International Tax Agreements Amendment Bill 2003
International Tax Agreements Amendment Bill 2003

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Law and Bills Digest Group
30 September 2003
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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

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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*. 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.

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.

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.
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.

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

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

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

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


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.
Endnotes


3 ibid.

4 ibid.


7 ibid.

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