

Taxation Agreement with New Zealand

Introduction

- 2.1 The *Convention between Australia and New Zealand for the Avoidance of Double Taxation with Respect to Taxes on Income and Fringe Benefits and the Prevention of Fiscal Evasion* is intended to replace an existing Agreement between the Government of Australia and the Government of New Zealand for the Avoidance of Double Taxation and the Prevention of Fiscal Evasion with respect to Taxes on Income [1997] ATS 23, as amended by the Protocol amending the Agreement between the Government of Australia and the Government of New Zealand for the Avoidance of Double Taxation and the Prevention of Fiscal Evasion with respect to Taxes on Income [2007] ATS 5.¹
- 2.2 The key objectives of the Treaty are to:
- promote closer economic cooperation between Australia and New Zealand by reducing barriers caused by the double taxation of residents of the two countries; and
 - improve certainty for Australian businesses looking to expand into New Zealand and for other Australian taxpayers by updating and modernising the tax arrangements between the two countries.²

1 National Interest Analysis (NIA), para 3.

2 NIA, paras 4 and 5.

Obligations

- 2.3 Articles 6 to 21 allocate taxing rights in respect of certain types of income fringe benefits and are of a kind already present within the existing Agreement.³
- 2.4 Article 23 obliges both countries to relieve double taxation on cross-border income by permitting tax paid under the other country's laws and in accordance with the Agreement to be allowed as a credit against tax payable under their own laws.⁴
- 2.5 Article 24 obliges each country to treat nationals of the other country no less favourably than it treats its own nationals regarding taxation and any connected requirements.⁵
- 2.6 Article 25 establishes dispute resolution procedures and obliges each country to endeavour to resolve disputes. The Article strengthens existing dispute resolution procedures by requiring both countries to allow taxpayers to pursue arbitration where an issue remains unresolved after two years.⁶
- 2.7 Article 26 obliges both countries to exchange relevant information, including obligations to observe secrecy provisions and to notify the other country of any significant changes to laws relating to relevant taxes. The Article allows limited grounds for either country to decline to provide requested information.⁷
- 2.8 Article 27 obliges each country to assist the other in the collection of revenue claims upon request and within the bounds of its own administrative practices, laws or public policy.⁸
- 2.9 Article 29 obliges the two countries to consult each other on the operation and application of the Agreement within five years of entry into force of the Treaty and at intervals of no more than every five years.⁹

3 NIA, para 18.

4 NIA, para 19.

5 NIA, para 20.

6 NIA, para 21.

7 NIA, para 22.

8 NIA, para 23.

9 NIA, para 24.

Relationship between Australia and New Zealand

- 2.10 Treasury emphasised that Australia and New Zealand share a ‘unique relationship’ characterised by a ‘highly interconnected economic relationship’.¹⁰ Based on trade in goods and services, New Zealand is now Australia’s fifth largest market, taking 5.2 per cent of our exports, and is the eighth largest source of imports for Australia. Australia is New Zealand’s principal trading partner, providing 20.8 per cent of its merchandise imports and taking 22 per cent of its merchandise exports.¹¹
- 2.11 Two-way trade reached A\$22.45 billion in 2007-08 with the balance in Australia’s favour. Two-way investment between Australia and New Zealand currently stands at over A\$110 billion. New Zealand is Australia’s sixth largest investor, with a total stock of investment worth A\$32.4 billion at the end of 2006. New Zealand is the third largest market for Australian investment abroad, with Australia the largest investor in New Zealand. The total stock of Australian investment in New Zealand was worth A\$65.3 billion at the end of 2006.¹²
- 2.12 Additionally Australian and New Zealand citizens move freely between the two countries for work and leisure. Under the Trans-Tasman Travel Arrangements which have been in place since 1973, citizens from both countries can visit, live, work and remain indefinitely in the other country without applying for formal authority.¹³ The flow of citizens between the two countries tends to fluctuate with changing economic conditions in either Australia or New Zealand. In 2007-08 over 756,000 Australians visited New Zealand¹⁴ and 1,392,136 New Zealanders came to Australia.¹⁵ Of the New Zealanders, 49,221 came on either a permanent or long-term basis.¹⁶

10 Ms Lynette Redman, *Transcript of Evidence*, 7 September 2009, p. 10.

11 *NZ Tax Agreement*, Regulation Impact Statement (NZ RIS), para 1.14.

12 NZ RIS, paras 1.15 and 1.18.

13 Department of Immigration and Citizenship, *Population flows: immigration aspects 2007-08 edition*, Commonwealth of Australia, 2009, p. 81.

14 C. Harkess et al, *Migration Trends & Outlook 2007/08*, Department of Labour, Wellington, 2009, p. 43.

15 Department of Immigration and Citizenship, *Population flows: immigration aspects 2007-08 edition*, Commonwealth of Australia, 2009, p. 82.

