

## Double Taxation Agreement with Chile

### Introduction

- 5.1 The key objectives of the *Convention between Australia and the Republic of Chile for the Avoidance of Double Taxation with Respect to Taxes on Income and Fringe Benefits and the Prevention of Fiscal Evasion, and Protocol* are to:
- promote closer economic cooperation between Australia and Chile by reducing barriers caused by double taxation of income; and
  - improve the integrity of the tax system through a framework to prevent international fiscal evasion.<sup>1</sup>
- 5.2 Chile is Australia's third largest trading partner in Latin America, with two way trade totalling \$1.275 billion in 2008-09. Australia's major exports to Chile are coal, beef, civil engineering equipment, and specialised machinery and parts. Australia's imports from Chile include copper, lead ores and concentrates, pulp and waster paper and wood. Approximately 120 Australian companies are actively trading with Chile, with investments in 2008 of \$2 billion.<sup>2</sup>

### Reasons to take treaty action

- 5.3 The Convention is intended to promote trade and investment between the two countries and provide greater certainty for Australian businesses and

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1 National Interest Analysis (NIA), para. 4.

2 Regulation Impact Statement (RIS), paras 1.8 and 1.9.

other Australian taxpayers by establishing an internationally accepted framework for the taxation of cross-border transactions.<sup>3</sup> It will also reduce taxation barriers to the cross-border movement of people, capital and technology.<sup>4</sup> It will primarily achieve this through reducing withholding taxes on dividend, interest and royalty payments.<sup>5</sup>

- 5.4 The Convention addresses business concerns about the lack of competitiveness for Australian investments, compared with competitors, in Chile.<sup>6</sup>
- 5.5 The Committee was informed that although Chile did not agree to all of Australia's preferred tax treaty rate limits for withholding taxes, the treaty includes most favoured nation clauses 'that will assist in maintaining the competitiveness of Australian business and the dealings in Chile into the future'.<sup>7</sup> The most favoured nation clauses will require Chile, if it limits its taxation more favourably in another treaty, to notify Australia and allow it to enter into negotiations to seek a similar outcome.<sup>8</sup>
- 5.6 There are several provisions in the treaty that are intended to reduce compliance costs and improve certainty for taxpayers, including:
- cross-border business profits of Australian and Chilean enterprises will be taxed in a manner consistent with international tax norms;
  - only the country of residence may tax profits from international transport activities;
  - a seven-year time limit will apply for the adjustment of profits of an enterprise in transfer pricing cases; and
  - pensioners will only be taxable in their country of residence in respect of all pension income.<sup>9</sup>
- 5.7 The Convention does not impose any greater obligations on residents of Australia than Australia's domestic tax laws and in some cases will reduce the obligations of Australians operating or investing in Chile.<sup>10</sup> The

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3 NIA, paras 5 and 6.

4 Mr Michael Atfield, *Transcript of Evidence*, 21 June 2010, pp. 25-26.

5 NIA, para. 7.

6 NIA, para. 9.

7 Mr Michael Atfield, *Transcript of Evidence*, 21 June 2010, p. 26.

8 Mr Michael Atfield, *Transcript of Evidence*, 21 June 2010, p. 28.

9 Mr Michael Atfield, *Transcript of Evidence*, 21 June 2010, p. 26.

10 NIA, para. 15.

Convention is expected to reduce compliance costs for taxpayers with cross-border dealings.<sup>11</sup>

- 5.8 The Convention also establishes a framework for tax information exchange to prevent international tax evasion, through provisions that are similar to those in Australia's bilateral tax information exchange agreements.<sup>12</sup>

## Obligations

- 5.9 The Convention will reduce withholding taxes on dividend, interest and royalty payments between the two countries. Under the Convention:
- the Australian dividend withholding tax rate limit will be reduced from 30 per cent to 5 per cent on intercorporate dividends on holdings of at least 10 per cent (Article 10) to promote direct investment into Australia by Chilean multinationals;<sup>13</sup>
  - reduced rates of interest withholding tax on Chilean sourced interest paid to Australian lenders will be locked in (Article 11);<sup>14</sup>
  - most favoured nation clauses will require Chile to reduce its rates of interest withholding tax to between 15 and 10 per cent or inform Australia if it provides more favourable treatment of interest in a subsequent treaty and enter into negotiations with Australia about providing the same treatment (Article 11(4) and Item 6 of the Protocol);<sup>15</sup>
  - royalty withholding tax will be reduced in both countries from 30 per cent to 5 per cent for equipment royalties and 10 per cent for other royalties (Article 12) and a most favoured nation obligation imposed;<sup>16</sup> and
  - profits from within a multinational company will be allocated on an agreed basis (Articles 7 and 9).

