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Double Taxation Conventions with respect to Taxes on Income and the Prevention of Fiscal Evasion and Protocol with France and Norway

Introduction

4.1 This chapter reviews two double taxation conventions with respect to taxes on income and the prevention of fiscal evasion and protocol with the Governments of France and Norway. These conventions are:

- *Convention between the Government of Australia and the Government of the French Republic for the Avoidance of Double Taxation with respect to Taxes on Income and the Prevention of Fiscal Evasion and Protocol, done at Paris on 20 June 2006* (French Convention); and the
- *Convention between the Government of Australia and the Government of the Kingdom of Norway for the Avoidance of Double Taxation with respect to Taxes on Income and the Prevention of Fiscal Evasion, done at Canberra on 8 August 2006* (Norwegian Convention).

4.2 The French Convention will replace the 1976 Australia-France tax Agreement as amended by the 1989 protocol and the 1979 Australia-France Airline Profits Agreement.[1] The Norwegian Convention will replace the 1982 Australia-Norway Convention.[2] The Conventions

1 French Convention National Interest Analaysis (FCNIA), para. 2.

2 Norwegian Convention National Interest Analysis (NCNIA), para. 2.

reflect changes in tax treaty policy and business practice and follow the recommendations of the Board of Taxation's Review of International Tax Arrangements.[3]

Purpose of the Conventions

4.3 Both Conventions will reduce rates of withholding taxes on dividends, interest and royalties and bring into line the treatment of capital gains tax with OECD[4] practice and its improved integrity measures. This includes rules to allow for the cross-border collection of tax debts and rules for the exchange of information on tax matters.[5]

4.4 The Conventions are expected to: meet Australia's most favoured nation obligations with both France and Norway; reduce barriers to trade and investment caused by overlapping taxing jurisdictions between Parties thus promoting closer economic cooperation with France and Norway; and help prevent tax evasion.[6]

4.5 Reduced withholding tax rates on interest and royalty payments will make it cheaper for Australian businesses to obtain business loans and intellectual property from France and Norway. The Conventions will also reduce the withholding tax rate on dividend payments from an Australian subsidiary to its parent company in both France and Norway. This is expected to encourage businesses in France and Norway to directly invest in Australia.[7]

4.6 A representative of the Treasury informed the Committee of the purpose of the Conventions:

> Firstly, they aim to promote the flow of investment, trade and skilled personnel between the two countries by eliminating double taxation and providing a reasonable element of legal and fiscal certainty for commerce between the respective countries. Secondly, they aim to improve the integrity of the tax system by creating a framework through which tax administrations of both countries can prevent international

3 Mr Michael Rawstron, *Transcript of Evidence*, 11 September 2006, p. 3.

4 Organisation for Economic Cooperation and Development

5 FCNIA and NCNIA, para. 4.

6 FCNIA and NCNIA, para. 5; Mr Michael Rawstron, *Transcript of Evidence*, 11 September 2006, pp. 3-4.

7 FCNIA and NCNIA, para. 5; Mr Michael Rawstron, *Transcript of Evidence*, 11 September 2006, pp. 3-4.

> fiscal evasion and eliminate double taxation. Thirdly, they aim to develop and improve bilateral relations with the countries concerned. Fourthly, they aim to maintain Australia's position in the international tax community. At the highest level, these treaties form part of the network of tax treaties that ultimately support Australia's geopolitical, strategic, security and regional interests.[8]

Consultation

4.7 The Board of Taxation conducted a Review of International Taxation Arrangements on the direction of Australia's tax treaty policy. The Board's recommendations supported a move towards a more residence-based treaty policy in substitution for treaty policies (reflected in most of Australia's treaties, including the existing 1976 Australia-French treaty and the 1982 Australia-Norway Convention) based on the source taxation of income.[9]

4.8 Consultation with the business community occurred through the Tax Treaties Advisory Panel[10] and submissions from stakeholders and the wider community were invited in November 2003. Business and industry groups generally supported similar outcomes to those in the 2003 United Kingdom Tax Convention and the 2001 United States Protocol. The conventions provide similar outcomes to those treaties.[11]

4.9 States and Territory Governments were consulted via the Commonwealth-State/Territory Standing Committee on Treaties in October 2003.[12]

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8 Mr Michael Rawstron, Transcript of Evidence, 11 September 2006, pp. 2-3.

