

US taxation of Australian Superannuation funds: when the Super is NOT so super after all

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Retirement and pension funds generally do not make or break national political campaigns. Except, of course, Australian Superannuation funds. Fondly referred to as “Supers” by Australians, proposed reforms^[1] to Supers announced by Australian Treasury Secretary, Scott Morrison, in May apparently cast a definitive impact on the Coalition’s lackluster performance in the July 2016 national elections, resulting in a controversial “wafer-thin” majority lead.^[2]

Why are Supers able to pack a punch in the political arena? First of all, the Super is not your typical private retirement account. The Super is the chic and modern substitute or supplement to Australia’s Age Pension^[3] and voluntary savings,^[4] which make up Australia’s social security program.^[5] Unlike its traditional counterparts, the Super is a hybrid structure specifically tailored by Australian law to incentivize individuals to save for retirement by imposing preferential tax rates on investment earnings. The results speak for itself. As of March 2016, Supers have amassed total aggregate assets of \$2,032 billion or rounded, \$2 trillion.^[6] Secondly, Supers are not just “funds”. The offerings are so diverse that the common use of the term “Superannuation fund” tends to be misleading.^[7] The Superannuation industry has provided Australians with a smorgasbord of Super offerings^[8] that any change to the Super regime that has generated phenomenal savings would logically be met with much resistance. Thirdly, Supers are directly regulated by statute and administered by four different government agencies.^[9] Superannuation funds, along with other Superannuation entities,^[10] are regulated under the Superannuation Industry (Supervision) Act of 1993 (SISA) and its Regulations (SISR) (collectively, SIS Legislation). The SISA itself is no lightweight legislation – SISA arises pursuant to the pension and corporation powers of the Australian Constitution.^[11] As a consequence, Supers that are regulated under SISA and constitute “complying funds”^[12] are eligible for statutory tax concessions.^[13]

A quick recap of how Supers operate is required to understand its popular appeal as a savings vehicle for Australians: A Super is formed typically by the execution of a signed trust deed^[14] and transfer of money or other property accepted by the trustee as an initial contribution to be held in trust for the Super’s beneficiaries (i.e. members).^[15] The Super is funded by concessional and non-concessional contributions classified as: (1) mandatory employer concessional contributions under the Superannuation Guarantee scheme (SG Contributions),^[16] which are generally tax deductible contributions made by the employer to the Super equivalent to 9.5 per cent of the employee’s salary;^[17] (2) concessional voluntary employee pre-tax contributions (a.k.a. Voluntary Employee Contribution or VEC);^[18] and (3) non-concessional voluntary employee contributions (After-Tax Contributions),^[19] which are not tax deductible to the employee but can include contributions from individual take-home pay, inheritances, and proceeds from asset sales. Concessional contribution amounts up to \$35,000 cap per year are subject to a contributions tax of 15 per cent.^[20] Non-concessional contribution amounts in excess of the annual cap limits^[21] would be taxed at a 49 per cent rate.^[22]

Complying Supers^[23] receive preferential tax treatment across three stages of the fund: the contributions phase, the accumulations phase, and the pension phase. Once in the fund at accumulations phase, both concessional and non-concessional contributions benefit from the concessional 15 per cent tax rate on

earnings which are subject to annual caps.^[24] It is noteworthy to point out that for Australian tax purposes, the concessional contributions (i.e. the SG Contribution and VEC amounts) and any earnings accrued on such amounts while in the Super, as well as earnings accrued to the non-concessional After-Tax Contributions, do not constitute taxable income to the employee in Australia,^[25] notwithstanding that such amounts are contributed to a Super that is intended to benefit the employee upon his retirement. When “preservation age”^[26] is reached, a member can make unlimited transfers into a tax-free pension phase account from the accumulation account (where the 15 per cent tax applies to earnings).^[27] At pensions phase, contributions plus any earnings accrued are usually paid as tax-free benefits provided the member meets one of the specified conditions of release.^[28]

