

Documents tabled on 11 March 2009:

National Interest Analysis [2009] ATNIA 8

with attachment on consultation

**Agreement between the Government of Australia and the Government of
the Isle of Man 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, done at London on 29 January 2009
[2009] ATNIF 4**

NATIONAL INTEREST ANALYSIS: CATEGORY 2 TREATY

SUMMARY PAGE

Agreement between the Government of Australia and the Government of the Isle of Man 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, done at London on 29 January 2009 ([2009] ATNIF 4)

Nature and timing of proposed treaty action

1. The proposed treaty action is to bring the Agreement between the Government of Australia and the Government of the Isle of Man 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 (the Agreement) into force. Pursuant to Article 10, the Agreement will enter into force on the date of the latter written notification through the appropriate channel between Australia and the Isle of Man (IoM) giving notice that constitutional and legal procedures for entry into force have been completed.
2. The Agreement will then have effect:
 - in respect of Australian tax, for any year of income beginning on or after 1 July in the calendar year next following the date of entry into force; and
 - in respect of the IoM, for any year of income beginning on or after 5 April in the calendar year next following the date of entry into force.
3. In relation to Australian external territories, the Agreement only applies to the external territories specifically listed in Article 3(1).

Overview and national interest summary

4. The Agreement provides for the allocation of taxing rights between Australia and the IoM with respect to certain income of individuals who are residents of Australia or the IoM, helping to prevent double taxation. It also establishes 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 IoM. The Agreement is consistent with provisions contained in Australia's comprehensive bilateral tax treaties.
5. The IoM is a self-governing dependent territory of the British Crown, located in the Irish Sea. It is not part of the United Kingdom. It has a low-tax structure and is an internationally recognised offshore financial centre.
6. Detailed information on the level and type of economic activity between Australia and the IoM is not available. However, data held by the Australian Transaction Reports and Analysis Centre indicates that a significant amount of funds flow between Australia and the IoM.
7. The Agreement is part of a package of benefits offered to the IoM to encourage it to conclude a tax information exchange agreement (TIEA) with Australia. That agreement – the *Agreement between the Government of Australia and the Government of the Isle of Man on the Exchange of Information with Respect to Taxes* - was signed simultaneously with this Agreement on 29 January 2009.

Reasons for Australia to take the proposed treaty action

8. The Agreement supports Australia's efforts to combat offshore tax evasion through the establishment of transparency measures and effective exchange of information arrangements with low-tax jurisdictions. The Agreement was signed in conjunction with a TIEA between Australia and the IoM on 29 January 2009. Australia has a significant interest in concluding TIEAs with certain low-tax jurisdictions. TIEAs are the bilateral means that facilitate the provision of information by low-tax jurisdictions, and enhance Australia's ability to protect its revenue base and improve the integrity of the tax system. The IoM would not have signed the TIEA without this Agreement (among other benefits) being offered by Australia.

9. The IoM's commitment to implement this Agreement and the TIEA is a positive step in its relationship with Australia. It will also be seen by the international community as a step towards good governance. A media release issued by the OECD on 29 September 2008 noted that the IoM 'is a significant financial centre and was one of the first jurisdictions to engage constructively with OECD countries in efforts to address the abuse by companies and individuals of offshore centres to evade their tax obligations.'

Obligations

10. The Agreement provides for the allocation of taxing rights, between Australia and the IoM over certain income of individuals, specifically retirees, government employees and students. Under the Agreement, Australia and IoM are obliged to forgo their taxing rights over such income derived by individuals who are residents of the other Party. The Agreement also establishes 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 IoM. The Agreement will remain in force for as long as the TIEA between Australia and the IoM remains in force, unless either Party terminates the Agreement as provided for in Article 11.

11. Article 1 provides that the Agreement applies only to persons who are residents, for taxation purposes, of Australia or the IoM. This precludes non-residents from obtaining the benefits of the Agreement. For Australia, the Agreement only applies to the federal income tax, and does not apply to sub-federal taxes (Article 2).

