only family members, are impacted by Australian law obligating them to comply with 74,000+ pages of the US Tax Code. This is on top of Australian tax code requirements. Often tax breaks in one country are cancelled by the other country.

An estimated 77,000+ US persons live in Australia based on census data. Approximately 54% have Australian citizenship. Many have never had a US passport.

The Extraterritorial US tax and compliance requirement of Australians under US "Citizenship Based Taxation" is not justified. It is wrong. America has forgotten a core founding principle of 'no taxation without representation.' Australia should not acquiesce, especially where US law infringes on Australian Sovereignty, and where generally Australians would not accept taxation without representation or services.

A basis of taxation is services in exchange. Australian residents pay taxes to and receive government services from the Australian government. Australian residents do not receive services from the US Government such as education, unemployment, disability, roads etc. Thus the taxation including what has been called "formageddon" compliance is unjustified and unfair. Some have gone as far as to call the practice a form of 'indentured servitude' or 'financial slavery.' For Australian tax residents who are also nationals from other countries (England, New Zealand, South Africa, etc.) Australian law does not oblige these persons to pay tax to those countries on Australian earnings, assets, and income.

You may ask how are these Australians who are US persons double taxed? The ATO says on their website that "tax treaties prevent double taxation."

In a recent high profile case the US Internal Revenue Service (IRS) chased London Mayor Boris Johnson for around 100,000 pounds capital gains tax (in USD) on the sale of his first home in England. Such gains are not taxable in the UK or Australia. Yet gains above $US250,000 on personal home sales are taxable in the US. Boris Johnson lived in the US only his first five years and gained his wealth for toil in the UK. Boris Johnson called the US extraterritorial tax "outrageous."

This story of Patricia Moon, a Canadian with clinging US Nationality, was reported in The Wall Street Journal. The same laws apply in Australia. Patricia Moon lived in Canada for decades with her Canadian only bread-winner husband. In the previous three years she made no more than $11,000 in any one year, paid all her Canadian tax, owed no US tax, yet she figured she could be up for $US455,000 in fines for not filing US returns and reporting her joint bank accounts to the US. She was in a state of "terror" and suffered sleepless nights. There are Australian 'Patricia Moons.' Some are fearful that if they do not comply they will not be able to visit relatives in the US.

As reported in the New York Times, in an article titled An American Tax Nightmare: "An American couple, living in Australia for many years, received notice that the merchant banking account for their chain of retail stores was to be cancelled, as Fatca reporting demands overwhelmed their bank's capabilities."

Home sales, report bank accounts what else? Superannuation accounts of Australian residents are considered "nonqualified pension funds" under US law. Any tax that the US has but not Australia does not get 'prevented' by the tax treaty. The US need only call a tax by a different name than Australia for it to flow through without tax credits allowed against Australian tax liability.

Most US tax laws have been in place for decades but have largely been unenforceable until now. Recently Australia adopted a FATCA IGA making Australian law the reporting of Australian resident US person financial account details to the ATO which reports them to the US IRS.

While there is recognition among members of Parliament that Australian residents will be impacted by the combination of FATCA and US Citizenship Based Taxation, there is a belief among some US persons that members of Parliament don't know what this really means, and that Parliament should find out.

Most US persons living in Australia have no idea about US tax compliance and double taxation as they believe some or all of the following: that no one told them, it does not make sense to them, that they are exempt as they are Australian Citizens/Australian Permanent Residents/they were born in Australia, that they live in a relatively high tax country (Australia), they believe the tax treaty will protect them, they think they don't make enough, or they don't have any money or income in the US. Others don't comply because they can not afford the cost which may run into the thousands each year for a simple US return even if no tax is owed.

Here is a key point: The US AND Australian governments have done very little to inform Australians who are US persons of their US tax obligations under Australian law. Even the ATO website states that tax treaties "prevent double taxation." With no other explanation. To many people these words may mean you pay all your Australian tax then you need not pay any more tax to the US. It is much more complex.

The Australian government ought to ensure that tax obligations are fair and non-discriminatory. The government ought to provide crystal clarity as to tax obligations of Australians. And importantly, The Australian Government should not put the government's "head in the sand" on the issue.

Via the FATCA IGA, Australia will help a foreign government (US) enforce foreign extraterritorial law against Australians living in Australia. To make way for FATCA, Australia rewrote privacy law to make exception for international treaty – FATCA. Discrimination law is yet to be tested – where Australians who are US persons are being singled out for account reporting and extra tax and compliance obligations. Also, FATCA violates the privacy of Australian only family members (think husband / wife) when the ATO reports to the US joint account information. Additionally the financial security of these Australian only family members is undermined by the additional US tax and compliance obligations.