The topic of Super reforms strikes a raw nerve in mainstream Australian political life. And it should. Supers are the real deal when it comes to retirement vehicles, to wit: currently, none of the amounts that are contributed to the Super within annual cap limits are taxable to the member; earnings accrued on amounts contributed to the Super are taxable to the Super at concessional rates and Super benefits distributed to the member at retirement age are tax-free. The proposed reforms to the Super contained in the Federal Budget 2016-2017 would alter the sweet Super advantages currently enjoyed by the Aussies in two ways: first, by reducing contribution amounts that Aussies can put into their Supers subject to preferentially low tax rates on earnings; and second, by causing those who have socked away their rainy day monies in the Super to now incur tax liabilities if their retirement accounts exceed \$1.6 million on July 2017.

Do any of the proposed reforms to the Super change the plight of U.S. citizens in Australia (U.S. expats) who have the thankless task of reporting their Super as part of their U.S. worldwide income or assets which they accumulated in Australia? Well, the answer is both “no” and “yes”. United States expats in Australia were already dealing with U.S. tax reporting requirements on their worldwide income and assets even before the federal budget reforms were proposed. However, the proposed reforms, if legislated, would escalate the scope and magnitude of U.S. tax reporting obligations of U.S. expats with respect to their Supers. Why? Because until the U.S. Internal Revenue Service (IRS) and Treasury provide definitive guidance on how U.S. expats should disclose their Supers to comply with their U.S. tax reporting obligations, all contributions and earnings in the Super will be attributed as taxable income to the U.S. expat, subject to U.S. tax. The prevailing U.S. treatment of Supers as a fully taxable asset to the U.S. expat should not be surprising. Supers are anything but simple. Indeed, even the Australian courts have struggled to determine what the true nature of a member’s interest in a Super is.^[29]

Firstly, the United States does not have an equivalent for the Super’s hybrid structure, which has both Australian social security and private retirement funds components. The Super is so unique that the IRS has yet to issue definitive guidance on how it should be classified and reported for *all* U.S. tax purposes. Our review of internal IRS emails released to the public under a Freedom of Information Act (FOIA) request, rulings, case law, and recent meetings with the IRS Chief Counsel’s office and tax-writing committees of Congress confirm that there is no fixed mandate on how a Super should be classified and reported for U.S. tax purposes.

Secondly, the nature of a Super is very difficult to pin down. While Supers are typically trusts that hold Superannuation assets, they are not taxed as trusts under Australian tax laws.^[30] Further, a member’s interest in his Super is also not treated under Australian laws as one governed exclusively by the trust deed alone. Judge Graham Hill of the Federal Court of Australia has acknowledged the complexity of classifying such an interest because there are two distinct legal relationships that simultaneously overlap in the Super – one governed by the deed of trust between the trustee, the trust property, and beneficiary, and the second arising from a plan evidencing a contractual relationship between an employer and employee.^[31] We would venture to add that somewhere between this fiduciary trust and contract law

overlap lies a third relationship between employer and Commonwealth created by statutory mandate.

Thirdly, there are systemic differences between the U.S. and Australia's national pension schemes which prevent U.S. tax authorities from reconciling the Super as everything else but what it truly is, i.e. a privatized national pension scheme. As noted in the Organization for Economic Co-operation and Development (OECD) report "Pensions at a Glance",^[32] generally, both the United States and Australia have three-tiered retirement systems that consist of (1) a government pension system; (2) an occupational employment-based pension system; and (3) supplemental voluntary personal savings.^[33] The first tier is a public pension, while the second and third tiers typically take the form of private pensions, namely individual retirement savings accounts in the nature of funded and secured plans.^[34] In a funded and secured plan, the "employer simply contributes a specified percentage of the worker's compensation to an individual investment account for the worker... such that her benefit would be based on all such contributions plus investment earnings."^[35] Australia's social security program, which includes the Super, is administered as a funded and secured plan. In contrast, benefits under an unfunded and unsecured plan may be calculated under many different methods,^[36] and distributions are typically in the form of an annuity, lump sum, or a combination of both. The United States administers its social security program as an unfunded and unsecured promise to pay an amount in the future. Our inability to recognize the Super as a privatized national pension scheme thwarts efforts to arrive at an appropriate classification of the Super for U.S. tax purposes that comes close to the mark.

