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Ending UK tax authority's defiance of Australian law & attempted bypassing of treaties

It is not generally known in Australia that Her Majesty's UK Revenue and Customs (the UK Revenue or HMRC) has recently been attempting to collect UK taxes in Australia *without lawful authority since at least 2015*.

It is basic international law that one country does not seek to enforce its tax laws inside the territorial boundaries of another jurisdiction.

Since the grant of self-government to the Australian colonies, starting in 1855, UK taxes have not been enforceable or able to be collected in Australia. As a matter of Australian law, UK tax debts are not enforceable in Australian Courts and *vice versa*.

The basic principle is very clear, Australians do not get to vote in UK elections on UK taxes and UK residents do not get to vote on Australian taxes.

Unless there is an enforceable tax treaty in place between both countries, no country can enforce its taxes within another country or expect the other country to assist it in doing so.

Accordingly, before entering into any Free Trade Agreement (FTA) with the United Kingdom, Australia should insist on proper respect from the UK tax authorities for Australia's sovereign rights and the rights of Australians.

There is no provision in the current UK Australia Double Taxation Agreement (DTA) which permits the enforcement of UK taxes in Australia.

Notwithstanding the absence of any such legal authority, the UK Revenue has been sending tax notices to Australians who formerly worked in the UK, demanding that Australians pay alleged back taxes to HMRC. These claims arise out of disputed tax arrangements dating back in many cases the 1990s, where in fact the arrangements were regarded as legal at the time by most professional advisers and were apparently accepted at the time by the UK Revenue.

The UK Revenue ought to know, and doubtless does know, that it is a criminal offence under Australian law to demand money with menaces such as threatening penalties or fines when in fact the alleged tax debt is not enforceable in Australian Courts.

It is extortion when money is demanded illegally

The crime of extortion occurs when a public official without lawful authority threatens citizens in demanding money. Letters sent to Australian residents by the UK Revenue demanding money from Australians are therefore totally obnoxious and show an underhanded and

untrustworthy approach by the UK authorities to their international legal obligations and the jurisdictional limits on their authority.

There is doubt that UK authorities be trusted to keep treaties in good faith

In short, one questions whether the UK authorities can be trusted to keep treaties in good faith.

Furthermore, it appears that the Australian taxation office has connived at, and turned a blind eye, to abuses by the UK Revenue of the tax treaty with Australia and international conventions.

Notwithstanding the absence of any provision in the UK Australia Double Tax Agreement (DTA) for mutual assistance in the collection of Australian and UK taxes, the UK Revenue and the ATO appear to have connived in an attempt to bypass Australian law at the behest of the UK Revenue, whereby it is asserted that the OECD *Convention on Mutual Assistance in Tax Matters* (signed by Australia in 2012 but not ratified by Parliament) permits the ATO to collect UK taxes under Division 263 of Schedule One of the *Taxation Administration Act 1956*.

This is dishonest.

Division 263, enabling the collection by the ATO of foreign tax claims, was enacted by Parliament in 2006. It envisages an Article in a proper double tax agreement between Australia and the foreign country enabling collection of each other's taxes.

The UK double tax agreement with Australia has no such Article.

The ATO tries to pretend that the 2012 OECD Convention can be enforced in Australia for any country under the 2006 Division 263 legislation.

Abuse of law

This is an abuse of law because not only does such an interpretation give a retrospective effect to the 2012 OECD Convention but it also ignores the fact that the OECD Convention has never been enacted into law as such by Parliament. The OECD Convention is not attached to the *International Tax Agreements Act 1953* as a Schedule which has been given the force of law in Australia by the Federal Parliament.

Given the abuses of treaties by the UK Revenue, and the facts above which show that the UK authorities cannot be trusted, a Protocol needs to be added to any UK Free Trade Agreement (FTA) declaring that –

1. UK taxes are not enforceable in Australia; and
2. any future treaty between the UK and Australia altering that position will only have effect and be enforceable in respect of finally determined tax debts arising for tax years after ratification of any such treaty by Parliament; and
3. all UK Revenue claims can be contested in Australian Courts.

Yours truly

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President

Civil Liberties Australia is a not-for-profit association which reviews proposed legislation to help make it better, as well as monitoring the activities of parliaments, departments, agencies and forces to ensure they match the high standards that Australia has always enjoyed and continues to aspire to.

We work to keep Australia the free and open society it has traditionally been, where you can be yourself without undue interference from 'authority'. Our civil liberties are all about balancing rights and responsibilities, and ensuring a 'fair go' for all Australians.