National Interest Analysis [2016] ATNIA 2

with attachment on consultation

Agreement between Australia and the Federal Republic of Germany for the Elimination of Double Taxation with Respect to Taxes on Income and on Capital and the Prevention of Fiscal Evasion and Avoidance

(Berlin, 12 November 2015)

[2015] ATNIF 31

NATIONAL INTEREST ANALYSIS: CATEGORY 2 TREATY

SUMMARY PAGE

Agreement between Australia and the Federal Republic of Germany for the Elimination of Double Taxation with Respect to Taxes on Income and on Capital and the Prevention of Fiscal Evasion and Avoidance

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Nature and timing of proposed treaty action

1. The proposed treaty action is to ratify, pursuant to its **Article 32**(1), the *Agreement between Australia and the Federal Republic of Germany for the Elimination of Double Taxation with Respect to Taxes on Income and on Capital and the Prevention of Fiscal Evasion and Avoidance*, and the attached Protocol, signed on 12 November 2015 ('the proposed treaty').

2. The proposed treaty will enter into force, pursuant to **Article 32**(2), on the day of the exchange of instruments of ratification by Australia and Germany. The provisions of the proposed treaty will take effect in Australia in three stages, namely:

(a) in respect of withholding tax, on income derived on or after 1 January next following the date of entry into force;
(b) in respect of fringe benefits tax, in relation to fringe benefits provided on or after 1 April next following the date of entry into force; and
(c) in respect of other Australian tax, on income, profits or gains of any year of income beginning on or after 1 July next following the date of entry into force.

3. Following its entry into force, pursuant to its **Article 32**(3), the proposed treaty will wholly replace the *Agreement between the Commonwealth of Australia and the Federal Republic of Germany for the Avoidance of Double Taxation and the Prevention of Fiscal Evasion with Respect to Taxes on Income and Capital and to certain other Taxes, and Protocol* [1975] ATS 8 ('existing Agreement'), *which* entered into force on 15 February 1975. The provisions of the existing Agreement including its Protocol will, however, continue to have effect for taxable years and periods which expired before the time at which the provisions of the proposed treaty will be effective.

Overview and national interest summary

4. The key objective of the proposed treaty is to update the existing bilateral tax arrangements reflected in the existing Agreement, to align them with current Australian and international tax policy settings. This is expected to encourage trade and investment, which will further enhance economic relations between Australia and Germany.

5. The proposed treaty includes new integrity provisions, as recommended in the OECD/G20 *Base Erosion and Profit Shifting* ('BEPS') Reports published on 5 October 2015, intended to minimise tax avoidance opportunities. The proposed treaty strengthens the administrative assistance

arrangements between Australian and German revenue authorities by enabling exchange of information in respect of all taxes imposed in either country, as well as mutual assistance in the collection of outstanding tax debts. Collectively, these provisions will enhance tax system integrity.

Reasons for Australia to take the proposed treaty action

Reducing barriers to bilateral investment and trade

6. The proposed treaty is expected to reduce taxation barriers to bilateral trade and investment between Australia and Germany, primarily by reducing source country taxes on cross-border payments of dividends, interest and royalties. Rather than taking unilateral action to reduce such taxes (which are imposed as withholding taxes in Australia), Australia has adopted the approach of agreeing to such reductions on a reciprocal bilateral basis. This approach 'locks in' the tax limits in both countries, thus ensuring a stable tax framework for business between Australia and its tax treaty partners.

7. In particular, the proposed treaty will reduce the *dividend withholding tax rate limit* from 15% to zero on dividends paid to a publicly listed company, or a subsidiary thereof and, in certain circumstances, on dividends paid to an unlisted company which holds 80% or more of the paying company. It will also reduce the dividend withholding tax rate from 15% to 5% on inter-corporate dividends paid to a company that holds 10% or more of the paying company. The zero and 5% rates are conditional on the shares being held for a minimum period of 12 or 6 months respectively. In all other cases, the rate will remain at 15% (**Article 10**). This will promote direct investment and will allow Australian companies to repatriate profits made by certain German subsidiaries back to Australia without facing any further tax.