The *horror vacui* arising from the lack of guidance on the U.S. taxation of Supers has resulted in a lot of confusion and considerable uncertainty for U.S. expats subject to both Australian and U.S. national pension programs. Consequentially, U.S. expats have erroneously reported their interests in Supers for U.S. tax purposes as a beneficial interest in a foreign nonqualified employee plan or deferred under Section 402(b),^[37] or an employee grantor trust under Treasury Regulations Section 1.402(b)-1, or as a foreign grantor trust under Sections 671-679. The consequences of misreporting a Super as any of the three foregoing classifications has been financially burdensome for U.S. expats in Australia, if not devastating.

If the Super were classified as a Section 402(b) plan, contributions and, in certain circumstances, earnings accrued to the Super would be subject to current income taxes in the U.S., thereby resulting in substantial income tax liabilities for the U.S. expat (directly under Section 402(b) or alternatively as an employee grantor trust under Treasury Regulation Section 1.402(b)-1(b)(6)) without any relief available under the Tax Treaty. This would result in substantial income tax liabilities, plus penalties and interest, for the U.S. expat who now has to get his U.S. taxes current by filing "catch-up" U.S. income tax returns, information returns and disclosing all foreign bank accounts and foreign assets.

We question whether Section 402(b) applies at all to the Super. Section 402(b) requires an employer-employee deferred compensation arrangement, an "employee's trust", to fall within its scope. The Super does not arise out of a private contractual arrangement between an employer and employee as other typical (foreign and domestic) pension plans, nor is it tax-deferred. All contributions and earnings are currently taxed at preferentially low rates. Moreover, neither the Code nor the Treasury Regulations provide clear guidance on what constitutes an employee's trust.^[38] While the IRS has issued a private letter ruling classifying the Super as a foreign trust^[39] for U.S. federal income tax purposes, whether the Super also constitutes an "employee's trust" for Section 402(b) purposes remains undefined, unaddressed, and therefore subject to interpretation.

If, alternatively, the Super is classified as a foreign grantor trust under Sections 671-679 of the Code, all realized income and gains in the Super arising from Superannuation assets would be attributed to the U.S. expat, resulting in income taxes and, likely, passive foreign investment company (PFIC) reporting

obligations for investments held by the Super.^[40] While this option results in arguably less current taxes to the U.S. expat up front, it effectively creates an ongoing burden in the form of more professional fees for the U.S. expat to become fully tax-compliant with these complex U.S. tax reporting obligations. We do not agree that a Super constitutes a foreign grantor trust primarily because it is unlikely that a U.S. expat would be the grantor or trustee of the Super. Even if such were the case, a U.S. expat, as a member-beneficiary of the Super, would not have the ability to exercise discretionary powers and control over the Super under Australian law.

What can be done to alleviate burdensome U.S. tax reporting obligations of US expats with respect to their membership interest in Supers?

