



COMMONWEALTH OF AUSTRALIA

# Official Committee Hansard

JOINT STANDING COMMITTEE ON TREATIES

**Reference: Treaties tabled on 20 August 2009**

MONDAY, 14 SEPTEMBER 2009

CANBERRA

BY AUTHORITY OF THE PARLIAMENT

TO EXPEDITE DELIVERY, THIS TRANSCRIPT HAS NOT BEEN SUBEDITED



## **INTERNET**

Hansard transcripts of public hearings are made available on the internet when authorised by the committee.

The internet address is:

**<http://www.aph.gov.au/hansard>**

To search the parliamentary database, go to:

**<http://parlinfoweb.aph.gov.au>**

**JOINT STANDING  
COMMITTEE ON TREATIES**

**Monday, 14 September 2009**

**Members:** Mr Kelvin Thomson (*Chair*), Senator McGauran (*Deputy Chair*), Senators Birmingham, Cash, Farrell, Ludlam, Pratt and Wortley and Mr Briggs, Mr Forrest, Ms Hall, Mr Murphy, Ms Neal, Ms Parke, Mr Simpkins and Ms Vamvakinou

**Members in attendance:** Senators Cash, McGauran, Pratt and Wortley and Mr Forest, Ms Hall, Mr Murphy and Mr Kelvin Thomson

**Terms of reference for the inquiry:**

To inquire into and report on:

Treaties tabled on 20 August 2009

**WITNESSES**

**ALLEN, Mr Malcolm, Assistant Commissioner, International Relations, Australian Taxation  
Office ..... 1**

**ATFIELD, Mr Michael John, Senior Adviser, Treasury ..... 7**

**WOOD, Mr Gregory, Policy Adviser, Treasury ..... 1**



---

**Committee met at 11.02 am**

**ALLEN, Mr Malcolm, Assistant Commissioner, International Relations, Australian Taxation Office**

**WOOD, Mr Gregory, Policy Adviser, Treasury**

**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 to Transfer Pricing Adjustments.**

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

**CHAIR (Mr Kelvin Thomson)**—I declare open this public hearing of the Joint Standing Committee on Treaties' ongoing review of Australia's international treaty obligations. The committee will take evidence on three treaty actions which were tabled in the parliament on 20 August. I thank witnesses for being available for this hearing. I welcome representatives from the Treasury.

Although the committee does not require you to give evidence under oath, I should advise you that this hearing is a legal proceeding of the parliament and warrants the same respect as proceedings of the House and the Senate. The giving of false or misleading evidence is a serious matter and may be regarded as a contempt of parliament. If you nominate to take any questions on notice could you please ensure that your written response to questions reaches the committee secretariat within seven working days of your receipt of the transcript of today's proceedings. I invite you to make any introductory remarks you wish to make before we proceed to questions.

**Mr Wood**—Thank you. The proposed tax agreements with Jersey include a tax information exchange agreement and an agreement on the allocation of taxing rights over certain income derived by individuals. In our view, these agreements will allow Australia to better administer and enforce its tax laws. The proposed agreements form part of Australia's ongoing commitment to the OECD's work on eliminating harmful tax competition through the implementation of international standards of tax transparency and information exchange, as endorsed by the United Nations and the G20.

Along with other countries, Australia is actively pursuing the conclusion of tax information exchange agreements with low-tax jurisdictions that are committed to implementing these international standards. The proposed tax information exchange agreement will enable the Commissioner of Taxation to seek relevant taxpayer information from the authorities in Jersey for both civil and criminal tax purposes. In the case of Australia, this would apply to all federal taxes administered by the commissioner.

Importantly, the agreement would override domestic bank secrecy laws and the ability of a country to refuse to provide information because it does not have an interest in that information for its own domestic tax purposes. The proposed taxing rights agreement is part of a package of additional benefits designed to encourage jurisdictions to conclude tax information exchange agreements with Australia. It would allocate taxing rights between the two countries over certain

cross-border income derived by individuals who are residents of Australia or Jersey, thereby helping to prevent the double taxation of that income.