8. The proposed treaty will reduce the *interest withholding tax rate limit* from 10% to zero for interest paid to financial institutions that are unrelated to, and dealing wholly independently with, the payer. Exempting interest paid to German financial institutions will lower borrowing costs for Australian firms, the economic burden of which is typically borne by the Australian payer of the interest. The existing treaty zero rate limit for interest paid to the Australian or German Governments, bodies exercising governmental functions and banks performing central banking functions will continue to apply. In all other cases, the rate will remain at 10% (**Article 11**).

9. The proposed treaty will also reduce the *royalty withholding tax rate limit* from 10% to 5% (**Article 12**). Reduced source country taxation on royalties is likely to encourage Australian businesses to source intellectual property from Germany and vice versa. While Australian withholding taxes on royalties effectively seek to tax the foreign recipients of the royalties, contracts often include provisions (known as 'gross-up' clauses) which effectively transfer the economic burden of the tax onto the payer of the royalties. Reducing these rates is expected to reduce the costs for Australian businesses of accessing German intellectual property. In contrast to the existing Agreement, the definition of 'royalties' in the proposed treaty will not include the right to use industrial, commercial or scientific equipment, which will lower costs for Australian firms that lease such equipment from German residents, due to the economic burden of royalty withholding tax being typically borne by the payer of the royalty.

10. More generally, the proposed treaty will modernise the existing tax treaty arrangements with Germany consistent with Australian, German and international tax treaty policy preferences. This will provide improved tax treaty outcomes for Australian businesses looking to expand into Germany and vice versa.

Increased certainty and reduced compliance costs for taxpayers

11. The proposed treaty expands on the existing Agreement by including more comprehensive rules allocating taxing rights over income flowing between the two countries (including rules governing the taxation of income, profits or gains from the alienation of different categories of property).

12. The proposed treaty clarifies that treaty benefits will be available for income received by Australian managed investment trusts and certain German collective investment vehicles (**Article 4**(4)).

13. Where the revenue authority of one country adjusts the taxable income of a resident of the other country, to reflect the arm's-length price of goods or services provided to an associated enterprise, the proposed treaty will require the revenue authority of the other country to make an appropriate adjustment to the amount of tax charged in its jurisdiction in respect of the same profits (**Article 9**). This will help remove double taxation of the same profits in the hands of two associated enterprises. A 10 year time limit will generally apply for initiating the first adjustment to profits.

14. The proposed treaty will allocate *taxing rights over fringe benefits* provided by employers to their employees to the country that has the primary taxing right over the employment income to which the benefits relate (**Article 14**(4)). This will prevent the double taxation of fringe benefits that can otherwise arise, and remain unrelieved, because Australia taxes the provider of the benefit (the employer) as opposed to the recipient (the employee).

15. The proposed treaty will protect taxpayers from one country from tax discrimination in the other country (**Article 24**). This will ensure that Australian nationals and businesses are not subject to more burdensome taxation and connected requirements in Germany than German nationals and businesses in the same circumstances, and vice versa. This will provide certainty for individuals and businesses that have dealings in both countries.

16. Taxpayers will have three (3) years from the first notification of the action to seek the revenue authorities' assistance in the resolution of tax disputes arising from the application of the treaty by presenting their case to the competent authority in either country (**Article 25**). Taxpayers will be able to seek independent and binding arbitration where a tax dispute remains unresolved after two years after the commencement of the mutual agreement procedure under Article 25. Unresolved issues may not, however, be submitted to arbitration to the extent that they involve the application of the principal purpose test in the proposed treaty or either country's domestic rules designed to prevent evasion or avoidance of tax.

Establishing a more effective framework to prevent international fiscal evasion and avoidance

17. The proposed treaty includes OECD/G20 tax treaty recommendations intended to address base erosion and profit shifting ('BEPS') practices. This includes:

(a) a new Preamble clarifying that the purpose of the treaty is to eliminate double taxation with respect to taxes on income and on capital without creating opportunities for non-taxation or reduced taxation through tax evasion or avoidance (including through treaty-shopping arrangements).

(b) a new rule ensuring the benefits of the proposed treaty will be denied if a principal purpose of a person is to take advantage of the treaty, unless it is established that granting the benefit is in accordance with the proposed treaty's object and purpose (**Article 23**(2)).