We would encourage U.S. expats to seize the current momentum and push for legislation that will “enshrine” the Super’s objectives as one that will “provide income in retirement to substitute or supplement the Age Pension.”^[41] This would conclusively lay all doubts to rest that the Super should be analyzed in a manner that is consistent with (and therefore taxed similarly to) U.S. Social Security. The treatment of SG Contributions as foreign social security is consistent with the statutory mandate under Australian Superannuation law requiring employer contributions to be made pursuant to the taxing authority of the Commonwealth of Australia (Commonwealth) and not on account of a contractual relationship between employer and employee. Consequently, earnings accrued on SG contributions and distributions therefrom should also be classified as foreign social security benefits which are already excluded from U.S. taxation under Article 18(2) of the Tax Treaty.^[42]

Further, the increased focus on Super reform gives both Australian and U.S. tax authorities a limited window of opportunity to revise Article 18 of the Tax Treaty^[43] dealing with pensions, particularly if Section 402(b) is applied to concessional contributions made to the Super. The revision would incorporate Article 18 of the 2006 and 2016 U.S. Model Income Tax Conventions (U.S. Model Treaties) and exclude Super contributions and earnings from potential U.S. taxation. Article 18(2) and (4) of the 2006 Model Treaty^[44] and Article 18(3) of the 2016 Model Treaty^[45] applies to situations where the individual is a U.S. citizen and resident of the host country. It provides that contributions attributable to employment paid by or on behalf of the individual during the employment period to a pension fund are deductible or excludable in computing the individual’s U.S. tax. Further, any accrued pension benefits or employer contributions attributable to employment made by the U.S. person’s employer are not treated as taxable to the individual in the United States.^[46] Article 18(2) and (4) of the 2006 Model Treaty and Article 18(3) of the 2016 Model Treaty are excepted from the Saving Clause of both U.S. Model Treaties.

Australian Prime Minister Turnbull stated it best when he stated that, “Superannuation is an area of notoriously great complexity.”^[47] Indeed, the task of untangling the intricacies of Super classification and taxation would likely require a joint effort from Australian and U.S. tax authorities. We believe that the competent authorities of both countries would do well to alleviate the tax burden of U.S. expats in Australia by issuing a Memorandum of Understanding to clarify the status of Supers under Article 18 of the Tax Treaty. Doing so would provide affected U.S. expats certainty of their tax and reporting positions without the fear of civil and criminal action for failing to file or correctly report their interest in a Super.

[1] See, Commonwealth of Australia Budget 2016-17, “Making our tax system more sustainable” released May 3, 2016, available at https://budget.gov.au/2016-17/content/glossies/tax_super/html/ (site visited July 19, 2016) (hereinafter, “**Federal Budget 2016-17**”).

[2] See, The Australian, “Federal Election 2016: Victory for Turnbull, now for the super battle” (July 11, 2016) at <https://www.theaustralian.com.au/federal-election-2016/federal-election-2016-victory-for-turnbull-now-for-the-super-battle/news-story/5c56acad04feffcd9afa1328a280c10> (site visited 7/18/2016). ABC News, “Election 2016: Malcolm Turnbull set to unveil new ministry as concerns linger over superannuation” by Naomi Woodly (July 17, 2016) at

<https://www.abc.net.au/news/2016-07-18/election-2016-malcolm-turnbull-to-unveil-new-ministry-today/7636598> (site visited 7/18/2016); The Guardian, "Turnbull faces party room pressure over superannuation and Liberal campaign" by Gabrielle Chan (July 17, 2016) at <https://www.theguardian.com/australia-news/2016/jul/17/turnbull-faces-party-room-pressure-over-superannuation-and-liberal-campaign> (site visited 7/18/2016). See also, The Sydney Morning Herald, "Malcolm Turnbull softens defense of superannuation changes as backdown looms" by Fergus Hunter (July 17, 2016) at <https://www.smh.com.au/federal-politics/political-news/malcolm-turnbull-softens-defense-of-superannuation-changes-as-backdown-looms-20160717-gg7f0g.html> (site visited 7/18/2016); The New Daily, "Malcolm Turnbull puts his money where his mouth is" by Quentin Dempster at <https://thenewdaily.com.au/news/national/2016/07/17/turnbull-big-donation/> (site visited 7/18/2016).

^[5] See, Federal Budget 2016-17 at page 3.

