

The “Super” reason Australians are renouncing their US citizenship

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US citizens living in Australia and around the world are finding themselves facing the very 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. Fast-forward 10 years and wait times to book renunciation appointments at US consulates and embassies worldwide have exploded, with record numbers of quarterly and annual departures documented.^[1] So why is this article dialed in on our Aussie friends when US renunciation appears to be a global movement? The reason is Australia’s popular retirement vehicle known as a Superannuation fund (commonly referred to as a “Super”), something that can have negative cross-border US tax implications. The Super problem for US citizens in Australia is fueling a heightened desire to give up US citizenship.

A Superannuation fund is a financial vehicle in Australia that is set up to provide an individual with income in retirement. Like most governments that sponsor retirement programs, Australia supports its citizen’s contributions 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 golden 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 100,000 that is rapidly growing, the Super poses problems.^[3]

But before we dive into why Super funds are causing Australians to renounce, it is important to understand how the United States taxes its citizens. The United States is one of the few 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 residing 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, however. On top of being taxed on one’s worldwide income, US information reporting obligations,^[5] and the potential of owing US tax, US citizens living in Australia must also deal with the consequences of the US estate and gift tax regime during life and at death.^[6] To complicate things even further, the implementation of the Foreign Account Tax Compliance Act (FATCA)^[7] went into full effect on July 1, 2014. This dragnet, enacted to catch non-compliant US taxpayers with funds located abroad, is causing many US citizen expats in Australia sleepless nights in anticipation of a notice from the IRS. The Australian Taxation Office clearly outlines the effects and requirements of FACTA on both US citizens and on the financial institutions within Australia’s borders, stating:

“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.”^[8]

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 need my US citizenship and, if so, what are the benefits? Clients 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.^[9] Not only can the filing and reporting costs seem ludicrously expensive and intrusive, but the penalty regime for non-compliance can be catastrophic if not dealt with 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 cut a US dollar check to the IRS. Add those factors to FATCA’s arrival to the cross-border compliance party in 2014, and more and more U.S. citizens living in Australia have had enough. While outside the scope of this blog, I have written a detailed article on whether or not renouncing makes sense for you and the many associated pitfalls, please see:

[Renouncing Your US Citizenship: Is Divorcing Uncle Sam Right For Me?](#)

If an individual does decide to renounce his or her US citizenship, he or she needs counsel to ensure it is done the right way. Not properly renouncing one’s US citizenship can result in highly negative consequences such as the imposition of the US exit tax^[10] or permanent disbarment from United States.^[11] Advice and planning that take into account all areas of US law associated with renunciation is critical to obtaining the desired results.

While outside the scope of this blog, the complex rules and phases of a Super under Australian law, and the corresponding mismatched US tax treatment, are a driving force in Australians giving up their US citizenship. For a deeper dive into US tax treatment of a Super, please reference 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 that many are not willing to continue dealing with. Add the Super dilemma 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] June 15th for filers abroad. You may be allowed an automatic two month extension of time to file your return and pay any federal income tax that is due. You will be allowed the extension if you are a U.S. citizen or resident alien and on the regular due date of your return you are living outside of the United States and Puerto Rico and your main place of business or post of duty is outside the United States and Puerto Rico, or

you are in military or naval service on duty outside the United States and Puerto Rico.

[6] 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.

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

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

[9] \$5,490,000 USD unified credit available in 2017 (Indexed for inflation). Estate tax rate of 40 percent.

[10] IRC § 877A.

[11] 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.)