Some say just renounce US citizenship. The US makes renunciation of US citizenship complex and expensive and a substantial barrier; one person has called it a "horrendous cost to comply and/or extricate out of US."

For no other group of Australians does Australian law (tax treaty) oblige consideration of renouncing a second citizenship. Why has Australia given over its sovereignty to the United States on this matter of tax and compliance – to the extreme harm of its own law abiding citizens and residents? Why has Australia not treated this group of Australians as equal without discrimination due to birthplace?

Some may point to the upcoming Common Reporting Standard (CRS) and say that Australia will in future report financial accounts for nationals of many countries. A key difference is that all the CRS countries practice Residency Based Taxation while the US practices Citizenship Based Taxation. The CRS requires reporting accounts of non-resident nationals of other countries to those countries – leaving FATCA a threat to US persons and CRS not a threat. The US has not signed up for CRS.

Equal and privileged Australian citizenship, backed by Australian law, would remove without any doubt the ambiguity of the tax treaty under which the US wants to (ambiguously) claim persons for tax purposes with total disregard for Australian citizenship and residency in Australia.

Tax Treaty gaps set Australian families with a US Person family member at a disadvantage compared to the Australian only household next door. Or perhaps the next household has members from any of a variety of nonUS countries. Think of it. These other Australians may enjoy security of financial planning including savings in superannuation and tax free home sales, etc. where the Australian household (with US person) does not have this relative security and clarity.

Where is the fair go for these people who call Australia home? Why doesn't the Australian government protect these Australians on Australian soil from the "intervention into Australian internal affairs" represented by US tax and compliance laws? Worse yet,why does Australia and the ATO mislead these people and Parliament that the Australian-US Tax Treaty "prevents double taxation?"

I seek your assistance in the following ways:

1) Initiate a Parliamentary Inquiry into Australian – US Tax Treaty Tax Treaty gaps that disadvantage Australians who are also US persons in their family financial security, employment, retirement, estate planning, and free time required for the compliance compared to all other Australians – in an unequal and discriminatory manner and without regard to the Australian "Fair Go."

2) Request the ATO to report to Parliament on: Australia – US Tax Treaty Gaps impacting Australian tax residents, with examples of finances/tax liabilities for different types of individuals: Single, married with Australian only spouse, with Australian only children, born in Australia but as a US person, disabled person, early in career, late in career, different income brackets, and retired. Such reporting should have been included in the FATCA IGA Impact Statement.

3) Request the ATO to amend their misleading website information. Such information may have mislead Parliament in its adoption of the tax treaty as "all good" when no it does not completely prevent double taxation as stated but guarantees double taxation. Suggested website change to include the following footnote:

a. In the case of the Australian-US Tax Treaty while the treaty alleviates double taxation, some forms of double taxation are guaranteed through tax treaty gaps. The US is unique among OECD countries in its taxation of US Persons (citizens and Greencard holders) wherever they live in the world on their global income and assets, as if they are resident in the US, obliging them to comply with the 74,000+ page US tax code. Often US tax law is at odds with the Australian tax code with tax breaks in one country cancelled by the tax code of the other country. The Australian Government has not provided additional protections for Australian Citizens and Australian Permanent Residents against what is called "US Citizenship Based Taxation."

Australian Citizens and Permanent Residents who are US persons may be subject to additional US tax, substantial compliance, and potential substantial penalties beyond all taxes, compliance, and penalties required by Australia. Generally, above the Australian tax free threshold, there is no additional US tax on earnings and interest as Australian tax rates in these categories are higher than US rates. Yet for categories where Australian taxes are higher than US taxes such as on earnings and interest, no tax credits from these types of taxes paid to Australia, on the excess of Australian tax paid above the US rates, are allowed by the tax treaty against other categories of taxes where US rates are higher than or in addition to Australian taxes.

Depending on the individual circumstances extra US tax may include on sale of the family home for gains over $US250,000, Superannuation accounts which under US tax law are considered “non-qualified pension funds”, Obamacare NIIT 3.8% investment tax, investment gains impacted by currency fluctuations between the Australian and US dollars, lower tax free threshold in America than in Australia, disregard of Australian dividend franking credits, and any other tax, higher tax rate, or tax under a different name that the US has but not Australia.

Even if no US tax is owed, an Australian resident has no money or income in the US, and if they receive $0 in US government services, the US may still require US tax returns and reporting of all financial accounts.

The US tax code treats any account or asset in Australia as “foreign,” with suspicion of tax evasion, involving extra reporting, tax, restrictions, and punitive compliance penalties.

Australian financial account reporting is in US Dollars to the US Financial Crimes Enforcement Network, any Australian accounts US persons have signature authority over (including employer and community service accounts even if there is no beneficial interest), if value of total foreign accounts is above $US10,000.

