



INFORMATION, ANALYSIS
AND ADVICE FOR THE PARLIAMENT

INFORMATION AND RESEARCH SERVICES

Bills Digest
No. 41 2003–04

International Tax Agreements Amendment Bill 2003

ISSN 1328-8091

© Copyright Commonwealth of Australia 2003

Except to the extent of the uses permitted under the *Copyright Act 1968*, no part of this publication may be reproduced or transmitted in any form or by any means including information storage and retrieval systems, without the prior written consent of the Department of the Parliamentary Library, other than by Senators and Members of the Australian Parliament in the course of their official duties.

This paper has been prepared for general distribution to Senators and Members of the Australian Parliament. While great care is taken to ensure that the paper is accurate and balanced, the paper is written using information publicly available at the time of production. The views expressed are those of the author and should not be attributed to the Information and Research Services (IRS). Advice on legislation or legal policy issues contained in this paper is provided for use in parliamentary debate and for related parliamentary purposes. This paper is not professional legal opinion. Readers are reminded that the paper is not an official parliamentary or Australian government document. IRS staff are available to discuss the paper's contents with Senators and Members and their staff but not with members of the public.

Inquiries

Members, Senators and Parliamentary staff can obtain further information from the Information and Research Services on (02) 6277 2646.

Information and Research Services publications are available on the ParlInfo database.

On the Internet the Department of the Parliamentary Library can be found at:

<http://www.aph.gov.au/library/>

Published by the Department of the Parliamentary Library, 2003

INFORMATION AND RESEARCH SERVICES

Bills Digest
No. 41 2003–04

International Tax Agreements Amendment Bill 2003

Brendan Bailey
Law and Bills Digest Group
30 September 2003

Contents

Purpose.	1
Background.	1
The Government's policy commitment	2
Australian Labor Party's comments	3
Main Provisions	3
Schedule 1—The 2003 United Kingdom Convention	3
<i>International Tax Agreements Act 1953</i>	3
Schedule 2—The 2002 Mexican agreement	5
<i>International Tax Agreements Act 1953</i>	5
Schedule 3—Miscellaneous Amendments	6
<i>Income Tax Assessment Act 1936: International Tax Agreements Act 1953:</i> <i>Taxation (Interest on Overpayments and Early Payments) Act 1983</i>	6
Concluding Comments.	6
Endnotes.	7

International Tax Agreements Amendment Bill 2003

Date Introduced: 11 September 2003

House: House of Representatives

Portfolio: Treasury

Commencement: Royal Assent, but both the 2002 Mexican tax treaty and the 2003 United Kingdom tax treaty covered by the Bill will enter into force on the last of the dates on which Australia and the respective treaty partners exchange notes through the diplomatic channel.

Purpose

The purpose of the Bill is to provide legislative authority for the entering into force of two new comprehensive tax treaties with the United Kingdom and Mexico, respectively. The treaty with Mexico was signed on 9 September 2002 and the treaty with the United Kingdom was signed on 21 August 2003.

Background

Australia has agreements with a number of countries, known as Double Tax Agreements, aimed to prevent the double taxation of income where income is received by a resident of one country from activities in the other country. The agreements also aim to help minimise tax avoidance and evasion. The agreements deal with income from a number of specific sources, such as business income, dividends, interest and royalties. The agreements provide for the taxation treatment which is to apply, particularly which country may tax various categories of income and limitations of the amount that may be taxed. Subsection 4(2) of the *International Tax Agreements Act 1953* provides that agreements are, in most cases, to overrule provisions of the *Income Tax Assessment Act 1936* and the *Income Tax Assessment Act 1997* although a specific Australian law can overrule an agreement.

Agreements have a common format but differ to reflect the various tax rules applying in the countries with which Australia has an agreement. The agreements covered by this Bill were signed between Australia and Mexico (signed 9 September 2002) and Australia and the United Kingdom (signed 21 August 2003). The treaty with the United Kingdom is the

Warning:

This Digest was prepared for debate. It reflects the legislation as introduced and does not canvass subsequent amendments.

