

Tax agreements with the Cook Islands, Gibraltar and the States of Guernsey

Introduction

2.1 This chapter addresses five taxation agreements:

- *Agreement between Australia and the Cook Islands on the Exchange of Information with Respect to Taxes;*
- *Agreement between Australia and the Cook Islands on 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;*
- *Agreement between Australia and Gibraltar on the Exchange of Information with Respect to Taxes;*
- *Agreement between Australia and the States of Guernsey for the Exchange of Information Relating to Tax Matters; and*
- *Agreement between Australia and the States of Guernsey 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.*

2.2 These agreements are amongst a number of bilateral agreements being concluded as part of Australia's ongoing commitment to the OECD's work on eliminating harmful tax practices among low tax jurisdictions.¹ More than 40 low tax jurisdictions have publicly committed to OECD standards

¹ Cook Islands Tax Information Exchange Agreement (TIEA) National Interest Analysis (NIA), para 9.

of transparency and information exchange for tax purposes since 2002.² Australia has signed 13 tax information exchange agreements and six have entered into force.³

2.3 The agreements are intended to help Australia protect its revenue base and improve the integrity of the tax system by discouraging tax evasion.⁴

2.4 Low-tax jurisdictions can be used in arrangements designed to avoid paying tax elsewhere. In particular, assets and income that are subject to Australian tax can be concealed by their secrecy laws.⁵

2.5 The Cook Islands, Gibraltar and the States of Guernsey all have low tax structures and are recognised offshore financial centres. The level and type of economic activity between Australia and each of these countries is not fully known, however, AUSTRAC data indicates a significant flow of funds.⁶ The Australian Taxation Office (ATO) indicated in evidence that it would like to obtain further information about Australian dealings with a number of trustee companies operating in the Cook Islands.⁷

Tax Information Exchange Agreements

2.6 The three tax information exchange agreements establish the legal basis for the exchange of tax information between the Governments of Australia and the Cook Islands, Gibraltar and the States of Guernsey.⁸ The agreements will allow the Commissioner for Taxation to seek relevant taxpayer information from these countries for both civil and criminal tax purposes.⁹ Importantly, the agreements override domestic bank secrecy laws and a country cannot refuse to provide information on the basis that it does not have an interest in that information for its own domestic tax purposes.¹⁰

2 Cook Islands TIEA NIA, para 10.

3 Cook Islands TIEA NIA, para 7; Mr Malcolm Allen, *Transcript of Evidence*, 10 May 2010, p. 11. The Committee reviewed these treaties in JSCOT Reports 73, 87, 99, 102 and 107.

4 Cook Islands TIEA NIA, para 6.

5 Cook Islands TIEA NIA, para 12.

6 Cook Islands TIEA NIA, para 12; Gibraltar NIA, para 12; Guernsey TIEA NIA, para 12.

7 Mr Malcolm Allen, *Transcript of Evidence*, 10 May 2010, p. 9.

8 Cook Islands TIEA NIA, para 1; Gibraltar NIA, para 4;

9 Mr William Potts, *Transcript of Evidence*, 10 May 2010, p. 8.

10 Mr William Potts, *Transcript of Evidence*, 10 May 2010, p. 8.

- 2.7 The three agreements essentially follow the format of the model Australian tax information exchange agreement. The key obligations include:
- both parties are obliged to exchange information where the information is foreseeably relevant to the administration and enforcement of the parties' domestic tax laws;
 - where the requested party does not hold the information necessary to comply with the request, it must use its relevant information gathering powers to provide the requested information even if not required for domestic tax purposes;
 - information must be provided as promptly as possible and must be kept confidential;
 - requests can be refused if not in conformity with the agreement or if the requesting party cannot obtain the information under its own laws;
 - ordinary costs will be borne by the requested party and extraordinary costs by the requesting party unless otherwise agreed; and
 - both parties are obliged not to apply prejudicial or restrictive measures based on harmful tax practices to residents or nationals of either country while the agreement is in force.¹¹

Implementation and costs

- 2.8 No further legislation is required to implement these agreements.
- 2.9 The agreements 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 with each country to clarify costs that will be borne by the ATO.¹²

Existing agreements

- 2.10 The Committee asked about the operation of those agreements already in force. The ATO informed the Committee that the agreements with Bermuda, Netherlands Antilles, and Antigua and Barbuda have been used, with seven exchanges of information concluded and one in progress at the current time. In particular, the agreements have been useful in

11 Cook Islands TIEA NIA, paras 15-24; Guernsey TIEA NIA, paras 15-24; Gibraltar NIA, paras 15-24.

12 Cook Islands TIEA NIA, para 28; Guernsey TIEA NIA, para 28; Gibraltar NIA, para 28.

obtaining information relating to the repatriation of foreign funds to Australia through credit cards issued in these countries.¹³

