

Taxation Agreements

Introduction

7.1 This chapter addresses tax information exchange agreements with the following countries:

- Anguilla;
- Bahamas;
- Belize;
- Cayman Islands;
- Dominica;
- Grenada;
- Principality of Monaco;
- Saint Christopher (Saint Kitts) and Nevis;
- Saint Lucia;
- Saint Vincent and the Grenadines;
- Samoa;
- San Marino;
- Turks and Caicos Islands;
- Vanuatu; and
- the Kingdom of the Netherlands, in respect of Aruba.

- 7.2 The chapter also addresses agreements with Samoa and Aruba relating to the allocation of taxing rights and transfer pricing adjustments.
- 7.3 Since 2002, more than 40 countries have committed to the implementation of OECD standards on the elimination of harmful tax practices. Australia is currently Chair of the Global Forum on Transparency and Exchange of Information for Tax Purposes (the Global Forum), which has a membership of more than 90 countries.¹
- 7.4 The Committee has previously reviewed a number of similar agreements in Reports 73, 87, 99, 102, 107 and 112.

Tax information exchange agreements

- 7.5 The key objective of each tax information exchange agreement (TIEA) is to establish a legal basis for the exchange of tax information with low tax jurisdictions that have committed to the OECD's standards.²
- 7.6 Treasury told the Committee that the OECD's work to eliminate harmful tax practices has been:
- ... very successful, especially over the last year and a half. Over the past year, especially since the G20 has become quite focused on transparency and tax information exchange, more than 400 of these tax information exchange agreements have been signed throughout the world. I believe we have signed 25. In the first five years of our efforts to sign these agreements, we probably signed four or five. In the last 18 months or so we have signed perhaps 19.³
- 7.7 The TIEAs are intended to discourage tax evasion and make it harder for taxpayers to avoid or evade Australian tax. 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.⁴
- 7.8 At the present time, countries that have concluded 12 effective agreements are considered to have 'substantially implemented' the internationally

1 Vanuatu Tax Information Exchange Agreement (TIEA) National Interest Analysis (NIA), para. 8.

2 Vanuatu TIEA (NIA), para. 3.

3 Mr Gregory Wood, *Transcript of Evidence*, 29 June 2010, pp. 3-4.

4 Vanuatu TIEA NIA, paras 11 & 12.

agreed tax standards on information exchange. Treasury indicated to the Committee that this threshold is likely to increase over time.⁵ All 90 countries that are members of the Global Forum will also be subject to peer review to examine whether they have the right agreements in place and the domestic powers to ensure the information is available and accessible.⁶

- 7.9 The TIEAs will improve Australia's ability to administer and enforce its tax laws as they will allow the Commissioner for Taxation to request information from each country that is relevant to determining Australian tax liabilities. In particular, as the agreements are consistent with the OECDs standard, jurisdictions will be unable to refuse to provide information solely because they do not have a domestic tax interest in such information or because a bank or similar financial institution holds that information.⁷
- 7.10 Australian Transaction Reports and Analysis Centre (AUSTRAC) data indicates that the flow of funds between Australia and each of these countries is either significant (Vanuatu, Cayman Islands, Bahamas, Monaco, Saint Lucia and Samoa), minor (Dominica, San Marino, Grenada, Aruba, Belize and Anguilla) or relatively small (Turks and Caicos Islands, Saint Vincent and the Grenadines, and Saint Kitts and Nevis). This classification is based upon a combination of both the number of transactions and amount of money being transferred.⁸ The Committee notes that, of the countries being considered in this chapter, the Cayman Islands has a higher flow of funds than all of the other countries combined, much of it related to legitimate business.⁹
- 7.11 Australia has placed a high priority upon concluding agreements with countries in the Pacific as there is evidence that people generally utilise havens that are geographically close.¹⁰ Some of the other agreements have arisen as a result of the international emphasis upon establishing a minimum number of 12 agreements in order to satisfy the OECD commitment to global transparency.¹¹ The Australian Taxation Office (ATO) informed the Committee that:

5 Mr Gregory Wood, *Transcript of Evidence*, 29 June 2010, p. 11.

6 Mr Malcolm Allen, *Transcript of Evidence*, 29 June 2010, p. 11.

7 Mr Gregory Wood, *Transcript of Evidence*, 29 June 2010, p. 2.

8 Mr Malcolm Allen, *Transcript of Evidence*, 29 June 2010, p. 10.

9 Mr Malcolm Allen, *Transcript of Evidence*, 29 June 2010, p. 4.

10 Mr Malcolm Allen, *Transcript of Evidence*, 29 June 2010, p. 4.

11 Mr Malcolm Allen, *Transcript of Evidence*, 29 June 2010, p. 4.

The standard from the Global Forum is that if a country asks for an exchange agreement you would generally grant that.¹²