This Digest does not have any official legal status. Other sources should be consulted to determine the subsequent official status of the Bill.

third comprehensive treaty to be signed with Australia in a series that extends over a number of years (Australia has had a tax agreement with the United Kingdom since 1946). This new treaty introduces an alignment with more recent tax treatments and modern business practices. The treaty with Mexico offers the opportunity of an expansion of trade and investment links between Australia and Mexico.

Agreements tend to have standardised rules for the taxation of various categories of income depending on its source and the place of residence of the person deriving the income, although different limits and variations to the standard rules apply for the various countries.

The Government's policy commitment

On 13 May 2003, the Treasurer, the Hon Peter Costello MP, issued a 21 page press release which announced the outcome of the Government's review of Australia's international taxation arrangements conducted by the Board of Taxation. The review arose out of the Government's commitment in *Securing Australia's Prosperity*.¹ The *Explanatory Memorandum* (at page 17) to the Bill states that the 2003 taxation treaty with the United Kingdom accords with the policy directions announced on 13 May 2003.

In his Second Reading speech to this Bill, the Treasurer, the Hon Peter Costello MP, said of the new treaty with the United Kingdom:

It will significantly assist trade and investment flows between the two countries and further demonstrates the government's commitment to update ageing treaties with major trading partners as recommended by the Ralph report and Review of Business Taxation. The treaty will produce a positive economic outcome for Australia. Gains include a larger and faster growing Australian economy with flow-on effects on employment, trade and investment.²

On the matter of the treaty with Mexico the Treasurer said:

The government believes the conclusion of the Mexican tax treaty will strengthen trade, investment and wider relationships between Australia and Mexico.³

The Treasurer explained that the Bill will also amend the *International Tax Agreements Act 1953* to clarify the operation of the dividend articles in Australia's double tax treaties consistent with the introduction into the taxation system of Australia's debt equity rules in 2001. The Treasurer said:

The proposed amendment will ensure that amounts that are treated as a return on debt under the debt and equity rules are taxed at interest withholding tax rates and not dividend withholding tax rates. This conforms to the internationally accepted view that the dividends article of a treaty applies to equity interests and the interest article applies to debt interests.⁴

Warning:

This Digest was prepared for debate. It reflects the legislation as introduced and does not canvass subsequent amendments.

This Digest does not have any official legal status. Other sources should be consulted to determine the subsequent official status of the Bill.

In relation to the Australia–United Kingdom taxation treaty, the Treasurer issued a detailed press release outlining the main features of the new treaty on 21 August 2003.⁵

Australian Labor Party's comments

The passage of the Bill was expedited through the House of Representatives on 16 September 2003. The Labor Member, Mr David Cox MP, supported the content of the treaties and noted the importance of the treaty with the United Kingdom because of the strength of investment and trade between the two countries. He also noted the substantial changes to the taxation system over the past 23 years.

Mr Cox MP also noted that the Australia-Mexico double tax agreement completes Australia's tax treaty network with the North American free trade area. He pointed to the involvement of the former Labor Minister for Trade, the Hon Dr N. Blewett, as the Australian Minister who initiated the negotiations for the Mexico tax treaty in the early 1990s.⁶

Mr Cox MP was, however, critical of the lack of time allowed for scrutiny of the treaties. Both the United Kingdom and Mexico treaties were tabled on 9 September 2003. Mr Cox proposed an amendment to the Second Reading of the Bill that would have extended time and deferred the vote of the Bill, to enable the Joint Standing Committee on Treaties to consider and report on the treaties on 3 November 2003.⁷ The proposed amendment was defeated. The Bill then passed its remaining stages in the House of Representatives.

Main Provisions

Schedule 1—The 2003 United Kingdom Convention

International Tax Agreements Act 1953

The *International Tax Agreements Act 1953* gives the force of law in Australia to tax treaties which are included as Schedules to the Act. The Schedules are the text of the international treaties themselves, supplemented by subsequent Protocols which amend the main agreement identified in the Schedules.