Australian trusts and mutual funds for which US persons are beneficiaries are subject to US tax and compliance treatment under US Passive Foreign Investment Corporation regulations.

Under the Australian FATCA IGA, if thresholds are met, the ATO will report financial account information of US persons to the US IRS including balances and interest. Australia is not required to report superannuation accounts under the FATCA IGA yet US law requires individuals to report superannuation accounts and potentially pay US tax on annual gains under US “non-qualified pension” rules, without credit for Australian taxes paid on superannuation and without credit against Australian tax liabilities for other types of taxes.

Tax issues involving the overlay of the US tax code onto the Australian tax code are complex. Often considerable compliance expense in specialised tax advice is required for even for simple situations and even in cases where no US tax is owed. Any Australian residents who are also US persons should seek professional tax advice.

4) Refer the matter to the Australian Human Rights Commission. To investigate: US extraterrerritorial double tax and compliance of Australian residents; Australian law that obliges the US tax and compliance laws on Australians who are US persons; the Australian FATCA IGA that turns Australian banks and the ATO into arms of the US IRS aiding in the enforcement of unjust tax and compliance; and the human rights abuse represented by such financial and compliance obligation with potentially bankrupting penalties if not done right.

The information in this letter may serve as a starting point for such investigation. A human rights complaint has been acknowledged as received by the UN Human Rights Commission from members of The Isaac Brock Society and Maple Sandbox. Countries of the world acquiescing to US tax and compliance laws against their own tax residents are implicated in this compliant.

Areas of investigation may include right to privacy, right to be treated as innocent until proven guilty, right to be free from cruel punishment, right to be governed by the government where you reside under the Master Nationality Rule, right to leave one’s country of birth, right to government representation, and right to non-discriminatory taxation.

There is also the issue of alienation from property without compensation represented by Australia’s signing of the tax treaty. Compounding this issue is the open-endedness of the treaty not shielding those impacted over time by changes to either Australian tax laws or US tax laws resulting in a greater degree of alienation from property. Examples are that the treaty was signed before the introduction of superannuation and before the US Obamacare NIIT investment tax, the treaty did not prevent US double taxation here, thus double taxation and compliance reporting has become greater over the years. Fear prevents many from speaking out about these issues or even using their real names when doing so; including fear of the power of the IRS, the obtuse nature of the US tax code with changes every year, great potential penalties, recognition that there is no effective representation in the US government for the 8.7 million US persons living overseas (they would never had agreed to it all especially for no services in exchange), and recognition that the tax laws directed at US persons living overseas are divorced from concepts such as fairness or ‘liberty and justice for all.’ Australians who are US persons may be said to be subject to ‘state sponsored financial terrorism’ on Australian soil by a powerful foreign state.

What now

Given the four courses of action above, a letter to Chris Jordon, ATO Commissioner of Taxation might be first off. You may send a copy of this letter and ask him to "please explain."

You may also ask, on a "yes" or "no" basis if the ATO has the expertise to comprehensively provide information in regards to the total tax obligations (Australian + US) under Australian law (tax treaty) for Australian resident US persons. As such expertise has not appeared to be demonstrated, it appears that the answer is no. Perhaps Parliament did not ask for such advice (tax treaty/FATCA IGA), or the ATO did not insist on providing it. Or perhaps there was trusting and outsourcing to the US on these matters involving Australian sovereignty and Australian law covering Australian resident citizens and permanent residents.

The Australian – US Tax Treaty and FATCA IGA appear to have been passed by the Australian Parliament and Senate without proper and complete review of the impacts on Australians. This is the justification for opening a Parliamentary Inquiry.

As the ATO has responsibility and obligation to accurately report and not mislead on tax obligations (including on the ATO website), the ATO should engage a study with the likes of PwC Australia or KPMG Australia who have the required expertise. As the Australian and US tax laws are always changing it is suggested that an ongoing engagement is in order. Yes this involves spending money yet PwC and KPMG are not affordable to mere mortals. Tax can not be fair if it obligates the expense for such calibre advice for ordinary Australians.

The next course of action may be referral of this letter to Professor Gillian Triggs and theAustralian Human Rights Commission. This commission will require report from the ATO as outlined above under #2 as well.
Below is a request that Australia should ask of the US. Yet before proceeding, Parliament needs the proper and complete information, in regards to where the tax treaty guarantees double taxation and other tax and compliance impacts on Australian residents that the ATO is obliged to provide.

On simplification, fairness, and respect for Australian sovereignty grounds Australia requests agreement and tax treaty change with the US with EXEMPTION from US tax for Australian residents: Superannuation, personal home, estate, Australian tax free threshold, any additional US tax above Australian tax rates even 0% Australian rates and even for taxes Australia does not have, Obamacare NIIT Investment tax, and up to $5 million asset exemption and all asset appreciation while living in Australia for Australian assets – and for Australian resident US persons to be taxed with reporting requirement as "non-resident aliens" under US tax and compliance law.

