

## Taxation Agreements with Jersey

### Introduction

3.1 This chapter considers two treaties:

- an *Agreement between the Government of Australia and the Government of Jersey for the Exchange of Information with Respect to Taxes*; and
- an *Agreement between the Government of Australia and the Government of Jersey for the Allocation of Taxing Rights with Respect to Certain Income of Individuals and to Establish a Mutual Agreement Procedure in Respect of Transfer Pricing Adjustments*.

3.2 The first Agreement, the Tax Information Exchange Agreement (TIEA), establishes the legal basis for the exchange of tax information between Australia and Jersey.<sup>1</sup>

3.3 The second Agreement, the Taxing Rights Agreement (TRA), is part of a package of benefits that have been offered to Jersey to encourage it to conclude the above mentioned TIEA. This Agreement provides for the allocation of taxing rights of certain cross-border income derived by the residents of both countries, and establishes a mechanism to help resolve disputes arising from transfer pricing adjustments.<sup>2</sup>

3.4 Jersey is a British Crown Dependency, located in the English Channel. It has a low-tax structure and is an internationally recognised offshore

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1 Tax Information Exchange Agreement National Interest Analysis (TIEA NIA), para 3.

2 Taxing Rights Agreement National Interest Analysis (NIA), paras 3 and 6.

financial centre. Detailed information on the level and type of economic activity between Australia and Jersey is not available. However data held by the Australian Transaction Reports and Analysis Centre (AUSTRAC) indicates that a significant amount of funds flow between Australia and Jersey.<sup>3</sup>

## Reasons to take treaty action

- 3.5 The TIEA is the sixth Agreement of this kind for Australia and is part of Australia's efforts to conclude tax information exchange agreements with countries committed to working with the OECD to improve transparency and establish effective procedures for the exchange of tax information. Other Agreements are in place with Bermuda, Antigua and Barbuda, the Netherlands Antilles, the British Virgin Islands and the Isle of Man.<sup>4</sup> The Agreements for the British Virgin Islands and the Isle of Man were considered by the Committee earlier this year.<sup>5</sup>
- 3.6 Treasury told the Committee that the TIEA will strengthen the ability of Australia to administer and enforce its tax laws by enabling the Commissioner of Taxation to 'seek relevant taxpayer information from the authorities in Jersey for both civil and criminal tax purposes'.<sup>6</sup> The Agreement will override domestic bank secrecy laws and compel each country to supply relevant information even if it does not require the information itself.
- 3.7 Treasury submitted that the second Agreement, the Taxing Rights Agreement, will encourage Jersey to conclude the TIEA by offering a package of additional benefits. The Agreement will help to prevent double taxation for individuals who are residents of either country and derive cross-border income from Australia or Jersey.<sup>7</sup>
- 3.8 Treasury considers the additional benefits being offered to various jurisdictions through the taxing rights agreements an important incentive

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3 NIA, paras 4 and 5.

4 TIEA NIA, para 7.

5 See Joint Standing Committee on Treaties (JSCOT) *Report 99: Treaties tabled on 3 December 2008 and 3 February 2009* available at <<http://www.aph.gov.au/house/committee/jsct/reports.htm>>; and JSCOT *Report 102: Treaties tabled on 12 and 16 March 2009* available at <<http://www.aph.gov.au/house/committee/jsct/reports.htm>>.

6 Mr Gregory Wood, *Transcript of Evidence*, 14 September 2009, p. 1.

7 Mr Gregory Wood, *Transcript of Evidence*, 14 September 2009, pp. 1-2.

to sign TIEAs. Not all jurisdictions take the offer up but those that do receive:

- recognition that they are no longer operating as a tax haven;
- technical assistance and training; and
- the benefits of the taxing rights agreement which avoids double taxation for its citizens.<sup>8</sup>

## Progress on taxation evasion measures

3.9 As the Committee has examined a number of TIEAs and taxation exchange agreements recently, it sought an update on progress in negotiating similar agreements with relevant jurisdictions. Treasury confirmed that progress had accelerated considerably with four agreements signed in the past year, compared to only three such agreements being signed in the past three to four years.<sup>9</sup>

3.10 The Committee asked whether the implementation of these agreements was having a noticeable affect on tax evasion. Treasury is confident that 'the noose is definitely tightening' on tax evasion world wide with approximately 50 countries signing these types of agreements since the G20 meeting in March-April 2009.<sup>10</sup>

3.11 The ATO identified the technical assistance being offered by Australia to various jurisdictions through the taxation exchange agreements as an important contributor to negotiations. In particular, smaller jurisdictions were said to benefit from practical assistance in the form of resources and training. Australia has valuable expertise in a wide range of areas and has facilitated the exchange of information on issues such as VAT, GST and compliance models.<sup>11</sup> The ATO explained that in many cases the assistance required can be very basic:

For many of the smaller countries, actually having the resources in place to accept those requests, store them safely, and send the information back, can get down to levels such as providing

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8 Mr Gregory Wood, *Transcript of Evidence*, 14 September 2009, p. 4.

9 Mr Gregory Wood, *Transcript of Evidence*, 14 September 2009, p. 2.

10 Mr Gregory Wood, *Transcript of Evidence*, 14 September 2009, p. 2; Mr Malcolm Allen, *Transcript of Evidence*, 14 September 2009, p. 3.