Warning:

This Digest was prepared for debate. It reflects the legislation as introduced and does not canvass subsequent amendments.

This Digest does not have any official legal status. Other sources should be consulted to determine the subsequent official status of the Bill.

The current Schedules contained in *Volume 1* to the *International Tax Agreements Act 1953* are:

Schedule 1—United Kingdom	Schedule 11A—Protocol—French Republic
Schedule 1A—Protocol—United Kingdom	Schedule 12—Hellenic Republic
Schedule 2—United States of America	Schedule 13—Kingdom of Belgium
Schedule 2A—Protocol—United States	Schedule 13A—Protocol—Kingdom of Belgium
Schedule 3—Canada	Schedule 14—Philippines
Schedule 3A—Protocol—Canada	Schedule 15—Switzerland
Schedule 4—New Zealand	Schedule 16—Malaysia
Schedule 5—Republic of Singapore	Schedule 16A—Protocol—Malaysia
Schedule 5A—Protocol—Republic of Singapore	Schedule 16B—Second Protocol—Malaysia
Schedule 6—Japan	Schedule 17—Sweden
Schedule 7—French Republic*	Schedule 18—Denmark
Schedule 8—Italy	Schedule 20—Ireland
Schedule 9—Federal Republic of Germany	Schedule 21—Italy
Schedule 10—Kingdom of the Netherlands	Schedule 22—Republic of Korea
Schedule 10A—Second Protocol—Kingdom of the Netherlands	Schedule 23—Norway
Schedule 11—French Republic*	Schedule 24—Malta

(*Schedule 7 for the French Republic deals separately with income from international air transport.)

Items 1 to 11 in Schedule 1 of the Bill amend the various references in the definitions contained in section 3 of the *International Tax Agreements Act 1953* to help clarify the series of treaties and related documents entered into between Australia and the United Kingdom over the period 1946 to 2003.

Item 12 replaces the existing sections 5 and 5A in the *International Tax Agreements Act 1953* to recognise that the 2003 tax treaty is the new comprehensive tax agreement to operate between Australia and the United Kingdom, while still retaining the residual authority of any necessary provisions contained in earlier treaties.

Item 14 is the key provision in the Bill relating to the tax treaty with the United Kingdom. **Item 14** repeals the existing Agreement and Protocol with the United Kingdom in

Warning:

This Digest was prepared for debate. It reflects the legislation as introduced and does not canvass subsequent amendments.

This Digest does not have any official legal status. Other sources should be consulted to determine the subsequent official status of the Bill.

Schedules 1 and 1A (see above), respectively, and replaces them as a new Schedule 1 to the *International Tax Agreements Act 1953*.

The 2003 treaty with the United Kingdom is a comprehensive tax arrangement that alleviates the incidence of double taxation that would otherwise apply to Australian and United Kingdom residents who derive income, profits or gains from the United Kingdom or Australia. The *Explanatory Memorandum* to the Bill states that the estimated cost to the Australian revenue will be about \$100 million per annum but that the cost is partly offset by an expected increase in revenue as a result of increased economic activity. Other offsets are stated which are assessed as producing an overall positive outcome for the economy (see page 11 of the *Explanatory Memorandum*).

A detailed explanation of the content of the 2003 tax treaty with the United Kingdom is contained at pages 15–90 of the *Explanatory Memorandum* to the Bill. However, the major change is the recognition of dual listed companies and the taxing rights applicable to such entities.