These provisions are consistent with corresponding provisions in Australia's comprehensive tax treaties. This agreement will also provide an administrative mechanism to help resolve transfer pricing disputes that may arise between taxpayers and the revenue authorities of Australia or Jersey. Due to its limited application to income derived by pension recipients, government employees and students, the cost of this agreement to Australia is expected to be negligible.

In conclusion, tax information exchange agreements are an important component of Australia's efforts to combat offshore tax avoidance and evasion, and we therefore recommend that members of the committee support the treaty action proposed.

**CHAIR**—During a hearing we had in May this year into a similar agreement with the Isle of Man, the committee heard of measures being taken to mitigate the cascade effect—that is, where agreements such as this one come into effect in one jurisdiction, tax evasion practices move to other tax havens where the agreements do not exist. We heard that progress had been slow in implementing these agreements but that the pace was expected to pick up after the G20 announcements in March. Are we having more success in implementing these agreements, and how many are still outstanding?

**Mr Wood**—Yes, we are having more success. The impact of the G20 declaration in April and also ongoing G20 interest in this work has made a real difference to the progress of these negotiations. Over the past year, we have signed four of these agreements, and we have another couple planned in the near future. If you compare that with the previous three-year period, you will see that we signed three in three or four years. So the pace is definitely accelerating and a lot of countries have indicated that they are now willing to conclude these agreements with us. It is up to us to cope with the demand, effectively, from those countries.

**CHAIR**—In the case of someone who has money in Jersey now and who might be evading taxes through that vehicle, how easy is it for them to move their money elsewhere before this agreement comes into effect?

**Mr Wood**—It would be relatively easy because this agreement is not in force yet, so they have the opportunity to do that between now and the time that the agreement enters into force. There is an opportunity there for that sort of activity. The general idea is that, the more countries that sign these agreements on a worldwide basis, the fewer destinations there will be for those sorts of taxpayers to invest their money.

**CHAIR**—Do you think that there are plenty of destinations for them to move their money to now, or do you think that the noose is tightening?

**Mr Wood**—The noose is definitely tightening but there are still jurisdictions that are available, and there is always the prospect of other jurisdictions emerging which, until now, have not been operating offshore centres.

**Senator McGAURAN**—I am intrigued to know what is in it for Jersey.

**Mr Wood**—Jersey would see an enhancement of its reputation as a financial centre. It would be seen as a compliant and genuine financial centre as opposed to one that relies on secrecy laws to allow taxpayers from other countries to conceal assets and income.

**Mr MURPHY**—I am interested to know what the differences are between our privacy laws and those in Jersey and, as a result of this treaty, the implications for an individual.

**Mr Wood**—The tax information exchange agreement has a confidentiality article which ensures that whatever information is exchanged is used only for tax purposes by either country. It cannot be used for other purposes outside tax administration or prosecution and so forth.

**Mr Allen**—It is a bit broader than that. In dealing with agreements with a lot of these countries there are three main things that we are looking to achieve that they would not normally have in their existing legislation. One is to counter bank secrecy, which effectively eliminates the ability of any organisation seeing who has banking information in their banks. The second one is around the ownership of entities registered in that jurisdiction, whether they are companies, trusts or some more exotic forms of organisations.

**Mr MURPHY**—Ownership, control—

**Mr Allen**—Yes. The third one is generally accounting information. Many countries do not have the same requirements as we do to keep accounting records for a period of time. Then of course there is the ability for the competent authority in that country to access that information and provide it in relation to a genuine information request under the agreement.

**Ms HALL**—I am just wondering how widespread or significant tax evasion is from the Australian perspective in Jersey. Is it a really big issue?

**Mr Allen**—Jersey is probably one of the countries that we would rate as being in the highest risk category for haven type of abuse. We probably see two main things there. Being a Channel Island, most of the UK banks have branches in Jersey, so for a lot of people there is a lot of comfort in that they are dealing with a large reputable financial organisation and they have been got the benefit of bank secrecy in that jurisdiction by banking through that branch of the UK bank. We see, particularly, a lot of expats that may come from countries where there is a genuine reason to try to protect money from the state. They may end up migrating to Australia but they had pre-existing arrangements which include Jersey accounts. The other one that we tend to see is that some large multinational organisations have employees' share trusts based in Jersey, again, relying on the secrecy laws there to remunerate some of their executives in ways that are trying to escape tax in the country that they are currently working in.