(c) a new rule clarifying that treaty benefits will be available for income derived through fiscally transparent entities (such as partnerships and trusts) but only to the extent that the income is treated as the income of a resident of Australia or Germany under domestic law (**Article 1**(2)).

Collectively, the new integrity provisions will better ensure that the benefits of the proposed treaty are only granted in appropriate circumstances.

18. To further guard against potential double non-taxation, the proposed treaty provides that individuals who change their tax residence after at least 5 years will remain taxable in their former country of residence on certain capital gains from the alienation of property (**Article 13**(6) and(7)). Similarly, the proposed treaty provides that the source country is not obliged to provide treaty benefits for income derived by a temporary resident of the other country if that other country exempts that income because of the individual's status as a temporary resident (**Article 23**(1)).

19. The definition of 'permanent establishment' in the proposed treaty has been strengthened and supplemented by new integrity provisions (recommended in the OECD/G20 BEPS reports), which will broaden the range of circumstances in which both countries can tax business profits (**Article 5**).

20. The proposed treaty maintains the integrity of Australia's existing laws by providing that nothing in the treaty will prevent either Contracting State from applying their own domestic laws to prevent the evasion or avoidance of taxes (**Article 23**(3)).

21. The proposed treaty will enhance tax system integrity by establishing a framework to address international tax evasion through the inclusion of improved rules to allow the revenue authorities of Australia and Germany to cooperate to detect and prevent tax evasion. In particular, it will allow the exchange of relevant information between the two revenue agencies in respect of all taxes imposed in either country (**Article 26**). In contrast, the existing treaty only permits taxpayer information exchange for a specified range of income, corporate and capital taxes.

22. The proposed treaty will also enable mutual assistance between the Contracting States in the collection of outstanding tax debts (**Article 27**) and includes strict rules governing the privacy of tax information exchanged between Australia and Germany in relation to individuals (**Article 30**).

23. The proposed treaty will also provide an agreed basis for determining the allocation of profits within multinational enterprises and whether the profits on related party dealings by members of a multinational group operating in both countries reflect the pricing that would be adopted by independent parties (**Articles 7** and **9**). This will assist the Australian Taxation Office ('ATO') in its ability to respond to international profit shifting through its administration of transfer pricing laws (that is, laws that seek to ensure that the prices charged for goods and services transferred between associated entities reflect market prices).

Obligations

24. **Articles 6** to **21** of the proposed treaty allocate taxing rights in respect of certain types of income, fringe benefits and capital between the two countries. The obligations contained in these Articles are broadly of a kind already present in the existing Agreement. These obligations, including the key differences from the existing Agreement, are discussed below.

25. **Article 2** (3) (Taxes Covered) clarifies that Australia's fringe benefits tax and resource rent taxes are included within the scope of the proposed treaty. These taxes are not explicitly covered by the existing Agreement.

26. **Article 4** (Resident) sets out how an individual's State of residence shall be determined. Article 4 (3) provides that a mutual agreement procedure will apply to determine the deemed residence of dual-resident entities for the purposes of the treaty if the "place of effective management" cannot be determined. In the absence of agreement between competent authorities regarding residence, the dual-resident will not be entitled to enjoy the benefits of the proposed treaty. **Article 4** (4) also provides that treaty benefits will be available for income received by Australian managed investment trusts (referred to in the proposed treaty as 'collective investment' vehicles) and certain German investment vehicles. This will ensure that such trusts and investment vehicles can appropriately access the treaty withholding tax rate limits for dividends and interest.

27. **Article 5** (Permanent Establishment) defines the term 'permanent establishment', which is relevant to determining when a business, which is a resident of one country, will have a taxable presence in the other country. This definition, compared to the corresponding definition in the existing Agreement, will broaden the range of circumstances in which Australia can tax business profits derived by German residents from mining and other natural resource activities, building, installation and construction activities, and the operation of substantial equipment, in Australia. A permanent establishment will also be deemed to exist where a person (agent) acts on behalf of an enterprise, unless that agent is acting in a truly independent capacity. In addition, integrity rules will help prevent related parties from circumventing the specified permanent establishment time thresholds by splitting contracts or from fragmenting their activities to avoid having a permanent establishment (recommended in the OECD/G20 BEPS reports).