^[6] Jonathan Barry Forman and Gordon D. Mackenzie, *Optimal Rules for Defined Contribution Plans: What Can We Learn from the U.S. and Australian Pension Systems?* (UNSW Australian School of Business Research Paper No. 2013 TABL 1000), available at <https://ssrn.com/abstract=1954879>.

^[5] See also, U.S. Social Security Administration Program Operations Manual System (POMS), Overview of the Australian Social Security System at GN 01743.010, available at <https://policy.ssa.gov/poms.nsf/lnx/0201743010> (last visited July 19, 2016).

^[6] See, Superannuation Statistics, March 2016 edition published by the Australian Prudential Regulatory Authority (APRA) available at <https://www.apra.gov.au/Super/Publications/Pages/Quarterly-MySuper-statistics.aspx> (published 5/24/2016) (site visited 7/18/2016).

^[7] See, Hon. Justice Graham Hill, *The True Nature of a Member's Interest in a Superannuation Fund*, 5 J. Austl. Tax'n 1 (2002). Honourable Justice Graham Hill of the Federal Court of Australia acknowledged that the term "superannuation fund" mistakenly suggests that every superannuation scheme is actually a fund. *Id.*

^[8] See for example, (1) corporate or employer-sponsored fund; (2) industry funds (3) retail funds and public funds; (4) public sector funds; (5) small APRA funds; and (6) self-managed superannuation funds ("**SMSFs**").

^[9] SIS is administered by APRA, ASIC, the Commissioner of Taxation and the Chief Executive of Medicare. The Commissioner of Taxation was added as a regulator primarily for the administration of SIS Legislation as it related to self-managed superannuation funds ("**SMSF**").

^[10] For example, the Approved Deposit Fund ("**ADF**") and Pooled Superannuation Trust ("**PST**") are superannuation entities that are also regulated under SIS legislation. We note, however, that ADFs are indefinitely continuing funds that are maintained by a registrable superannuation entity ("**RSE**"), a licensee that is a constitutional corporation solely for approved purposes (i.e., receive rollovers of superannuation benefits). Under SISA s 10(1), a PST is treated as a resident unit trust (the trustee of which is a trading or financial corporation) used for investing in certain assets under SISA s 48.

^[11] See generally SISA s 3(2)

^[12] A Super will be classified as a complying fund if it has (1) a constitutional corporate trustee or (2) its governing rules provide that the sole or primary purpose of the fund is the provision of "old age pensions" pursuant to Par. 51 (xxiii) of the Constitution; and (3) the trustee must give APRA or ATO an irrevocable election for the fund to become regulated under SISA. See *Superannuation in Australia* (CCH) at ¶ 2-170 and SISA ss 19(2) to (4).

^[13] See generally SISA s 3(2), s 19(2) to (4).

^[14] It is not necessary that the trust deed is signed and executed in Australia as long as the initial contribution made to establish the fund is paid and accepted by the trustee of the fund in Australia. See Australian Tax Office, *Income Tax: Meaning of "Australian Superannuation Fund" in Subsection 295-95 of the Income Tax Assessment Act of 1997*, TR 2008/9 at ¶ 13.

^[15] *Id.* An active member of a Super is a contributor to the fund or an individual on whose behalf contributions have been made. A contributor to the fund is "an individual who makes a contribution for the purposes of providing for future retirement or superannuation benefits." See Australian Tax Office, *Income Tax: Meaning of "Australian Superannuation Fund" in Subsection 295-95 of the Income Tax Assessment Act of 1997*, TR 2008/9 at ¶¶ 184-189 (Dec. 2, 2010). If a member is a contributor to the fund at a particular time, they will be an "active member" irrespective of whether the member is an Australian or foreign resident.