- 7.12 The Committee notes that Australia is seeking a tax information exchange arrangement with 26 other countries, and specifically a TIEA with Andorra, Bahrain, Brunei, Costa Rica, Cyprus, Guatemala, Liberia, Lichtenstein, Macao, Mauritius, Montserrat, Nauru, Panama and the Seychelles.¹³ It has also concluded an agreement with the Marshall Islands that is yet to be tabled.¹⁴

Obligations

- 7.13 Each of the agreements follows the format of the Australian model TIEA, which is based on the OECD model tax information exchange agreement.
- 7.14 The key obligations in each agreement are:
- 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;
 - each Party must ensure its competent authority has the authority to obtain and provide information held by banks, financial institutions, and any person acting in an agency or fiduciary capacity, as well as information regarding ownership of companies and partnerships and persons involved with trusts and foundations;
 - information must be provided as promptly as possible and must be kept confidential;
 - with consent, officials of one jurisdiction can interview individuals and examine records within the other jurisdiction;
 - 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;

12 Mr Malcolm Allen, *Transcript of Evidence*, 29 June 2010, p. 4.

13 Mr Gregory Wood, *Transcript of Evidence*, 29 June 2010, p. 7.

14 Mr Malcolm Allen, *Transcript of Evidence*, 29 June 2010, p. 7.

- 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; and
- Parties are required to jointly endeavour to resolve any issues concerning interpretation or application of the agreement.¹⁵

7.15 The following agreements include additional provisions to those outlined above:

Aruba

Article 6 of the agreement provides that the Parties may forward to each other, without prior request, information of which they have knowledge.¹⁶

Turks and Caicos Islands

Article 5(5) provides that there is no obligation on the Contracting Parties to obtain or provide information relating to a period more than six years prior to the tax period under consultation.¹⁷

Article 9 provides that the agreement will not impinge upon the rights and safeguards secured to persons by the laws or administrative practices of the Requested Party.¹⁸

Dominica

Article 5(5) provides that the agreement does not create an obligation to obtain or provide information on ownership of public traded companies or public collective investment funds or schemes where such information would give rise to disproportionate difficulties.¹⁹

Article 9 provides that the agreement will not affect the rights and safeguards secured to persons by the laws or administrative practice of the Requested Party.²⁰

Anguilla

Article 5(5) provides that the agreement does not create an obligation on the Contracting Parties to obtain or provide information relating to a period more than six years prior to the tax period under consideration.²¹

15 See, for example, Vanuatu TIEA NIA, paras 14 to 24.

16 Aruba TIEA NIA, para. 19.

17 Turks and Caicos Islands NIA, para. 17.

18 Turks and Caicos Islands NIA, para. 22.

19 Dominica NIA, para. 17.

20 Dominica NIA, para. 22.

- 7.16 The ATO indicated that the three main types of information that would be sought using these agreements are banking, corporate ownership and accounting information.²²

Implementation and costs

- 7.17 No further legislation is required to implement the agreements.
- 7.18 The TIEAs 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 has been signed²³ or is currently under negotiation with each country to clarify costs that will be borne by the ATO.
- 7.19 The Memoranda of Understanding provide that each country will cover its own administrative costs, such as salary costs, in actioning a request for information. However, should information be required from a third party, which charges a fee or needs to obtain legal advice, those costs would be met by Australia up to a specified amount, usually somewhere between US\$500 and \$1000. Should costs be likely to exceed this, Australia would need to agree to proceed with the exchange request.²⁴
- 7.20 The Committee asked the ATO about the cost and resource implications arising from the conclusion of a large number of TIEAs at one time. The ATO indicated that it did not expect the agreements to result in significant additional work for the ATO, particularly as it is expected most requests will originate from Australia.²⁵
- 7.21 However, the capacity of low-tax countries to deal with requests from a range of countries may be an issue. The ATO indicated that it is addressing this issue in two ways. First, it is providing technical assistance, particularly to Pacific countries, and it is expected that Vanuatu and Samoa may require further one-on-one assistance. This could include assistance with training staff and making sure systems, such as computer and filing systems, are established. Secondly, Australia is participating in reviews being undertaken by the Global Forum to measure resources that are in place.²⁶

21 Anguilla NIA, para. 18.

22 Mr Malcolm Allen, *Transcript of Evidence*, 29 June 2010, p. 5.

23 Memorandum of Understanding have already been concluded with Saint Lucia, Belize, Samoa and Saint Vincent and the Grenadines.