28. **Article 6** (Income from Immovable Property) provides that income derived by a resident of a Contracting State from immovable property located in the other Contracting State may be taxed in the other Contracting State. Immovable property will include, for example, leases or other interests in land, property accessory to immovable property and rights to explore for and mine natural resources. Any interest or right in immovable property will be considered to be in the State in which the immovable property is situated or where the exploration may take place. This will enhance

Australia's ability to tax income derived by German residents from the use of immovable property, including mining rights, located in Australia.

29. **Article 7** (Business Profits) clarifies that an enterprise of a Contracting State (including beneficiaries of trusts) that derives business profits through a permanent establishment located in the source country will be deemed to be carrying on a business through that permanent establishment and taxable (in the source country) on their share of the profits attributable to it. This will clarify Australia's taxing rights over business profits derived by German residents through one or more interposed trusts with permanent establishments located in Australia. Business profits will continue to be attributed to permanent establishments on the basis of the 'relevant business activity' approach. A 10 year time limit will apply for the adjustment of profits, except where an audit has been initiated or in cases of fraud, wilful default or gross negligence. A different rule applies for profits from certain insurance businesses (Article 7(6)). Such profits are excluded from the operation of Article 7 and may be taxed in accordance with the respective taxation laws of Australia or Germany.

30. **Article 8** (Shipping and Air Transport) provides that profits from international shipping or air transport activities, including from leased containers used in such activities, will be taxable only in the country of residence of the operator but may also be taxed in the other country where the transport is between places in that other country. This will allow Australia to continue to tax profits derived by German residents from Australian coastal shipping trade and intra-Australian airline activities. In contrast to the existing Agreement, the proposed treaty does not impose a 5% limit on the amount of income from such activities that may be taxed.

31. **Article 9** (Associated enterprises) requires the revenue authorities to make appropriate adjustments to the amount of tax charged on income from transactions between related enterprises in certain circumstances to remove double taxation. This will ensure that transactions between associated entities are not double-taxed and reflect the pricing that would be adopted by independent parties. A 10 year time limit will apply for the adjustment of profits, except where an audit has been initiated or in cases of fraud, wilful default or gross negligence.

32. **Articles 10** (Dividends), **11** (Interest) and **12** (Royalties) provide that dividends, interest and royalties that arise in a Contracting State and are paid to a resident of the other Contracting State may be taxed in the other State. They may also be taxed in the originating Contracting State, although limits are placed on this depending on certain circumstances. As noted in paragraphs 7 to 9 above, Australia and Germany have agreed to reduce the source country tax rate limits that apply to such income from the corresponding rates contained in the existing treaty. The reduced rates will help facilitate bilateral investment and the free movement of capital and technology between the two countries, achieved by lowering costs for Australian firms that lease certain equipment or access technology from German residents, lowering borrowing costs for Australian firms where interest is paid to German financial institutions, and encouraging more direct equity investment into Australia by lowering Australian dividend withholding tax.

33. **Article 13** (Alienation of Property) provides for source country taxation of income, profits or gains derived by a resident of a Contracting State from the alienation of immovable property located within its jurisdiction, including from the disposal of interests in land-rich entities. An integrity rule will ensure that the rule for land-rich entities will apply if the relevant conditions are met at any time during the 365 days preceding the disposal (recommended in the OECD/G20 BEPS reports). Income, profits or gains derived from the disposal of moveable property forming part of permanent

establishment may be taxed in the country where the permanent establishment is located (Article 13(2)). Income, profits or gains derived from the disposal of ships or aircraft operated in international traffic, as well as from the disposal of other assets pertaining to those operations, are taxable only in the country of residence of the operator (Article 13(3)). Residual capital gains will be taxable only in the country of residence of the alienator (Article 13(5)).

34. **Article 13** helps prevent double non-taxation (that is, where neither country taxes the gain) by allowing Australia to tax its former resident individuals on capital gains if they alienate movable property within five years of leaving Australia (Article 13(7)). The amount of the gain that Australia may tax will be limited to the gain that would have been derived at the time the individual ceased to be an Australian resident. In addition, Germany may tax its former resident individuals on capital gains on the deemed alienation of shares at the time the individual ceased to be a German resident (Article 13(6)). Australia will generally calculate the capital gain on any subsequent alienation using the value Germany applied at the time of the change of residence.