^[16] Mandatory employer contributions are concessional superannuation contributions ("**SG Contributions**") made by an employer for its employee under the Superannuation Guarantee scheme introduced in 1992. Employers are required to contribute amounts to the Super equivalent to 9.5 percent of the employee's salary which are generally tax-deductible to the employer. This rate is set only until 2021, after which the rate is scheduled to incrementally rise to 12.0 percent by 2025. Failure to make sufficient SG Contributions makes the employer liable for a non-deductible superannuation guarantee charge (the "**SG Charge**") which constitutes a valid tax imposed on employers that is collected by the ATO. See Robin Woellner, Stephen Barkoczy, Shirley Murphy, Chris Evans & Dale Pinto, *CCH Australian Taxation Law* (2013) at ¶ 23-030.

^[17] See Robin Woellner, Stephen Barkoczy, Shirley Murphy, Chris Evans & Dale Pinto, *CCH Australian Taxation Law* (2013) at ¶ 23-030. This rate is set only until 2021, after which the rate is scheduled to incrementally rise to 12.0 percent by 2025.

^[18] See generally *Income Tax Assessment Act of 1997*, subdiv. 290-C. Currently, the maximum cap for pre-tax contributions is \$35,000 a year taxed at a 15 percent concessional rate to the Super upon receipt and on accruals thereafter during accumulation phase. VEC amounts that exceed the cap would be included in the individual's assessable income for the year. As previously noted, the proposed federal budget 2016-17 would reduce the maximum concessional contribution amounts (i.e., the SG Contributions and VEC amounts) from \$35,000 just \$25,000 per

year.

¹⁹⁸ Income Tax Assessment Act of 1997, subdiv. 290-C.

[20] The proposed federal budget would reduce the maximum concessional contribution amounts (i.e., the SG Contributions and VEC amounts) from \$35,000 just \$25,000 per year. See, Federal Budget 2016-17 at p. 4.

[21] Income Tax Assessment Act of 1997, s 292-85(2). Currently, the annual cap is \$180,000 for 2015/2016 for members aged 65 years but less than 75 years old and \$540,000 over a three year period for members under age 65 years. The proposed federal budget would replace these annual non-concessional cap limits with a lifetime non-concessional contribution limit of \$500,000, applicable to all non-concessional contributions made from July 1, 2007. See, Federal Budget 2016-17 at 4.

²²⁰ Income Tax Assessment Act of 1997, s 292-80, s 292-85(1).

[23] *Id.* at 1566-67. As previously noted, a complying Super is one that has received an unrevoked notice under the SIS Act stating that it is a complying fund. The notice is sent under SISA s 40 stating that it is a complying fund. For SMSFs, complying status is determined separately under SISA s 42.

[24] Otherwise, the highest marginal tax rate will be applied, currently at 47 percent. Taxable income of a Super includes, but is not limited to, the following: (1) contributions; (2) ordinary earnings; (3) capital gains; (4) interest; (5) dividends; and (6) rent. See, R.L. Deutsch, M.L. Friezer, I.G. Fullerton, R.J. Hanley, T.J. Snape, *The Australian Tax Handbook* (2014) at 1567. It is noteworthy, however, that income earned from assets held by the fund to provide for pensions benefits once the income stream is commenced is exempt from income tax as exempt current pension income. *Id.* at 1570-1582.

²⁵⁰ See, *Australian Tax Office, Income Tax: Superannuation Contributions*, TR 2010/1 at ¶ 104.

²⁶⁰ Access to benefits in a Super is generally restricted to members who have reached preservation age. This ranges from 55 to 60 years of age and is determined according to their date of birth. In the event of death before retirement, the member benefit is paid to the member's dependents.

[27] Proposed reforms under the Federal Budget 2016-17 would introduce a \$1.6 million cap on the total amount of superannuation that can be transferred from the accumulation to retirement account phase account, although balances can still exceed \$1.6 million through investment growth. See Federal Budget 2016-17 at p. 4.