24 Mr Malcolm Allen, *Transcript of Evidence*, 29 June 2010, p. 10.

25 Mr Malcolm Allen, *Transcript of Evidence*, 29 June 2010, p. 12.

26 Mr Malcolm Allen, *Transcript of Evidence*, 29 June 2010, p. 13.

Allocation of taxing rights agreements

- 7.22 The additional agreements with Samoa and Aruba provide for the allocation of taxing rights over certain income to help 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 each country. The provisions in these agreements are consistent with the corresponding provisions within Australia's comprehensive tax treaties.²⁷
- 7.23 The agreements are part of a package of benefits offered by Australia to encourage each country to conclude the TIEA. The other benefits being offered are:
- public recognition – Australia will no longer refer to the jurisdiction as a 'tax haven' in any official publication;
 - technical assistance; and
 - listing of the jurisdiction's stock exchange in Australia's regulations, which provides certain benefits in terms of Australia's foreign investment fund rules.²⁸
- 7.24 While many countries have not taken up the offer of this agreement, the Committee understands that in some cases incentives have been required for jurisdictions that have made a political commitment concerning harmful tax practices, but not implemented that commitment.²⁹

Obligations

- 7.25 The obligations in each agreement are essentially the same.
- 7.26 The agreements apply only to persons who are residents (as defined in Article 4 of each agreement) for taxation purposes of Australia and/or Samoa and Australia and/or the Kingdom of the Netherlands, in respect of Aruba.³⁰
- 7.27 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:

27 Mr Gregory Wood, *Transcript of Evidence*, 29 June 2010, p. 2.

28 Mr Gregory Wood, *Transcript of Evidence*, 29 June 2010, pp. 11-12.

29 Mr Gregory Wood, *Transcript of Evidence*, 29 June 2010, p. 11.

30 Samoa Allocation NIA, para. 7; Aruba Allocation NIA, para. 6.

- Under Article 5 of each agreement, Australia cannot tax Australian source pensions and retirement annuities paid to residents of Samoa or Aruba, provided such income is subject to tax in these countries. Australia can tax Samoan and Aruban source pensions and retirement annuities paid to Australian residents.
- Article 6 obliges Australia not to tax the salaries of government employees of Samoa or Aruba working in Australia in government service for non-commercial purposes. Each country will therefore have sole taxing rights over the salaries that they pay to individuals undertaking government functions.
- Under Article 7, Australia cannot tax maintenance, education or training payments received by students or business apprentices who are temporarily studying in Australia, where those payments are made from outside Australia. Other income will remain liable to Australian tax.³¹

7.28 The agreements also establish a mechanism to resolve disputes arising from adjustments made to taxpayers' income by the revenue authorities of either country (Article 8).³²

Implementation and Costs

7.29 Minor amendments will be required to the *International Tax Agreements Act 1953* to give effect to the agreements.³³

7.30 The agreements will have a financial impact on the ATO, however Treasury informed the Committee that due to their limited application to pension recipients, government employees and students, the costs of the agreements will be negligible.³⁴

Conclusion and recommendations

7.31 The Committee recognises the importance of establishing effective arrangements with low-tax jurisdictions to help eliminate harmful taxation practices and supports the efforts being made by the Government to

31 Samoa Allocation NIA, paras 9 to 12; Aruba Allocation NIA, paras 12 to 15.

32 Samoa Allocation NIA, para. 13; Aruba Allocation NIA, para. 16.

33 Samoa Allocation NIA, para. 15; Aruba Allocation NIA, para. 18.

34 Mr Gregory Wood, *Transcript of Evidence*, 29 June 2010, p. 2.

conclude these agreements. The Committee therefore supports binding treaty action being taken.

Recommendation 6

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

Recommendation 7

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

Recommendation 8

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

Recommendation 9

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

Recommendation 10

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

Recommendation 11

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

Recommendation 12

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

Recommendation 13

The Committee supports the *Agreement between the Government of Australia and the Government of Saint Christopher (Saint Kitts) and Nevis for the Exchange of Information Relating to Tax Matters*, and recommends that binding treaty action be taken.

Recommendation 14

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

Recommendation 15

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

Recommendation 16

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

Recommendation 17

The Committee supports the *Agreement between the Government of Australia and the Government of the Republic of San Marino for the Exchange of Information Relating to Taxes*, and recommends that binding treaty action be taken.

Recommendation 18

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

Recommendation 19

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

Recommendation 20

The Committee supports the *Agreement between the Government of Australia and the Kingdom of the Netherlands, in respect of Aruba, on the Exchange of Information with Respect to Taxes*, and recommends that binding treaty action be taken.

Recommendation 21

The Committee supports the *Agreement between the Government of Australia and the Government of Samoa 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 22

The Committee supports the *Agreement between the Government of Australia and the Kingdom of the Netherlands, in respect of Aruba, 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.

Kelvin Thomson MP

Chair