It may be said that via extraterritorial tax and compliance laws that the US is a financial bully. So then will Australia continue to participate in the bullying against Australian residents including denying it exists – no double tax here! Or, will Australia 'call the bullying out' as it should and shut it down?

Thank you for your assistance.

FATCA and US exceptionalism affects all Australians rather than how we have been personally affected. Once the issue is framed as how FATCA affects USCs in Australia, their immediate response is to say we must look to the US government for remedy, rather than the Australian government. This also frames us as "Americans in Australia" (even though we are Australian citizens), rather than as Australians being chased by a foreign government.

We are in the process of renouncing — and I think that once we are no longer USCs that will strengthen our standing to argue that the Australian government should be doing something to protect Australian citizens and residents from the international bully that is the US government.

Regarding the below subject.

Australian Citizenship National citizenship consultations
http://www.border.gov.au/News/Pages/citizenship-consultation-your-right-your-responsibility.aspx
http://www.border.gov.au/about/reports-publications/discussion-papers-submissions
http://www.border.gov.au/about/reports-publications/discussion-papers-submissions/australian-citizenship-your-right-your-responsibility#

The Australian Government wants to hear your views.

Last week Tuesday 2/9 there was a Citizenship WA public meeting.

Our MP arranged a meeting with Philip Ruddock MP and Senator Concetta Fierravanti-Wells.

What we can say it is obvious that the most effective way to get any political traction from the issue of FATCA is for constituents Australia wide to approach their local Parliamentary members and educate them (tell them to google FATCA from the Wikipedia site and include JC's type of letter.http://isaacbrocksociety.ca/fatca-and-australia/comment-page-2/#comments

Politicians DO NOT have a clue of what the FATCA legislation is about.

Here what was submitted to the Philip Ruddock and Senator Concetta Fierravanti-Wells:

We are gathered here today to strengthen Australian citizenship – and we quote from the ad you have put into The West Australian 29/08/2015 p.51 on National citizenship consultations "Australia is one of the most culturally diverse yet socially cohesive nations on earth. The open and inclusive society we enjoy has not come about by chance. It is of an adherence by Australian citizens, whether by birth or by choice, to a core set of values that underpins the rights and responsibilities of Australian citizenship." And yet you and parliamentary colleagues have voted in legislation, the "Tax Laws Amendment (Implementation of the FATCA Agreement) Act – 2014" which threatens to completely erode our rights and responsibility to a core set of values as Australian citizens. You have allowed domestic private and personal financial information to be transmitted to a foreign government on a discriminatory distinction.

By passing this legislation you have said that Australian citizenship by choice is not as full and complete as citizenship by birth. You have passed this legislation using the outdated terms of the U.S. Australia tax treaty of 1982, prior to the Australian government accepting immigrants from a foreign nation to fully naturalize as Australian citizens, which was not possible until 1986. Subsequently the outdated terms of the treaty have been used by the FATCA bill and the end result is openly discriminatory, dismissive of Australian citizenship, and totally disregards the privilege of Australian citizenship. Australian citizenship by choice is now hugely devalued and diminished as against most individuals with Australian born citizenship.

Australian who are citizens by choice are being targeted, interrogated and exposed to a foreign jurisdiction in regards to the transmission of domestic private and sensitive financial and banking information. How would you feel if this was happening to you without your consent, knowledge, and understanding of the detrimental lifelong implications?
The impacts on individuals targeted by FATCA with the status quo of the tax treaty are:

• ongoing debilitation of the value of Australian citizenship
• unifying power of and commitment to Australian citizenship eroded
• destabilisation in the identification of being a fully accepted Australian (counter to notions of national identity)
• demoralisation of being treated as a second class citizen in the country and allegiance of choice.

FATCA tax law will work as an ongoing discriminatory, destabilising, and detrimental effect toward full cultural assimilation, community integration and building, social cohesion, stability in the workplace, business, financial security, financial planning, succession planning and family structure. It directly affects children born in Australia and exposes non U.S. Australian resident spouses and partners in the case of joint banking accounts to scrutiny of their personal financial affairs.

The Australian Federal government is saying to citizens by choice that we can no longer "call Australia home". We are pursuing a standing of equality, equity and responsibility from the Australian government to be treated and regarded as fully privileged Australian citizens and not subject to the powers of a foreign jurisdiction by the Tax Laws Amendment (Implementation of the FATCA Agreement) Act 2014. Without this recognition and protection the citizenship of approximately 54,000 Australians is now severely compromised and the fore-mentioned core set of values are potentially meaningless.