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Senator the Hon Matthias Cormann
Acting Assistant Treasurer
c/- Manager
Manager
Tax Treaties Unit
Corporate and International Tax Division
The Treasury
Langton Crescent
PARKES ACT 2600

My dear Assistant Treasurer

AUSTRALIANS LOSE FROM TAX TREATIES

I refer to your request for comments on Australia's tax treaty negotiations.

I suggest some clear thinking is long overdue.

There are only three things you can tax – land, labour or capital and only one of them cannot run away, die out or wear out.

The optimal tax regime is therefore a purely territorial tax based on taxing land values (comprehending both site values and resource rents).

Under such a regime, Australia, with the richest resource endowment per head in the world, could be once again the tax haven she was in the nineteenth century when land revenues meant taxes were low, while wages and living standards were the highest in the world.

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You will note such a purely territorial tax regime renders tax treaties unnecessary.

You will also note that it would mean Australians might actually not give away most of the benefits of mining or other booms to foreign treasuries taxing foreign shareholders getting lowed-taxed dividends from Australian companies.

However, as a second best, you should look at rejecting the “residence” based paradigm of the OECD tax treaty system. It works, and is designed to work, against Australia’s national interests as a “source” country.

Unless other countries are willing to let us raise our withholding tax rates to, say, 25% and give full credit, Australia will never reap much reward from foreign investment.

I expect other countries will not agree to such a demand.

In that event, I suggest Australia simply start to terminate its tax treaties and cease to report to foreign treasuries on foreign taxpayers investing here.

Likewise, Australia should not send information on the private financial affairs of Australian citizens to foreign countries.

The first duty of a sovereign is to protect his people. Allegiance is a two-way street.

It is appalling that the Treasury is proposing to send the private financial details of around 1 million expatriate Australian citizens to governments all over the world - supposedly to help them enforce “residence” based taxation.

No one has asked what will be your liability and responsibility as a government when that information is stolen or leaked and we start seeing identity theft, fraud and kidnapping of children of expatriate Australians whose financial data has fallen into criminal hands. You only have to look at the Russian Mafia’s money laundering through the Bank of New York some years ago to realize this scenario is not fanciful and that no country, including the United States, can be trusted to protect confidential financial information of Australians.

I therefore suggest, as a matter of urgency, that automatic data exchange be rejected in our tax treaties and that, where information is sought, the other government should be asked to provide enforceable indemnities to the Commonwealth and any affected Australian citizen for any loss or injury they may suffer from the wrongful use of data provided.

If this is not done, it is obvious that hundreds of thousands of Australians, like people in Europe and elsewhere, will be forced to seek the assistance of lawyers to create anonymous wealth-holding structures, not to avoid tax, but merely to secure privacy and security as basic human rights to which they should be entitled as a matter of course.

Yours faithfully

Terence Dwyer