[28] Some conditions of release restrict the form of the benefit or amount of benefit that can be paid (a "**Cashing Restriction**"). For example, the payment may be an income stream (pension) or a lump sum, depending on the circumstances. See, Schedule 1 of the SISR for a table specifically setting out the conditions of release and cashing restrictions. See also, *Superannuation in Australia* (CCH) at ¶ 8-110 *et. seq.*, available at <https://iknowserver.www.iknow.cch.com.au> (last visited Dec. 2015). Payments to members that do not meet a condition of release are not treated as Super benefits; rather, these are taxed as ordinary income at the member's marginal tax rates subject to significant penalties. *Id.* at ¶ 8-270 *et. seq.*, and ¶ 12-500 available at <https://iknowserver.www.iknow.cch.com.au> (last visited Dec. 4, 2015).

[29] See, Hon. Justice Graham Hill, *The True Nature of a Member's Interest in a Superannuation Fund*, 5 J. Austl. Tax'n 1 (2002).

[30] Rather, Australian tax laws modify general tax principles for calculating taxable income of Supers. See, R.L. Deutsch, M.L. Friezer, I.G. Fullerton, R.J. Hanley, T.J. Snape, *The Australian Tax Handbook* (2014) 1565-66.

[31] *Id.* at p. 17.

[32] See OECD (2015), *Pensions at a Glance 2015: OECD and G20 indicators*, OECD Publishing, Paris, at 123.

¹³³ Jonathan Barry Forman and Gordon D. Mackenzie, *Optimal Rules for Defined Contribution Plans: What Can We Learn from the U.S. and Australian Pension Systems?* (UNSW Australian School of Business Research Paper No. 2013 TABL 1000), available at <https://ssrn.com/abstract=1954879>.

¹³⁴ *Id.* at 3-4.

¹³⁵ *Id.* at 5-6.

¹³⁶ *Id.* at 6.

[37] References the U.S. Internal Revenue Code of 1986 as amended (the "**Code**").

[38] We note that the definition of foreign employees' trust under Prop. Reg. §1.671-1(h) (2) fails to provide any definitive guidance on the issue of what constitutes an employee's trust. Indeed, Prop. Reg. §1.671-1(h) (2) definition provides a circuitous reference to §402(b) and §7701(a) (31).

¹³⁸ Code § 7701(a) (30) (B); Treas Reg. § 301.7701-7. See also, I.R.S. Priv. Ltr. Ruling 201538008, 201538007, 201538006 (issued June 11, 2015).

[40] See, e.g., 26 C.F.R. § 1.402(b)-1(b) (6). Hereinafter, 26 C.F.R. shall be cited as "**Treas. Reg.**"

[41] See, Federal Budget 2016-17 at p. 4.

[42] See Art. 18(2) of Convention for the Avoidance of Double Taxation and the Prevention of Fiscal Evasion with Respect to Taxes on Income, U.S.–Aus., Aug. 6, 1982, 35 U.S.T. 1999 (hereinafter the “**Tax Treaty**”), as *amended by* Protocol signed on Sept. 27, 2001.

[43] *Id.*

[44] U.S. Dept. of the Treasury, 2006 U.S. Model Income Tax Convention (hereinafter the “**2006 US Model Tax Treaty**”), *available at* <https://www.irs.gov/Individuals/International-Taxpayers/The-U.S.-Model-Income-Tax-Convention-and-Model-Technical-Explanation>.

[45] U.S. Dept. of the Treasury, 2016 U.S. Model Income Tax Convention (hereinafter the “**2016 US Model Tax Treaty**”), *available at* <https://www.treasury.gov/resource-center/tax-policy/treaties/Pages/treaties.aspx>.

[46] See Staff of the Joint Committee on Taxation, Comparison of the United States Model Income Tax Convention of September 20, 1996, with the United States Model Income Tax Convention of November 15, 2006 (2007) at 23-24.

[47] See, <https://youtu.be/aC7JpZJwCd0> (published May 31, 2016).