**Ms HALL**—Are you confident that this agreement with Jersey will actually deal with the problem and that tax evasion will no longer be able to be conducted through Jersey?

**Mr Allen**—It gets us a lot further than where we are at the moment. I think that it needs to be seen in the context of the global fight against bank secrecy. Since the G20 March-April meeting, there have been about 50 of these kinds of agreements signed around the world. So the net is closing as far as the number of jurisdictions where people can put money and hide it from tax authorities. You have got to put that then with the work of forums like the global forum to make

sure that this becomes effective exchange and is not just a network of agreements that are not being used in practice. The OECD countries are working together in operations that we are involved in, like the Joint International Tax Shelter Information Centre, or JITSIC. It is part of the tool kit, if you like, that we have to make it harder for people to get involved in these arrangements.

**Ms HALL**—And finally, other countries entering into agreements with Jersey so it stops the whole practice?

**Mr Wood**—Yes, Jersey over the past year or so has signed about 15 of these agreements with other countries. Jersey is one of the jurisdictions, first identified by the OECD as a tax haven, that has made quite a lot of progress in recent times. Just to go back to an earlier question too, there is also the deterrent effect of signing these agreements. Taxpayers will obviously become aware that Jersey is no longer such an attractive jurisdiction for that sort of activity. That forces them to perhaps move their money elsewhere, but it could be to a less sophisticated jurisdiction where they run a greater risk losing their money.

**Mr Allen**—The Global Forum on Transparency and Exchange of Information met in Mexico on the 1st and 2nd September and had elections there for the committee members for the global forum. They also established a Peer Review Group which will be doing the group of evaluating the effectiveness of exchange around the world. Jersey was elected as a vice-chair of the Peer Review Group, which again reflects that Jersey has been actively involved in working on transparency matters for quite some years. So amongst the countries originally identified by the OECD as havens, Jersey is a leader in moving things forward.

**Senator WORTLEY**—In your opening statement, Mr Wood, I think you mentioned ‘part of a package of additional benefits’. Would you be able to tell the committee about those additional benefits? Also, have other parties with which Australia has similar agreements been provided with similar benefits?

**Mr Wood**—As part of the move to encourage jurisdictions to sign these agreements, the government approved a package of additional benefits that Australia typically offers to a jurisdiction to encourage it to sign a tax information exchange agreement. That package has a number of components. Firstly, there is public recognition that the jurisdiction is no longer to be regarded as a tax haven from our perspective. There is the offer of technical assistance and training to assist the jurisdiction in implementing the agreement, and that is typically provided by the Taxation Office through a negotiation process with the other jurisdiction to work out exactly what sort of assistance they require and what is deliverable and what is not.

The next benefit is the second agreement, which is before you today, the allocation of taxing rights agreement which provides some benefits to residents of the other jurisdiction insofar as they will not be double-taxed on certain income. There is also an offer to not impose any prejudicial or restrictive measures against that jurisdiction while the tax information exchange agreement is in force.

Typically we offer that to all jurisdictions that we sign TIEAs with but not every jurisdiction has taken that offer up. From memory, Gibraltar, the Netherlands, Antilles and Antigua and Barbuda have so far decided not to take up the additional benefits agreement offer.

**Senator WORTLEY**—When you talk about technical assistance, can you go into a little bit more detail with regard to technical assistance and associated cost?

**Mr Allen**—I will go into it, but I will just point out upfront that Jersey are unlikely to take up a technical assistance offer from us. Generally we look at two main areas. We see the first step of getting effective exchange with a country is getting the agreement and the legal frameworks in place. But secondly, it is going to come back to the relationship where you can make exchange requests and they will respond to them in an appropriate manner. 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 sufficient filing cabinets of a secure standard and computer facilities to go with that.

We are also aware that, for some of the smaller countries, signing these agreements does impact on their government revenue as far as the income that they are making from their financial centre. So, often, we will have a look at what we can do to assist where we have expertise in collecting tax—for example, whether we can help with their VAT or GST and talk about the compliance models and approaches that we take. We could send an Australian taxation officer to a country for a period, but, more often than not these days, they will send two or three people to Australia and we will sit with them.