11 Mr Malcolm Allen, *Transcript of Evidence*, 14 September 2009, p. 5.

sufficient filing cabinets of a secure standard and computer facilities to go with that.<sup>12</sup>

## **Agreement between the Government of Australia and the Government of Jersey for the Exchange of Information with Respect to Taxes**

### **Obligations**

- 3.12 Article 4(1) obliges both Parties to exchange information where the information is relevant to the administration and enforcement of the Party's domestic tax laws.<sup>13</sup>
- 3.13 Article 4(2) obliges the requested Party to collect requested information even if it is not required for its own domestic tax purposes. Parties must ensure that their competent authority has the power to obtain requested information from banks, other financial institutions, any person acting in an agency or fiduciary capacity, and information regarding the legal and beneficial ownership of companies and partnerships as well as persons involved with trusts and foundations (Article 4(4)).<sup>14</sup>
- 3.14 Information must be provided without delay (Article 4(7)) and access provided to individuals and records (Article 5). However, information may be refused if requests do not conform to the Agreement or if the requesting Party would be unable to obtain the requested information under its own laws (Article 6).<sup>15</sup>
- 3.15 Information provided must be kept confidential (Article 7) and costs are divided between the Parties: direct costs are borne by the requesting Party and indirect costs by the requested Party (Article 8).<sup>16</sup>
- 3.16 Under Article 9 neither Party may impose punitive measures on residents or nationals of the other Party because that Party has failed to provide relevant information. Both Parties are obliged to use whatever dispute

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12 Mr Malcolm Allen, *Transcript of Evidence*, 14 September 2009, p. 5.

13 TIEA NIA, para 15.

14 TIEA NIA, paras 16 and 17.

15 TIEA NIA, paras 18, 19 and 20.

16 TIEA NIA, paras 21 and 22.

resolution methods may be necessary to resolve any disagreements over the application or interpretation of this Agreement (Article 10).<sup>17</sup>

## Costs and implementation

- 3.17 Treasury advised the Committee that implementation of the Agreement will have a small administrative and financial impact on the ATO as it is likely that most requests for information will originate from Australia. A Memorandum of Understanding will be concluded between the two countries to clarify costs that will be borne by the ATO.<sup>18</sup>
- 3.18 No further legislation or regulation is required to implement the Agreement. The implementation will not affect the existing roles of the Commonwealth or the States and Territories in tax matters.<sup>19</sup>

## **Agreement between the Government of Australia and the Government of Jersey for the Allocation of Taxing Rights with Respect to Certain Income of Individuals and to Establish a Mutual Agreement Procedure in Respect of Transfer Pricing Adjustments**

### Obligations

- 3.19 Under Article 5, Australia cannot tax Australian-source pensions and retirement annuities paid to residents of Jersey. Article 5 permits Australia to tax Jersey-source pensions and retirement annuities paid to Australian residents.<sup>20</sup>
- 3.20 Under Article 6, Australia cannot tax the salaries of government employees of Jersey working in Australia in government service for non-commercial purposes. Australia and Jersey will therefore have sole taxing rights over the salaries that they pay to individuals undertaking government functions.<sup>21</sup>
- 3.21 Under Article 7, Australia cannot tax maintenance, education or training payments received by students or business apprentices from Jersey who

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17 TIEA NIA, paras 23 and 24.

18 TIEA NIA, paras 27 and 29.

19 TIEA NIA, paras 25 and 26.

20 NIA, para 11.

21 NIA, para 12.

are temporarily studying in Australia, where those payments are made from outside Australia. Other income will remain liable to Australian tax.<sup>22</sup>

3.22 Article 8 establishes a mechanism to assist in the resolution of disputes arising from transfer pricing adjustments made by either country and provides an avenue for affected taxpayers to present their case to the relevant authority.<sup>23</sup>

3.23 Article 9 obliges the Parties to exchange information that is foreseeably relevant for the purposes of carrying out the Agreement.<sup>24</sup>

## Costs and implementation

3.24 Treasury advised the Committee that the Agreement will have a financial impact on the Australian Taxation Office (ATO), however this is expected to be minimal given the small number of taxpayers likely to be affected by the Agreement.<sup>25</sup>

3.25 Minor amendments will be required to the *International Tax Agreements Act 1953* to give effect to the Agreement. Treasury informed the Committee that this legislation is expected to be introduced into Parliament in late 2009. The implementation of the Agreement will not affect the existing roles of the Commonwealth or the States and Territories in tax matters.<sup>26</sup>

## Consultation

3.26 Relevant Commonwealth Ministers, the ATO and State/Territory Governments have been consulted in development of the Agreements. No public consultation took place as the negotiations for the Agreement were not public.<sup>27</sup>

## Conclusions and recommendations

3.27 The Committee recognises the importance of international efforts to combat offshore tax evasion and to establish consistent standards of tax governance between Australia and countries such as Jersey. The

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22 NIA, para 13.

23 NIA, para 14.

24 NIA, para 15.

25 NIA, para 18.

26 NIA, paras 16 and 17.

27 NIA, paras 27 to 30.

Committee also recognises the domestic tax benefits arising from taxation Agreements that discourage the use of certain countries as tax havens. The Committee therefore recommends that binding treaty action be taken for both Agreements.

### **Recommendation 2**

**The Committee supports the *Agreement between the Government of Australia and the Government of Jersey for the Exchange of Information with Respect to Taxes* and recommends that binding treaty action be taken.**

### **Recommendation 3**

**The Committee supports the *Agreement between the Government of Australia and the Government of Jersey for the Allocation of Taxing Rights with Respect to Certain Income of Individuals and to Establish a Mutual Agreement Procedure in Respect of Transfer Pricing Adjustments* and recommends that binding treaty action be taken.**