12. Article 5 obliges Australia to not tax Australian source pensions and retirement annuities paid to residents of the IoM, provided such income is subject to tax in the IoM. Article 5 permits Australia to tax IoM source pensions and retirement annuities paid to Australian residents.

13. Article 6 obliges Australia not to tax the salaries of government employees of the IoM working in government service, for non-commercial purposes, in Australia. This would apply, for example, to IoM residents who staff representative offices established in Australia to provide information on investment opportunities in the IoM. This approach provides Australia and the IoM with sole taxing rights over the salaries they pay to individuals undertaking governmental functions.

14. Article 7 obliges Australia not to tax maintenance, education or training payments received by students or business apprentices from the IoM who are temporarily studying in

Australia, where those payments are made from outside Australia. Other income will remain liable to Australian tax as provided for under Australian law.

15. Article 8 obliges the competent authorities of Australia and the IoM to endeavour to resolve disputes arising from transfer pricing adjustments made to taxpayers' income by the revenue authorities of Australia or the IoM. Affected taxpayers must invoke this process within three years of the first notification of the relevant adjustment.

Implementation

16. To give effect to the Agreement, minor amendments to the *International Tax Agreements Act 1953* will be necessary, including the insertion of the Agreement as a schedule to that Act. Legislation for this purpose is expected to be introduced into Parliament in March 2009.

Costs

17. The Agreement will have a financial impact on the Australian Taxation Office (ATO), which will administer it. However, the small number of taxpayers likely to be affected by the Agreement ensures that the financial impact will be minimal. Actual impacts are difficult to estimate but will be absorbed into existing arrangements relating to the administration of Australia's bilateral comprehensive tax treaties.

18. Affected Australian residents are unlikely to incur any significant compliance costs in relation to the Agreement, which may provide them with benefits.

19. Overall, it is estimated that the administrative and financial impact of concluding this Agreement will be minimal and can be absorbed into existing administrative arrangements.

Regulation Impact Statement

20. The Treasury has assessed the implementation of the Agreement against criteria in *The Best Practice Regulation Handbook*. This regulatory option has no/low impact on businesses and individuals or on the economy and a Regulation Impact Statement is not required.

Future treaty action

21. The Agreement does not provide for the negotiation of future legally binding instruments, amendments or appendices to the existing Agreement. However, this does not preclude the two Parties from agreeing in the future to amend the existing Agreement. The Agreement does not have an amendment clause, but Article 39 of the *Vienna Convention on the Law of Treaties 1969* provides that a treaty may be amended by agreement between the Parties. Any such agreement would be subject to the normal treaty process, including tabling and consideration by the Joint Standing Committee on Treaties (JSCOT). Any amendments to the Agreement may be considered in the future in line with Australian policy for TIEA negotiations current at that time.

Withdrawal or denunciation

22. Article 11(1) provides that the Agreement shall remain in force until terminated by either Party. Termination would be initiated by written notice of termination through the appropriate channel.

23. Article 11(2) provides that such termination would take effect, for Australia, from 1 July in the calendar year following that in which the notice of termination is given. The Agreement would also terminate upon termination of the related *Agreement between the Government of Australia and the Government of the Isle of Man on the Exchange of Information with Respect to Taxes* (the TIEA). In that event, Article 11(3) provides that the Agreement would terminate six months after receipt of notification of the termination of the TIEA.

24. Termination by Australia would be subject to the normal treaty process, including tabling and consideration by JSCOT.

Contact details

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Attachment on Consultation

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CONSULTATION

25. The tax information exchange agreement negotiations with the IoM were not in the public domain and, consequently, the public was not consulted.
26. The ATO was consulted in the development of the Australian model 'additional benefits' agreement, which was used as a basis for this Agreement, and ATO officials negotiated the text of this Agreement with the IoM. The ATO will administer the Agreement.
27. The State and Territory Governments have been consulted through the Commonwealth-State/Territory Standing Committee on Treaties. Information on the negotiation of this treaty has been included in the six-monthly schedules of treaties to State and Territory representatives.
28. In addition to the Assistant Treasurer and Minister for Competition Policy and Consumer Affairs, the Minister for Foreign Affairs, the Minister for Trade and the Prime Minister agreed to this treaty.