9 FCNIA and NCNIA, Attachment A, Consultation Annex, para. 1.

10 Members include: Business Council of Australia, CPA Australia, Corporate Tax Association, Institute of Chartered Accountants, International Fiscal Association, Investment and Financial Services Association, Law Council of Australia, Minerals Council of Australia, Taxation Institute of Australia, FCNIA and NCNIA, Attachment A, Consultation Annex, para. 2.

11 FCNIA and NCNIA, Attachment A, Consultation Annex, paras. 2 and 3.

12 FCNIA and NCNIA, Attachment A, Consultation Annex, para. 4.

Costs

4.10 The net economic cost of the French Convention, calculated by offsetting the cost to revenue with the reduction in business costs and gains in revenue resulting from it, is expected to be approximately A$5 million annually.[13]

4.11 Costs associated with the Norwegian Convention are expected to be negligible. Compliance costs are expected to be reduced and administrative costs associated with implementing the Norwegian Convention will be managed within the Australian Taxation Office and Treasury budgets.[14]

4.12 Treasury expects that the proposed interest withholding tax rate changes will reduce the effective cost of borrowing as Australian borrowers bear the burden of tax through gross-up[15] clause arrangements.[16]

4.13 As a result of the reduction in the cost of borrowing from France and Norway, Treasury expects that the conventions could lead to increased economic activity and foreign investment in Australia. The increase in economic activity is likely to lead to increases in other forms of tax collection.[17]

Legislation

4.14 The *International Tax Agreements Act 1953* will be amended to include the Conventions as a schedule.[18]

13 FCNIA, paras. 20 and 21.

14 NCNIA, paras 21 and 22.

15 While French and Norwegian companies would be liable for the interest and royalty income earned in Australia as a result of investment, contracts are often structured so that the Australian company absorbs the tax. The commercial practice of absorbing this tax is referred to as gross-up clause arrangements. FCNIA and NCNIA, para. 10.

16 FCNIA and NCNIA, para. 10.

17 FCNIA and NCNIA, para. 25.

18 FCNIA, para. 19 and NCNIA, para. 20.

Entry into force and withdrawal

4.15 The French Convention will enter into force on the first day of the second month following the date of receipt of last notification after both Parties' domestic requirements have been met.[19]

4.16 The Norwegian Convention will enter into force on the date of receipt of the last notification that Parties' domestic requirements have been met. Parties must identify in an exchange of notes when Article 27 (assistance in collection of tax debts) will come into effect.[20]

4.17 Either Party may withdraw from either convention by giving at least six months notice before the end of any calendar year after 5 years from the convention's entry into force.[21] The French Convention would then cease to be effective at various times in the next calendar year.[22] The Norwegian Convention would then cease to be effective for different types of income from either 1 January or July in the following calendar year.[23]

Future double taxation treaties

4.18 The Department of Treasury informed the Committee that approximately six double taxation agreements have been identified for revision and two are currently under consideration.[24]

Conclusion and recommendations

4.19 The Committee acknowledges that the French and Norwegian Conventions are expected to reduce barriers to trade and investment by overcoming the difficulty of Parties overlapping taxing jurisdictions and aiding in the prevention of tax evasion.

19 FCNIA, para. 1.
20 NCNIA, para. 1.
21 FCNIA, para. 27 and NCNIA, para. 28.
22 FCNIA, para. 27.
23 NCNIA, para. 27.
24 Mr Paul McBride, *Transcript of Evidence*, 11 September 2006, p. 6.

Recommendation 3

The Committee supports the ***Convention between the Government of Australia and the Government of the French Republic for the Avoidance of Double Taxation with respect to Taxes on Income and the Prevention of Fiscal Evasion and Protocol, done at Paris on 20 June 2006*** **and recommends that binding treaty action be taken.**

Recommendation 4

The Committee supports the ***Convention between the Government of Australia and the Government of the Kingdom of Norway for the Avoidance of Double Taxation with respect to Taxes on Income and the Prevention of Fiscal Evasion, done at Canberra on 8 August 2006*** **and recommends that binding treaty action be taken.**