

The “Super” reason Australians are renouncing their US citizenship

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Many US citizens living in Australia and elsewhere around the world have found themselves faced with the difficult decision of whether to keep or renounce their US citizenship. A decade ago, the idea of renouncing one's US citizenship was, for most, unthinkable. Currently, however, record numbers of individuals renounce every quarter and many US consulates are booking appointments 18 months in advance.^[1] While people choose to renounce their US citizenship for many reasons, a common reason Australian residents choose to do so is because of the lack of clear guidance on the US tax consequences of Australian Superannuation funds (Super).

For those who are unfamiliar, a Super fund is a financial vehicle in Australia that is set up to provide an individual with income upon retirement. Like most governments that sponsor retirement programs, Australia encourages its citizens to contribute to the funds by providing advantageous tax treatment for doing so. It is estimated that by mid-2015, Australians had over AUD \$2.02 trillion in Super assets.^[2] For a country with an estimated population of 24 million, this is clearly significant and is beginning to sound like a success story for many Australians in their retirement years. But this is not the case for Australian residents who are also US citizens. For an estimated US citizen population in Australia of over 90,000 (as of 2011) that is growing rapidly, the Super poses problems.^[3]

By way of background, it is important to understand how the United States taxes its citizens. The United States is one of two countries on earth that taxes the worldwide income of its residents, citizens, and foreign persons admitted as permanent residents.^[4] Thus, US citizens across the world are taxed by Uncle Sam on all the income they make, regardless of its currency, location earned, or if the US citizen has ever set foot on US soil. The consequence of this to the US citizen living abroad is the burden, cost, and headache of meeting annual IRS filing and reporting obligations. For a more detailed account of IRS reporting and filing obligations for US citizens resident in Australia, please reference Roy Berg's article: [US citizens living in Australia – US tax filing obligations](#).

The harsh consequences of citizenship-based taxation do not stop there. In addition to being taxed on worldwide income, the US also has a complex tax reporting regime and also an estate and gift tax regime.^[5] To complicate things even further, the implementation of the *Foreign Account Tax Compliance Act* (FATCA)^[6] went into full effect on July 1, 2014. FATCA was enacted to catch non-compliant US taxpayers with funds located abroad and has caused many sleepless nights for US citizen expats in Australia in anticipation of a notice from the IRS. In a news release, the Australian Taxation Office stated:

“From 1 July 2014, the Foreign Account Tax Compliance Act (FATCA) requires Australian financial institutions to review customer accounts to determine whether they are held by US citizens, US tax residents or US entities (or in some cases non-US entities controlled by US persons). Customers may be contacted by their financial institution (for example, by letter) about confirming whether they are a US citizen, tax resident or otherwise a US person .”^[7]

As US citizens around the world begin to understand how the IRS taxes its citizens and the manner in which they can now be found abroad through FATCA, the next logical step is to look for a solution. In doing so, the overarching question US citizens living in Australia and abroad are asking themselves is whether their “US citizenship juice is worth the squeeze?” In other words, do I really need my US citizenship and, if so, what are the benefits? US citizens who find themselves in this unenviable position are often emotionally and financially drained after the process of becoming US tax-compliant, staying US tax-compliant, and continually planning for cross-border US estate and gift tax issues.^[1] Not only can the filing and reporting costs seem ludicrously expensive and intrusive, but the penalty regime for non-compliance can be quite dire if not addressed properly.

To make matters worse, after jumping through the hoops of becoming US tax-compliant, many Australians realize that they may owe US tax due to their interest in a Super. The only thing worse than paying lawyers and accountants to file complex cross-border US tax returns is to then have to write a US dollar check to the IRS. Add those factors to FATCA’s arrival to the cross-border compliance party in 2014, and many US citizens living in Australia have had enough. I have written a detailed article on if renouncing makes sense for you and the many associated pitfalls: [Renouncing Your US Citizenship: Is Divorcing Uncle Sam Right For You?](#)

Individuals who choose to renounce their US citizenship need to be aware of the potential negative consequences of doing so and take steps to avoid them. The negative consequences can include the imposition of the US exit tax^[2], permanent inadmissibility from the United States, and the imposition of the inheritance tax.^[3]

While outside the scope of this article, the complex rules and phases of a Super under Australian law and the corresponding US tax and reporting obligations are a common reason that drives Australians to relinquish their US citizenship. For additional information about the US tax treatment of Super funds, please see Marsha-laine Dungog’s article: [US taxation of Australian superannuation funds: when the Super is NOT so super after all.](#)

In the end, there is little doubt that US citizens living abroad, both in Australia and globally, are renouncing in great numbers due to the effects of US citizenship-based taxation and FATCA. For the average US citizen living abroad, citizenship-based taxation creates problems with which many are no longer willing to contend. Add the unclear US tax treatment of Super funds to the plate of problems facing US citizens with an Australian connection, and it is clear why many have chosen to leave the table.

[1] Names of all renouncers are published quarterly in the Federal Register. See http://intltax.typepad.com/intltax_blog/2016/07/2016-second-quarter-published-expatriates.html (2009, 1534 in 2010, 1781 in 2011, 932 in 2012, 2999 in 2013, 3415 in 2014, and 4279 in 2015).

[2] *"Superannuation Statistics". The Association of Superannuation Funds of Australia.*

[3] *Australian Bureau of Statistics.* 2011. Last accessed 22 July 2014.

[4] IRC § 7701(b)(6). Lawful permanent resident, otherwise known as a “U.S. Green Card” holder.

[5] IRC § 2033 provides that the gross estate of a decedent who was a citizen or resident of the U.S. at the time of their death, shall include all of their assets no matter where situated. Residency for estate tax purposes is different than residency for income tax purposes. Residency for estate tax purpose is a domicile test, see, Treasury Regulations §20.0-1(b)(1). Thus, a renounced individual could still face estate tax exposure if considered domiciled in the U.S.

[6] The Foreign Account Tax Compliance Act enacted as revenue offset provisions of the Hiring Incentives to Restore Employment Act of 2010.

[7] <https://www.ato.gov.au/General/New-legislation/In-detail/Other-topics/International/Foreign-Account-Tax-Compliance-Act/>

[8] \$5,450,000 USD unified credit available in 2016 (Indexed for inflation). Estate tax rate of 40 percent.

[9] IRC § 877A.

[10] 8 U.S.C. § 1182(a)(10)(E)(2011). (Any alien who is a former citizen of the United States who officially renounces United States citizenship and who is determined by the Attorney General to have renounced United States Citizenship for the purpose of avoiding taxation by the United States is inadmissible.)