35. **Article 14** (Income from Employment) prevents the double taxation of salaries, wages and similar remuneration. It also prevents the double taxation of fringe benefits by allocating relevant taxing rights to the country that has the primary taxing right over the underlying employment income to which the benefits relate. Article 14 contains certain conditions and exceptions and expressly defers to the more specific rules in **Articles 15**, **17** and **18** in relation to salaries, wages and other similar remuneration.

36. **Article 15** (Directors' Fees) provides that directors' fees and other similar payments derived by a resident of a Contracting State as a member of the board of directors of a company of the other Contracting State may be taxed by the other Contracting State.

37. **Article 16** (Entertainers and Sportspersons) provides for the income of visiting entertainers and sportspersons to be exempt from tax in the country visited if the visit is funded by public funds of the individual's country of residence (Article 16(3)). This will foster publicly-funded visits between the two countries.

38. **Article 17** (Pensions, Annuities and Similar payments) provides for pensions, annuities and similar payments to be taxed only in the recipient's country of residence. The source (paying) country may, however, also tax the payments if they are first paid after 31 December 2016 and the payment is attributable to contributions which received certain tax concessions for at least fifteen years in the source country, or the payment is made under the social security legislation of the source country (Article 17(2)). After 1 January 2017, where payments are made under social security legislation, the source country taxation cannot exceed 15 per cent of the gross amount of the payment (Article 17(3)). Payments made as compensation for political persecution, war crimes or for similar reasons will be exempt in the country of residence of the recipient (Article 17(4)). Residents of a Contracting State who receive alimony or other maintenance payments arising in the other Contracting State shall only be taxable in the other Contracting State.

39. **Article 18** (Government Service) provides that government service income and pensions will be taxable only in the source country unless the person is both a resident and a national of the other country, in which case the pension will be taxable only in the residence country (Article 18(1) and (2)). Article 18 also provides for the existing treatment of government service salaries to apply to salaries and pensions paid to individuals in respect of services rendered to the German Federal

Central Bank and the Association of Chambers of Industry and Commerce for the promotion of Foreign Economic Relations through the Network of Foreign Chambers of Commerce or other mutually agreed comparable institutions (Article 18(3)).

40. **Article 19** (Professors, Teachers and Students) provides for the exemption from taxation in the State visited for remuneration derived by visiting teachers and professors for up to two years under the existing Agreement to become conditional on the remuneration being supported by public funds of the individual's usual country of residence or by a tax exempt charity or benevolent organisation and the remuneration is exempt in that country where the individual is usually resident (Article 19(1)). Payments to a student or business apprentice who is or was immediately before visiting a Contracting State a resident of the other Contracting State and who is present only for education or training purposes shall not be taxed in the Contracting State provided that payments arises from sources outside the Contracting State (Article 19(2)).

41. **Article 20** (Other Income) provides that income of a resident of a Contracting State not expressly dealt with elsewhere in the proposed treaty (such as lump sum retirement payments) may be taxed only in that State (Article 20(1)). Income not otherwise dealt with in the proposed treaty of a resident of a Contracting State arising from sources in the other Contracting State may also be taxed in the other Contracting State (Article 20(3)).

42. **Article 21** (Capital) contains rules governing the circumstances when Germany may apply Germany's capital tax to capital owned by Australian residents. Recognising that Australia does not impose capital taxes, Article 21 will apply unilaterally in respect of German capital taxes only.

43. **Article 22** (Methods of elimination of double taxation) includes rules on how double taxation will be relieved for different categories of income, profits or gains, including new integrity rules to guard against unintended double non-taxation of income, profits or gains. This expands on and modernises the double taxation relief rules in the existing treaty.

44. **Article 23** (Limitation of benefits) prevents double non-taxation by not obliging the source country to provide treaty benefits for income derived by a temporary resident of the other country if that other country exempts that income because of the individual's status as a temporary resident (Article 23(1)). Article 23 also includes a rule denying treaty benefits if a principal purpose of a person is to take advantage of the treaty, unless it is established that granting the benefit is in accordance with the object and purpose of the treaty (Article 23(2)). Article 23 also clarifies that nothing in the proposed treaty will prevent either country from applying their domestic laws which are designed to prevent the evasion or avoidance of taxes. This latter rule will ensure that both countries can continue to apply their domestic general anti-avoidance rules, as well as transfer pricing, dividend stripping, thin capitalisation, controlled foreign company and similar rules.