A good example of a broader approach is that we run about five or six multilateral events each year. We get a number of countries in and we talk about an issue that is of interest to everybody. Last month, we ran one on exchange information. We had about 10 countries attend, and a lot of them were countries that we have discussed in this forum that we have signed TIEAs with or are in the process of negotiating TIEAs with. Again, we sit down and explain how we approach exchange information and what we have learned over the years. New Zealand helped us to run that one, and there were also presentations from China. We just try to make sure that we are all on the same page and give these other countries a chance to raise what the issues are. Often we find that the conversation between the countries is more important and we learn as much as they do. That is the kind of broad space that we are now working in.

**Senator PRATT**—Clearly, there is a global push to bring in countries that have tax structures that enable evasion and to have that cease. I note that has emerged recently out of the G20, after building for some time. I appreciate that this issue is not directly relevant to this particular agreement but what can you tell us about the countries that are most resistant to that pull to come on board versus countries like Jersey that are heeding the call for reform?

**Mr Wood**—In fact there are not many countries left that are resisting this move. From the OECD perspective, one of the problems that this project had for a number of years was the so-called lack of a level playing field in that there were several OECD countries that had bank secrecy laws, and the tax havens were very concerned that they were being asked to implement standards that countries like Switzerland and Luxembourg were not prepared to implement. That scenario has changed, particularly since April. All of those OECD countries have endorsed the OECD standards and have said that they will implement them. Countries like Singapore and Hong Kong, which were also held in the same regard by a lot of tax havens, have made similar commitments. Once that obstacle was removed, the level of cooperation generally among other countries improved quite a lot.

**Senator PRATT**—What about places like the Cayman Islands?

**Mr Wood**—The Cayman Islands have made such a commitment and have signed a number of these agreements with other countries recently, and they are in negotiations with us.

**Senator PRATT**—Thank you.

**Mr FORREST**—These agreements are co-dependant, aren't they? You cannot have one without the other.

**Mr Wood**—You cannot have the additional benefits agreement without the exchange agreement. I do not know that it works the other way. The tax information exchange agreement could be a free-standing agreement, but the second agreement relies on the information exchange agreement being in force in order for it to enter into force.

**Mr FORREST**—Clause (1) of the national interest analysis provided to the committee says:

Pursuant to Article 10, the Agreement will enter into force on the date of the latter written notification between Australia and Jersey giving notice that their necessary internal procedures for entry into force have been completed.

What happens if tax evasion is discovered before the agreement formally comes into force? Could it still be prosecuted?

**Mr Wood**—If evidence were found, it could be.

**Mr FORREST**—For Australia to take any action on tax fraud, it does not need either of the agreements; is that right?

**Mr Wood**—That is correct. The Mutual Assistance in Criminal Matters Act 1987 allows Australia to make a request of any other country for assistance in criminal matters. To a certain extent, the criminal tax evasion side of the equation is already catered for by that act and other procedures. The real benefit of this agreement and other agreements of this type is in the civil tax evasion area. Prior to this agreement being signed we had no arrangements with Jersey to exchange information on civil tax matters.

**Mr FORREST**—I am happy with that, thank you

**CHAIR**—As there are no further questions, thank you for giving evidence today. If the committee has any further questions, the committee secretariat may seek further comment from you at a later date.

[11.27 am]

**ATFIELD, Mr Michael John, Senior Adviser, Treasury**

**Second Protocol Amending the Agreement between Australia and the Kingdom of Belgium for the Avoidance of Double Taxation and the Prevention of Fiscal Evasion with Respect to Taxes on Income**

**CHAIR**—While the representatives from the Treasury are getting organised, I note that a Parliamentary Delegation from the Republic of Indonesia led by Dr Laode Ida, Vice-Chairman of the DPD, the upper house of the Indonesian parliament, is present. I welcome you and I acknowledge your presence here at our committee hearings.