16 Department of Immigration and Citizenship, *Population flows: immigration aspects 2007-08 edition*, Commonwealth of Australia, 2009, p. 82.

Reasons to take treaty action

- 2.13 Treasury told the Committee that this Agreement will encourage a stronger economic relationship between Australia and New Zealand by reducing the barriers to bilateral trade and investment, primarily by reducing withholding taxes on dividend, interest and royalty payments between the two countries.¹⁷ In particular, 'the Future Fund and Australia's other nation building funds are exempted from withholding tax on interest and certain dividends received from New Zealand.'¹⁸
- 2.14 For individuals, the Agreement allocates sole taxing rights over pensions and similar periodic remuneration to the recipient's country of residence. Similarly a lump sum paid under a retirement benefit scheme, or in consequence of retirement, invalidity, disability or death, or by way of compensation for injuries, will be taxable solely in the country from which it is paid. These new rules will remove impediments to working and accumulating superannuation benefits in both countries.¹⁹ Treasury explained that this would correct a current problem for many retirees:
- Essentially what is intended with that provision is that it recognises that people that move between Australia and New Zealand during their working life can accumulate superannuation benefits in both countries but they have to retire to one. Often you will have the situation where somebody has accumulated an Australian superannuation benefit and, had they retired to Australia, the payment would have been exempt. Because they are aged over 60, it is coming from a tax-complying superannuation fund. But if they moved to New Zealand, it would not be exempt under their domestic law. So it ensures that that Australian exemption will also be granted in New Zealand and vice versa.²⁰
- 2.15 Treasury informed the Committee that the Agreement also ensures that an employee's remuneration during short term visits on secondment to one country is taxable only in the employee's country of residence.²¹ This will accommodate the increasing number of individuals who are sent to work for short periods of time in either country.

17 NIA, para 7.

18 Ms Lynette Redman, *Transcript of Evidence*, 7 September 2009, p. 10.

19 NIA, para 11.

20 Ms Lynette Redman, *Transcript of Evidence*, 7 September 2009, pp. 13-14.

21 NIA, para 12. Ms Lynette Redman, *Transcript of Evidence*, 7 September 2009, p. 11.

- 2.16 Treasury also informed the Committee that the Agreement will increase certainty for taxpayers by reducing the complexity of the tax treatment of many cross border transactions, particularly Australian managed investment trusts. An avenue has also been established for dispute resolution, providing further security for taxpayers.²²

Costs and implementation

- 2.17 There would be a small, unquantifiable cost in administering the changes made by the Treaty, including minor implementation costs to the Australian Taxation Office (ATO) in educating the taxpaying public and ATO staff concerning the new arrangements. Other administrative costs will continue to be managed within existing agency resources.²³
- 2.18 Reductions in New Zealand withholding taxes can be expected to result in an increase in the amount of Australian tax revenue through reduced Foreign Income Tax Offsets and increases in Australian taxable income. The revenue costs are likely to be broadly offset by revenue gains.²⁴
- 2.19 Treasury advised that amendments to the *International Tax Agreements Act 1953* will be made prior to the Treaty entering into force. No action is required by the States or Territories and there will be no change to the existing roles of the Commonwealth, or the States and Territories, in tax matters as a consequence of implementing the Treaty.²⁵

Consultation

- 2.20 The then Assistant Treasurer invited submissions from stakeholders and the wider community in January 2008. Treasury also sought comments from the business community through the Tax Treaties Advisory Panel.²⁶
- 2.21 The State and Territory governments have been consulted through the Commonwealth/State Standing Committee on Treaties. Information on

22 NIA, para 18. Ms Lynette Redman, *Transcript of Evidence*, 7 September 2009, p. 11.

23 NIA, para 30.

24 NIA, para 28.

25 NIA, para 26.

26 NIA, para 37.

the negotiation of this Treaty was included in the schedules of treaties to State and Territory representatives from early March 2009.²⁷

- 2.22 The Committee sought clarification of any concerns raised by business organisations during the consultation process. Treasury stated that overall business representatives had expressed support for the Agreement but were critical of the services provision. However, New Zealand insisted on the inclusion of a services provision and Treasury argued that it has negotiated a suitable compromise.²⁸

Conclusion and recommendations

- 2.23 The Committee recognises the unique relationship which exists between Australia and New Zealand and the importance of reducing complexity for both individuals and business with regard to taxation arrangements between the two countries. The Committee therefore supports binding treaty action being taken.

Recommendation 1

The Committee supports the *Convention between Australia and New Zealand for the Avoidance of Double Taxation with Respect to Taxes on Income and Fringe Benefits* and the prevention of Fiscal Evasion and recommends that binding treaty action be taken.

27 NIA, para 39.

28 Ms Lynette Redman, *Transcript of Evidence*, 7 September 2009, p. 17.