

National Interest Analysis [2015] ATNIA 19
with attachment on consultation

Agreement between Australia and the Republic of Estonia on Social Security

(Tallinn, 14 September 2015)

[2015] ATNIF 25

NATIONAL INTEREST ANALYSIS – CATEGORY 2 TREATY

SUMMARY PAGE

Agreement between Australia and the Republic of Estonia on Social Security

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Nature and timing of proposed treaty action

1. The proposed treaty action is in relation to the *Agreement between Australia and the Republic of Estonia on Social Security* done at Tallinn on 14 September 2015 ('Agreement').
2. Under **Article 22** (Entry into force), the Agreement shall enter into force on the first day of the third month following the month in which the last written notification is exchanged by the Contracting Parties through the diplomatic channel notifying each other that all conditions as are necessary for the entry into force of this Agreement have been fulfilled. Subject to completion of Australia's domestic treaty-making requirements, the Agreement is expected to commence in 2017.

Overview and national interest summary

3. Australia's social security agreements are bilateral treaties that close gaps in social security coverage for people who migrate between countries. The social security agreements do this by overcoming barriers to pension payments in the domestic legislation of each country, such as requirements on citizenship, minimum contributions, past residence history, and current country of residence.
4. The proposed Agreement provides for enhanced access to Australian and Estonian retirement benefits for people in Australia and Estonia and greater portability of these benefits between the two countries. Portability of benefits allows for the payment of a benefit from one country to a person in another country. Enhanced access to benefits is an underlying principle of bilateral social security agreements where the responsibility for providing benefits is shared.
5. Under the proposed Agreement, residence in one Contracting Party's territory will not affect a person's entitlement to benefits under the legislation of the other Contracting Party. People who move between Australia and Estonia will be able to do so in the knowledge that their rights to benefits are recognised in both countries. For Australia, the proposed Agreement covers the age pension and superannuation guarantee. For Estonia, the proposed Agreement covers the mandatory state insurance pensions for old-age, and survivor's pension.
6. The Agreement will facilitate business between Australia and Estonia by ensuring employers and employees do not have a 'double liability' in respect of the same work of an employee. This means, for example, that when an employee from one Contracting Party is temporarily seconded to work in the territory of the other, the employee and/or their employer will not need to make compulsory pension or superannuation contributions in both countries. In the Australian context, the Agreement will exempt employers and/or employees already making superannuation guarantee contributions in Australia, from the requirement to make compulsory social security contributions in Estonia. Similarly, Estonian employers will be exempt from the requirement to make superannuation guarantee contributions for employees sent to work temporarily in Australia, provided they continue to make contributions in Estonia.

7. The proposed Agreement will serve to reinforce Australia's political, business and strategic interests. It will bring economic and social benefits to Australia and facilitate business links between the two countries by reducing costs. It will help to maximise the foreign income of Australian residents, which will have positive flow-on effects within the Australian economy. It will also further strengthen bilateral relations between Australia and Estonia and provide choices in retirement for individuals who migrate to Australia or Estonia during or after their working lives.

Reasons for Australia to take the proposed treaty action

8. Australia's bilateral social security agreements improve access to income support for people whose adult lives are, or have been, divided between Australia and the other country Party to the relevant agreement. The main beneficiaries of these bilateral agreements are age pensioners, although they apply to any type of benefit, pension or allowance as listed in the legislative scope.
9. The proposed Agreement incorporates the same principles as Australia's other bilateral social security agreements. A key element of the Agreement is the sharing of responsibility between the Parties in providing social security coverage for current and former residents of both countries.
10. Under the proposed Agreement, individuals may be eligible for benefits from both countries if they meet certain criteria and have resided and/or worked in both countries during their working lives. Residents of Australia and Estonia will be able to move between these countries knowing that their rights to benefits are protected. Australia's 2011 census recorded 8,550 people in Australia who identified as being of Estonian ancestry and there are about 2,000 Estonian-born residents, the majority of whom are estimated to be of pension age. Australia has the sixth largest expatriate Estonian community after Finland, Russia, Sweden, Canada and the USA.
11. The proposed Agreement will potentially benefit all of the Estonian born population of Australia, as well as any residents who have contributed to the Estonian system at some point in their lives. It will also benefit former Australian residents living in Estonia.
12. The proposed Agreement will reduce costs for Australian businesses because it will exempt them from paying contributions in the Estonian social security system for employees they temporarily second to work in Estonia.
13. Currently Australian institutions are working to develop education links and student exchange arrangements with Estonia. Monash University in Melbourne has an exchange agreement with the Estonian Business School in Tallinn.