Mr Atfield, welcome. Although the committee does not require you to give evidence under oath, I should advise you that this hearing is a legal proceeding of the parliament and warrants the same respect as proceedings of the House and Senate. The giving of false or misleading evidence is a serious matter and may be regarded as a contempt of the parliament. If you nominate to take any questions on notice, could you please ensure that your written response to questions reaches the committee secretariat within seven working days of the receipt of the transcript of today's proceedings. I invite you to make any introductory remarks that you wish to make before we proceed to questions.

**Mr Atfield**—Thank you for the opportunity to make some introductory comments. We welcome the opportunity to present to this committee the benefits to Australia of the proposed second protocol with Belgium. Similar to what we have just heard with the tax information exchange agreement with Jersey, the second protocol also updates the exchange of information rules in the tax treaty with Belgium to the internationally agreed tax standard. In particular the new provisions provide that neither tax administration can refuse to provide information solely because they do not require the information for their own domestic purposes or because the information is held by a bank or a similar institution. While the exchange of information provisions would maintain important secrecy safeguards to protect the legitimate interests of taxpayers, information received could also be used for other purposes when the laws of both countries permit this and the tax authorities supplying the information authorise this.

The second protocol was negotiated in the context of recent international progress in improving tax transparency and exchange of taxpayer information between countries. It will align the exchange of information provisions with the internationally agreed taxation standard as reflected in the respective OECD and United Nations model tax conventions and endorsed by the G20 finance ministers. We therefore recommend that the members of the committee support the treaty action as proposed.

**CHAIR**—Thank you. Before I moved to questions, I have been advised that one or more members of the Indonesian delegation would like to take photographs. Unless there are any objections, that is fine. Generally we do not have any objection to being photographed—though some of us are more photogenic than others!

Mr Atfield, what are the mechanics of the exchange of information? Does that occur at a regular, set time or on an ad hoc basis?

**Mr Atfield**—Ordinarily it is on an ad hoc basis. If the tax office has a need for information then it will make a request to the Belgian tax authorities. Underpinning this, there are also what are called spontaneous exchanges of information. So, for argument's sake, if the tax office has some information in its possession which it thinks that the other countries' tax authorities would have an interest in, they can also exchange that information under the treaty.

**CHAIR**—Is that information transmitted electronically, in a storage device or—

**Mr Atfield**—I am not fully aware of how it is actually done, but I understand that it is done via electronic means and also through various storage media.

**CHAIR**—I would be happy if you would pass to the committee secretariat any further information on that point that you want to advise the committee of.

**Mr Atfield**—Yes.

**CHAIR**—The analysis of the OECD international standard on tax information exchange mentions the endorsement by the G20 in 2004 and the endorsement by the UN Committee of Experts on International Cooperation in Tax Matters in 2008. Was there any revision to the standard between 2004 and 2008, and is there any reason why Belgium or Australia did not respond earlier to comply with the standard?

**Mr Atfield**—To take one step back, Mr Wood was talking about the level playing field and saying that there were certain OECD members which did not adhere to the international standard. Belgium was one of those countries. I think the G20 finance ministers endorsing the standard in March of this year was the catalyst for a lot of those countries to basically give up their previous position and come on board and accept the internationally agreed tax standard.

**Mr MURPHY**—I am interested to know the extent of tax evasion by Australians through Belgium. Is it a significant magnitude?

**Mr Atfield**—I do not have that information on me, but I can provide that to the committee.

**Mr MURPHY**—Okay. Australia is listed by the OECD as a jurisdiction that has 'substantially implemented the internationally agreed tax standard'. Which other countries has Australia implemented agreements with to comply with the OECD standard?

**Mr Atfield**—I will run through them. There are a few that we have signed recently. There is: the 2009 New Zealand treaty, which we presented to the committee last week; the 2008 Japan treaty; the 2008 amending protocol with South Africa; the 2006 treaties with France, Norway and Finland; the 2005 amending protocol with New Zealand, which was the first one that we signed; and the Singapore protocol, which we signed last week.

**CHAIR**—Thank you for attending to give evidence today. If the committee has any further questions the committee secretariat may seek further comment from you at a later date.

Resolved (on motion by **Senator Cash**, seconded by **Mr Forrest**):

That this committee authorises publication of the transcript of the evidence given before it at public hearing this day.

**Committee adjourned at 11.35 am**