45. **Article 24** (Non-discrimination) contains non-discrimination rules requiring each country to treat nationals and businesses of the other country no less favourably for tax purposes than it treats its own nationals and businesses in the same circumstances.

46. **Article 25** (Mutual Agreement Procedure) provides for a mutual agreement procedure, including a mechanism for taxpayers to present complaints within three years from the first notification of the action, where they consider that they have not been taxed in accordance with the proposed treaty irrespective of the remedies provided by the domestic laws of either country.

Taxpayers may present their case to the competent authority of either country (Article 25(1)). The competent authority receiving a complaint that appears to be justified must endeavour to resolve it, either unilaterally or by mutual agreement with the competent authority of the other country (Article 25(2)). Article 25 also permits taxpayers to pursue independent arbitration where a dispute remains unresolved after two years, with the exception of disputes about the application of the treaty principal purpose test or either country's domestic rules designed to prevent evasion or avoidance of tax or where the issue has already been resolved by a court or administrative tribunal (Article 25(5)). More generally, the competent authorities of the two countries are required to endeavour to resolve, by mutual agreement, any difficulties or doubts regarding interpretation or application of the proposed treaty (Article 25(3)).

47. **Article 26** (Exchange of Information) obliges the exchange of foreseeably relevant tax information between Australia and Germany for carrying out the provisions of the treaty or for the administration or enforcement of domestic laws concerning taxes. Article 26(2) imposes an obligation on the country receiving any such information to treat it as secret in the same manner as information obtained under its domestic laws. Article 26(3) allows either country to decline to supply such information in certain circumstances, for example where:
(i) it would require administrative measures at variance with either country's domestic law or administrative practice;
(ii) the information requested is not obtainable under the laws or in the normal course of administration of either country; or
(iii) it would involve disclosure of a trade or business secret or would be contrary to public policy (for example, if it would breach human rights obligations). The safeguards in Article 26(3) will protect taxpayers' rights and proper use of the exchange of information provisions. Article 26 specifically applies to information held by banks and other financial institutions, thereby preventing bank secrecy laws from impeding access to relevant information.

48. **Article 27** (Assistance in the Collection of Taxes) requires and authorises Australia and Germany to provide assistance to each other in the collection of each other's tax debts, consistent with Australian and international tax treaty policy.

49. **Article 28** (Procedural Rules for Taxation at Source) contains rules for seeking a refund of overpaid withholding tax where a refund is requested within four years from the end of the calendar year in which the income was received.

50. **Article 29** (Members of Diplomatic Missions and Consular Posts) provides that nothing in the Agreement should change the fiscal privileges under general rules of international law or special international agreements of members of diplomatic missions and consular posts.

51. **Article 30** (Protection of Personal Information) sets out specific privacy rules for personal information exchanged under the proposed treaty in relation to individuals. This Article is consistent with Germany's tax treaty practice and strict domestic laws relating to the protection of personal information. The Article details the rules for the handling, use and protection of such information, including in cases where inaccurate information is supplied, and subsequent deletion of information. There is also an obligation to keep official records of the supply and receipt of personal information. The rules also set out the circumstances in which the individual should be informed about the information exchanged and how it will be used. Article 30 (e) further provides that the revenue

agency that receives the exchanged information will bear the cost of any claim for damages for a breach of privacy.

52. The Protocol to the proposed treaty, which under **Article 31** (Protocol) is an integral part of the treaty, sets out certain explanations and elaborations of particular provisions of the proposed treaty. These explanations and elaborations have been incorporated, where relevant, into the preceding discussion of obligations.

Implementation

53. Amendments to the *International Tax Agreements Act 1953* (Cth) will be made prior to the proposed treaty entering into force, in order to implement the obligations elaborated above contained in the proposed treaty into Australian law. These amendments will be effected prior to the proposed treaty entering into force in Australia. No action is required by the States or Territories. The implementation of the proposed treaty will not affect the existing roles of the Commonwealth, or the States and Territories, in tax matters.