Schedule 2—The 2002 Mexican agreement

International Tax Agreements Act 1953

The current Schedules contained in *Volume 2* to the *International Tax Agreements Act 1953* are:

Schedule 25—Finland	Schedule 36—Poland
Schedule 25A—Second Protocol—Finland	Schedule 37—Indonesia
Schedule 26—People’s Republic of China*	Schedule 38—Vietnam
Schedule 27—Austria	Schedule 38A—Exchange of Notes—Vietnam
Schedule 28—People’s Republic of China*	Schedule 39—Spain
Schedule 29—Papua New Guinea	Schedule 40—Czech Republic
Schedule 30—Thailand	Schedule 41—Taipei agreement
Schedule 31—Sri Lanka	Schedule 42—South African agreement
Schedule 32—Fiji	Schedule 43—Slovak agreement
Schedule 33—Hungary	Schedule 44—Argentine agreement
Schedule 34—Kiribati	Schedule 45—Romanian agreement
Schedule 35—India	Schedule 46—Russian agreement

(*Schedule 26 for China deals separately with income from international air transport.)

Warning:

This Digest was prepared for debate. It reflects the legislation as introduced and does not canvass subsequent amendments.

This Digest does not have any official legal status. Other sources should be consulted to determine the subsequent official status of the Bill.

Item 1 in Schedule 2 of the Bill inserts a definition of 'the Mexican agreement' into subsection 3(1) of the *International Tax Agreements Act 1953*. **Item 2** inserts a **new section 11ZK** to apply the Mexican agreement as law in Australia.

Item 3 is a key provision and it inserts a **new Schedule 47** (the full text of the Mexican agreement and protocol) into the *International Tax Agreements Act 1953*.

The 2002 treaty with Mexico is a comprehensive tax arrangement that alleviates the incidence of double taxation that would otherwise apply to Australian and Mexican residents who derive income, profits or gains from Mexico or Australia. The likely impact from this treaty of a decrease in Australian taxation revenue is assessed as low while the indirect benefits are enhanced trade and investment between the two countries. The *Explanatory Memorandum* to the Bill states that the estimated cost to the Australian revenue will be about \$2 million (see page 11 of the *Explanatory Memorandum*) offset by the indirect benefits.

A detailed explanation of the content of the 2002 tax treaty with Mexico is contained at pages 91–139 of the *Explanatory Memorandum* to the Bill.

Schedule 3—Miscellaneous Amendments

Income Tax Assessment Act 1936: International Tax Agreements Act 1953: Taxation (Interest on Overpayments and Early Payments) Act 1983

Items 1 to 5 in Schedule 3 make minor consequential amendments to the above Acts to update legislative references to the new treaties contained in the Bill.

Concluding Comments

It is noted that the tax treaty and protocol with Mexico was, according to the tabling statement, 'done at Mexico City on 9 September 2002' and was tabled in the Australian Parliament on 9 September 2003. This Bill, to implement the treaty (and the new version of the treaty with the United Kingdom) in domestic law was introduced into the House of Representatives on 11 September 2003.

Warning:

This Digest was prepared for debate. It reflects the legislation as introduced and does not canvass subsequent amendments.

This Digest does not have any official legal status. Other sources should be consulted to determine the subsequent official status of the Bill.

Endnotes

- 1 The Hon Peter Costello MP, Treasurer, 'Review of International Taxation Arrangements', *Press Release (2003 No.032)*, 13 May 2003 at :
<http://www.treasurer.gov.au/tsr/content/pressreleases/2003/032.asp>.
- 2 The Treasurer, the Hon Peter Costello MP, Second Reading Speech, 'International Tax Agreements Amendment Bill 2003', House of Representatives, *Debates*, 11 September 2003: p. 19207.
- 3 *ibid.*
- 4 *ibid.*
- 5 The Hon Peter Costello MP, Treasurer, 'Australia—United Kingdom Double Taxation Treaty', *Press Release (2003 No.0 73)*, 21 August 2003 at :
<http://www.treasurer.gov.au/tsr/content/pressreleases/2003/073.asp>
- 6 Mr David Cox MP, Second Reading Speech, 'International Tax Agreements Amendment Bill 2003', House of Representatives, *Debates*, 16 September 2003: pp. 19453–19456.
- 7 *ibid.*

Warning:

This Digest was prepared for debate. It reflects the legislation as introduced and does not canvass subsequent amendments.

This Digest does not have any official legal status. Other sources should be consulted to determine the subsequent official status of the Bill.