Obligations

14. **Part I** (Articles 1 to 5) of the proposed Agreement sets out the General Provisions. **Article 1** of the Agreement contains definitions and **Articles 2 and 3** respectively set out the legislative and personal scope of the Agreement. **Article 4** (Equality of treatment) obliges the Parties to ensure equal treatment of people covered by the proposed Agreement, with respect to eligibility for and payment of benefits. **Article 5** (Export of Benefits) provides that benefits are payable to persons who are residents of, and in, the territory of either Contracting Party.
15. **Part II** (Articles 6 to 9) of the Agreement concerns coverage and contains provisions to avoid double liability for compulsory superannuation contributions in respect of the same work of an employee. **Article 8** (Avoidance of Double Coverage) provides that where a person whose employment is subject to the laws of one Contracting Party is temporarily seconded to work in the territory of the other Contracting Party, the person and/or their employer will be subject only to the legislation of the first Contracting Party. **Article 9** (Exception Agreements) allows the relevant government authority of each Contracting Party, specified in **Article 1(b)** of the proposed

Agreement (the Competent Authorities), or institutions they have designated, specified in **Article 1(c)** (the Competent Institutions), to agree in writing to modify the application of **Part II** in respect to a particular person or category of persons.

16. **Part III** (Articles 10 to 12) of the Agreement applies to benefits payable by Australia. Under **Article 1** (Definitions) of the Agreement, a benefit is defined as ‘a pension’ provided for in the legislation of a Party, excluding (in the case of Australia) ‘any benefit, payment or entitlement under the law concerning the superannuation guarantee’. **Article 2** (Legislative Scope) makes it clear that the Agreement only applies to Australian social security law related to the age pension and the law concerning the superannuation guarantee.
17. **Part III** of the Agreement:
 - (a) obliges Australia to regard residents of Estonia, and Australian residents who are temporarily in Estonia, as Australian residents and as being present in Australia, for the purpose of claiming the benefit, provided the person has been a resident of Australia at some time in his or her life (**Article 10**); and
 - (b) provides that insurance periods in Estonia (defined under **Article 1** as periods of “payment of social tax, residence or employment” used to acquire the right to a benefit under Estonian legislation, or periods deemed equivalent) will be regarded as periods of residence in Australia for the purpose of meeting any minimum qualifying period of residence for the benefit (**Article 11**); and
 - (c) specifies how the rate of the Australian benefit (i.e. age pension) will be calculated under the proposed Agreement and how this applies to a person who is living inside or outside Australia (**Article 12**).
18. **Part IV** (Articles 13 and 14) of the Agreement applies to benefits payable by Estonia. Periods of Australian working-life residence will be taken into account by Estonia for the purpose of meeting minimum insurance periods to qualify for a benefit under Estonian legislation, provided the periods do not overlap with the person’s periods of insurance accumulated in Estonia (**Article 13**). The rate of pension from Estonia will be based on a person’s period of insurance accumulated in Estonia (**Article 13**).
19. **Part V** of the Agreement (Articles 15 to 20) sets out various obligations relating to the administration of the Agreement, including:
 - (a) for the Contracting Parties to consider the date a claim is lodged in one country as the date of lodgement in the other country (**Article 15(2)**);
 - (b) for the Contracting Parties to guarantee payment of benefits without deductions for government administrative fees or charges (**Article 16(2)**);
 - (c) for the Competent Authorities and Competent Institutions of each Contracting Party to assist each other to exchange information and to protect the confidentiality of personal data, and to communicate and accept documents in any of the official languages of either Contracting Party (**Article 17**);
 - (d) for the Competent Authorities to conclude an Administrative Arrangement to implement the proposed Agreement (**Article 18**); and
 - (e) for the Competent Authorities to resolve, to the extent possible, any differences which arise in interpreting or applying the proposed Agreement (**Article 19**) and for the Contracting Parties to meet to review the proposed Agreement upon request by either Contracting Party (**Article 20**).

20. **Part VI** (Articles 21 to 23) of the Agreement contains transitional and final provisions. **Article 21** (Transitional Provisions) precludes payment for any period prior to the date on which the proposed Agreement enters into force (**Article 21(1)**), but ensures that Estonian periods of insurance and periods of Australian residence completed before the proposed Agreement enters into force will be taken into account when determining entitlements to benefits under the proposed Agreement (**Article 21(2)**).
21. **Article 21** (3) also provides that the double superannuation liability provisions of **Articles 8(2)** and **8(3)** of the Agreement apply from the date of entry into force of the Agreement, even if an employee from one Contracting Party was seconded to work in the territory of the other before the proposed Agreement entered into force.
22. **Articles 22 and 23** respectively set out the arrangements for the entry into force of the proposed Agreement and its termination.

Implementation

23. The *Social Security (International Agreements) Act 1999* (Cth) ('the Act') gives effect in domestic law to relevant provisions of Australia's bilateral social security agreements which are set out in **Schedules 1-31** of the Act. A new Schedule containing the full text of the Agreement with Estonia will be added to the Act as a legislative instrument pursuant to regulations made under **Sections 8** (Addition of new scheduled international social security agreements) and **25** (Regulations) of the Act following the tabling of the Agreement and consideration of the Agreement by JSCOT.
24. Pursuant to **Section 27(1)(e)** of the *Superannuation Guarantee (Administration) Act 1992* (Cth) and **Regulation 7AC** of the *Superannuation Guarantee (Administration) Regulations 1993* (Cth), the provisions of Australia's bilateral social security agreements relating to double superannuation coverage are automatically given effect in Australian domestic law once the relevant agreement is added as a separate Schedule to the *Social Security (International Agreements) Act 1999*. The combined effect of **Section 27(1)(e)** and **Regulation 7AC** is that payment of salary or wages to an employee who has been sent temporarily to work in Australia will not give rise to a superannuation guarantee obligation for the overseas employer, provided that a relevant scheduled social security agreement is in place.
25. Following the passing of the new legislative instrument to the Act, the Agreement will enter into force under **Article 22** (Entry into Force) on the first day of the third month following Exchange of Notes by the Parties.