Allocation of taxing rights agreements

- 2.11 The agreements with the Cook Islands and the States of Guernsey provide for the allocation of taxing rights in order to prevent double taxation of the same income. They also establish a mechanism to assist in the resolution of disputes arising from transfer pricing adjustments made to taxpayers' income by the revenue authorities of Australia or the other countries.¹⁴
- 2.12 The agreements are part of a package of benefits offered to each country to encourage it to conclude the tax information exchange agreements.¹⁵
- 2.13 The Committee was informed that Gibraltar did not take up the offer of this agreement, possibly because its tax information exchange agreement was negotiated much more recently.¹⁶ Since the G20 meeting in April 2009, a number of countries have been focussed upon concluding the required minimum of 12 agreements to gain global recognition of their commitment to the OECD principles and such incentives have been less relevant.¹⁷

Obligations

Cook Islands

- 2.14 The agreement provides for the allocation of taxing rights over certain income of certain individuals. It only applies to persons who are residents for taxation purposes of Australia and/or the Cook Islands.
- 2.15 Each party is obliged to forego its taxing rights over certain income derived by retirees, pensioners, government employees, students and business apprentices, where they are residents of the other party:
- Under Article 5, Australia cannot tax Australian source pensions and retirement annuities paid to residents of the Cook Islands, provided

13 Mr Malcolm Allen, *Transcript of Evidence*, 10 May 2010, p. 11.

14 Cook Islands Allocation NIA, para 4.

15 Cook Islands Allocation NIA, para 7.

16 Mr William Potts, *Transcript of Evidence*, 10 May 2010, p. 9.

17 Mr Malcolm Allen, *Transcript of Evidence*, 10 May 2010, p. 9.

such income is subject to tax in the Cook Islands. Australia can tax Cook Islands source pensions and retirement annuities paid to Australian residents.¹⁸

- Article 6 obliges Australia not to tax the salaries of government employees of the Cook Islands working in Australia in government service for non-commercial purposes. Australia and the Cook Islands will have sole taxing rights over the salaries paid to individuals undertaking government functions.¹⁹
- Under Article 7, Australia cannot tax maintenance, education or training payments received by students or business apprentices from the Cook Islands who are temporarily studying in Australia, where those payments are made from outside Australia. Other income will remain liable to Australian tax.²⁰

2.16 The agreement also establishes a mechanism to resolve disputes arising from adjustments made to taxpayers' income by the revenue authorities of either country (Article 8).²¹

States of Guernsey

2.17 The agreement with the States of Guernsey is substantially the same as that with the Cook Islands. The key difference is that this agreement will apply only to certain income derived by government employees, students and business apprentices.²²

2.18 The agreement provides for the allocation of taxing rights over certain income of certain individuals and applies only to persons who are residents of Australia and/or Guernsey for taxation purposes.²³

2.19 Articles 5 and 6 oblige each party to forego taxing rights:

- Australia is obliged by Article 5 not to tax the salaries of government employees of Guernsey working in Australia in government service. Australia and Guernsey will have sole taxing rights over the salaries paid to individuals undertaking government functions.²⁴

18 Cook Islands Allocation NIA, para 12.

19 Cook Islands Allocation NIA, para 13.

20 Cook Islands Allocation NIA, para 14.

21 Cook Islands Allocation NIA, para 15.

22 Guernsey Allocation NIA, para 11.

23 Guernsey Allocation NIA, para 10.

24 Guernsey Allocation NIA, para 12.

- Australia cannot tax maintenance, education or training payments received by students or business apprentices from Guernsey who are temporarily studying in Australia, where those payments arise from sources outside Australia. Other income will remain liable to Australian tax (Article 6).²⁵
- 2.20 Article 7 establishes a mechanism to resolve disputes arising from adjustments made to taxpayers' income by the revenue authorities of either country.

Implementation and Costs

- 2.21 Minor amendments will be required to the *International Tax Agreements Act 1953* to give effect to these agreements. Treasury has indicated this legislation is expected to be introduced into Parliament in 2010.²⁶
- 2.22 The agreements will have a financial impact on the ATO, however this is expected to be minimal given the small number of taxpayers likely to be affected by the agreements.²⁷

Conclusion and recommendations

- 2.23 The Committee recognises the importance of establishing effective arrangements with low-tax jurisdictions to help eliminate harmful taxation practices and supports the effort being made by the Government to conclude these agreements. The Committee therefore supports binding treaty action being taken.

Recommendation 1

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

25 Guernsey Allocation NIA, para 13.

26 Cook Islands Allocation NIA, para 17; Guernsey Allocation NIA, para 16.

27 Cook Islands Allocation NIA, para 19; Guernsey Allocation NIA, para 18.

Recommendation 2

The Committee supports the *Agreement between the Government of Australia and the Government of the Cook Islands on 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.

Recommendation 3

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

Recommendation 4

The Committee supports the *Agreement between Government of Australia and the States of Guernsey for the Exchange of Information Relating to Tax Matters* and recommends that binding treaty action be taken.

Recommendation 5

The Committee supports the *Agreement between the Government of Australia and the States of Guernsey 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.