Costs

54. The reciprocal nature of tax treaties means that both countries can expect direct costs and benefits to their revenue bases as a result of changes to their taxing rights and increased taxpayer compliance.

First round impact of the proposed treaty

55. The Treasury has estimated the impact of the first round effects of the proposed treaty on forward estimates as a revenue cost of **$85 million**, mainly attributable to reduced dividend, interest and royalty withholding tax collections.

56. There would be a small, unquantifiable cost in administering the changes brought about by the entry into force of the proposed treaty, including minor implementation costs to the Australian Taxation Office ('ATO') in educating the taxpaying public and ATO staff concerning the new arrangements to replace the existing Agreement. There are also 'maintenance' costs to the ATO, and The Treasury, in terms of dealing with inquiries, rulings and other interpretative decisions and mutual agreement procedures (including advance pricing arrangements). These costs will, however, continue to be managed within existing agency resources.

57. No other material costs have been identified as likely to arise from the implementation of the proposed treaty.

58. As the proposed treaty is broadly consistent with international norms, it is expected to reduce compliance costs for those taxpayers with cross-border dealings between the two countries.

Second round impact of the proposed treaty

59. The estimated revenue costs and benefits do not take account of any additional revenues that may flow from the second round impacts generated by the treaty. Second round impacts include revenue gains from changes in cross-border investment levels, improved access to technology,

reduced capital costs, economic growth and job creation. The revenue cost does not therefore take into account anticipated revenue benefits from expected increases in cross-border trade and investment.

Regulation Impact Statement

60. The Office of Best Practice Regulation has advised The Treasury that a Regulation Impact Statement is not required.

Future treaty action

61. The proposed treaty does not provide for the negotiation of future legally binding instruments, nor does it contain specific amendment procedures. Under Article 39 of the *Vienna Convention on the Law of Treaties*, the proposed treaty may be amended from time to time by mutual consent of both Parties. Any such amendments would be subject to Australia's domestic treaty-making requirements, including tabling in Parliament and consideration by the Joint Standing Committee on Treaties.

Withdrawal or denunciation

62. **Article 33** provides that, following its entry into force, either country may terminate the proposed treaty by giving notice of termination, through diplomatic channels, at least six months prior to the end of any calendar year beginning after the expiration of five years from the date of entry into force of the proposed treaty. The proposed treaty would then cease to have effect in Australia:

(a) in respect of withholding tax on income that is derived by a non-resident, in relation to income derived on or after 1 January in the calendar year next following that in which the notice of termination is given;
(b) in respect of fringe benefits tax, in relation to fringe benefits provided on or after 1 April next following the date on which the notice of termination is given; and
(c) in respect of other Australian tax, in relation to income, profits or gains of any year of income beginning on or after 1 July in the calendar year next following that in which the notice of termination is given.

63. Any future termination of the proposed treaty by Australia will be subject to Australia's domestic treaty-making requirements.

Contact details

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ATTACHMENT ON CONSULTATION

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(Berlin, 12 November 2015)

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CONSULTATION

64. The then Treasurer and Minister for Finance announced the opening of negotiations with Germany for the proposed treaty and invited public submissions on 16 June 2015. Twelve submissions were received from companies and professional bodies. Treasury also sought comments from the business community through the Tax Treaties Advisory Panel, members of which include:

(a) Australian airline industry representatives;
(b) Australian Bankers' Association;
(c) Australian Financial Markets Association;
(d) CPA Australia;
(e) Corporate Tax Association;
(f) Financial Services Council;
(g) Institute of Chartered Accountants in Australia;
(h) Law Council of Australia;
(i) Minerals Council of Australia;
(j) Property Council of Australia; and
(k) The Tax Institute.

65. In general, business and industry groups recognised that Australia has strong and growing business interests in Germany and endorsed the conclusion of a new double tax treaty. In particular, business and industry groups strongly supported reductions in withholding taxes on dividends, interest and royalties.

66. The State and Territory Governments have been consulted through the mechanism of the biannual meetings of the Commonwealth-State Standing Committee on Treaties.