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11 NIA, para. 15.

12 NIA, para. 14. See also, for example, the treaties discussed in chapters 8 and 10.

13 NIA, para. 8.

14 NIA, para. 10.

15 NIA, para. 10.

16 NIA, para. 11.

5.10 The limits outlined in Articles 10 and 11 concerning dividends and interest will not apply in a reciprocal manner as Chile has a unique two tiered system of taxing profits, which is preserved by the agreement.<sup>17</sup>

5.11 Other obligations under the Convention include:

- a general obligation on both countries to allow tax paid under the other country's laws and in accordance with the proposed Convention to be allowed as a credit against tax payable under their own laws (Article 23);<sup>18</sup>
- a general non-discrimination principle, which requires each state to treat nationals of the other no less favourably than it treats its own nationals (Article 24);<sup>19</sup>
- dispute resolution procedures, including a mechanism for taxpayers to complain about operations of the Convention (Article 25);<sup>20</sup>
- provisions for the exchange of tax information (Article 26);<sup>21</sup>
- rules to ensure benefits conferred by the Convention will only apply in certain circumstances and to allow for consultation between Australia and Chile where benefits may not be as contemplated or intended by the Convention (Article 27);<sup>22</sup>
- obligations on both countries to consult in relation to any significant changes to laws relating to the taxes to which the Convention applies (Article 2 and Item 5 of the Protocol);<sup>23</sup> and
- a most favoured nation obligation is imposed on Chile by Item 6 and 7 of the Protocol requiring it to inform Australia if it provides more favourable treatment in a subsequent treaty with another country to interest derived by a financial institution or government, royalties, or if it excludes payment for industrial, commercial or scientific equipment from the meaning of royalties.<sup>24</sup>

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17 NIA, para. 16.

18 NIA, para. 17.

19 NIA, para. 18.

20 NIA, para. 19.

21 NIA, para. 20.

22 NIA, para. 21.

23 NIA, para. 22.

24 NIA, para. 23.

## Implementation and costs

- 5.12 The *International Tax Agreements Act 1953* will be amended to give effect to the Convention. The existing taxation roles of the Commonwealth and States and Territories will not be affected by the agreement.<sup>25</sup>
- 5.13 It is estimated that implementation of the treaty will result in minimal costs that will be managed within agency resources. The treaty is expected to reduce compliance costs for taxpayers.<sup>26</sup>

## Consultation

- 5.14 Negotiations for this treaty were publicly announced on 14 July 2005 and public submissions sought. Treasury also sought comment from the business community through the Tax Treaties Advisory Panel.<sup>27</sup> Business and industry groups supported the treaty.

## Conclusion and recommendation

- 5.15 The Committee acknowledges the intent of this agreement is to provide greater certainty for Australian businesses and other Australian taxpayers in their dealings in Chile and promote trade and investment between the two countries. It therefore supports binding treaty action being taken.

### Recommendation 4

**The Committee supports the *Double Taxation Agreement with Chile* and recommends that binding treaty action be taken.**

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25 NIA, para. 24.

26 NIA, paras 25-27.

27 This panel comprises the Australian Bankers' Association, Australian Chamber of Commerce and Industry, Australian Financial Markets Association, Business Council of Australia, CPA Australia, Corporate Tax Association, Institute of Chartered Accountants in Australia, International Fiscal Association, Investment and Financial Services Association, Law Council of Australia, Minerals Council of Australia, Taxation Institute of Australia, and the Property Council of Australia. NIA, Consultation Attachment.