Costs

26. The proposed Agreement was funded in the 2015-16 Federal Budget, at a net cost of **\$4.2 million** over the forward estimates period.
27. Departmental costs incurred by the DSS and the Department of Human Services total **\$4.6 million** over the forward estimates period, and are primarily one-off set-up costs.
28. The savings for the Department of Social Services ('DSS') to its administered funds budget are estimated to be **\$0.43 million** over the forward estimates period.
29. Provisions that exempt the payment of compulsory superannuation contributions are estimated to have a negligible revenue impact over the forward estimates.

Future treaty action

30. **Article 23** (1) (Duration, Modification and Termination) of the proposed Agreement provides for amendment of the Agreement by agreement in writing between the Contracting Parties. **Article 20** (Review of Agreement) of the proposed Agreement obliges the Contracting Parties to meet to review the proposed Agreement within six months of the request of either Contracting Party.
31. Any future amendments to the Agreement, whether arising out of review of the Agreement by the Parties under **Article 20** or by agreement between the Parties under **Article 23**(Duration, Modification and Termination) will be subject to Australia's domestic treaty-making requirements.

Withdrawal or denunciation

32. The Agreement contains no specific provisions for withdrawal from or denunciation of the Agreement by either Party, but contains instead a termination provision (**Article 23**).
33. **Article 23**(2) of the Agreement provides that it will remain in force until terminated by either Contracting Party giving 12 months' written notice to the other through the diplomatic channel.
34. Any future termination of the Agreement by Australia would be subject to Australia's domestic treaty-making requirements, including tabling in Parliament and consideration by JSCOT.
35. In the event of termination, **Article 23**(3) preserves the rights of individuals who are receiving benefits under the proposed Agreement prior to the termination, as well as the rights of those who have lodged claims and would have been entitled to receive benefits under the proposed Agreement, and certain employees and/or employers to whom the double superannuation liability provisions of **Articles 8**(2) and **8**(3) of the proposed Agreement apply.

Contact details

International Agreements
Eligibility and Participation Policy Branch
Department of Social Services

ATTACHMENT ON CONSULTATION

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[2015] ATNIF 25

CONSULTATION

1. The Department of Social Services ('DSS') consulted with relevant stakeholders regarding Australia's proposed entry into the *Agreement between Australia and the Republic of Estonia on Social Security* ('Agreement').
2. On 15 September 2015, the DSS wrote to Estonian community groups, Estonian Consulates and 14 welfare groups, in addition to all Australian State and Territory Governments, to provide information and seek their views and comments on the proposed Agreement. The Agreement text and information about the proposed Agreement are available on DSS's website at www.dss.gov.au.
3. Relevant Consulates, welfare and other organisations consulted by DSS in relation to the proposed Agreement are:

Ethnic Communities Council of QLD	ACT Multicultural Community Council
Ethnic Communities Council of WA	Australian Council of Social Service
Multicultural Council of NT Inc.	Our Home Co-operative Society Ltd
Welfare Rights Centre	Ethnic Communities Council of NSW
Multicultural Communities Council of SA	Ethnic Communities Council of Victoria
Multicultural Council of Tasmania	Council on the Ageing Australia
Federation of Ethnic Communities' Councils of Australia (FECCA)	Association of Independent Retirees
Superannuants Association	National Seniors Association
Consulate of the Republic of Estonia (QLD)	Consulate of the Republic of Estonia (SA)
Consulate of the Republic of Estonia (WA)	Consulate of the Republic of Estonia (TAS)

4. State/Territory Governments consulted by DSS in relation to the Agreement are:

ACT Chief Minister's Department
QLD Department of Premier and Cabinet
VIC Department of Premier and Cabinet
NT Department of Chief Minister
SA Department of Premier and Cabinet
TAS Department of Premier and Cabinet
WA Department of Premier and Cabinet
NSW The Cabinet Office, Inter-Governmental & Regulatory Reform Branch

5. No responses were received from any of the above stakeholders as a result of DSS' consultation process.
6. In addition, The Treasury has consulted with the Office of Best Practice Regulation ('OBPR') in relation to the requirement for a Regulation Impact Statement. The OBPR advised DSS that the regulatory impacts of the Agreement with Estonia are minor given that it:

- (a) reduces the compliance burden and costs for Australian and Estonian employers by removing the obligation to pay compulsory contributions into both countries' systems; and

(b) lowers the regulatory burden on Australian superannuation funds as they will not need to process as many superannuation payments, including 'departing Australia super payments' for Estonian employees working temporarily in Australia and unclaimed superannuation.

Accordingly, the OBPR does not require a Regulation Impact Statement.