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International Tax Agreements Amendment Bill (No.1) 2006

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International Tax Agreements Amendment Bill (No.1) 2006

Date introduced: 22 June 2006

House: House of Representatives

Portfolio: Treasury

Commencement: On Royal Assent.

Purpose

To provide for the legislative implementation of a Protocol amending the existing Australia-New Zealand Double Taxation Agreement.

Background

Australia has agreements with a number of countries, known as Double Taxation Agreements, aimed at preventing the double taxation of income where income is received by a resident of one country from activities in another country. They 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. They 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.

The [*Agreement with New Zealand for the Avoidance of Double Taxation and the Prevention of Fiscal Evasion with respect to Taxes on Income*](#) (the 1995 Agreement) was originally signed in 1995 and entered into force that same year. It replaced a [previous double taxation agreement](#) dating back to 1972. It is intended that the 1995 Agreement will be amended by a [2005 Protocol](#) (the Protocol). The International Tax Agreements Amendment Bill (No.1) 2006 (the Bill) provides for the legislative implementation the Protocol, thus enabling ratification by Australia.

There three main aspects to the Protocol. These are:

- Information exchange. The Protocol amends the 1995 Agreement to somewhat expand the existing obligations of Australia and New Zealand to provide tax-related information to each other when this is requested by the other jurisdiction. The existing safeguards in the 1995 Agreement regarding treating any such information as secret are unchanged. Also, there is no obligation to supply the requested information if that

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would be contrary to the law and administrative practice of the relevant jurisdiction, or the information would disclose confidential information where such disclosure is contrary to public policy. This provision (Article 2 of the Protocol) is taken from Article 26 of the OECD Model Tax Convention on Income and Capital.

- Assistance in collection provisions. Article 4 of the Protocol inserts an entirely new provision into the Agreement. From the Australian perspective, its practical application is in recovering tax debts from those Australian taxpayers who have left Australia but have assets or income in New Zealand. In such cases, the New Zealand authorities would recover the amount owing to the Australian Tax Office (ATO) under New Zealand legal processes and then remit the funds to Australia. There is no obligation on either country to provide assistance in recovering the tax debt if that would be contrary to the law and administrative practice of the relevant jurisdiction, or would be contrary to public policy, or where the administrative burden on the assisting country is disproportionate to benefit to the other country in recovering the debt. Article 4 is taken from Article 27 of the OECD Model Tax Convention on Income and Capital.
- Article 5 of the Protocol inserts a ‘most favoured nation’ provision. In the event that New Zealand reduces withholding tax rates on dividends, interest and royalties in a treaty with another country to levels below those in contained in the Articles 10-12 of the 2005 Agreement, New Zealand must enter into negotiations with Australia ‘with a view to providing the same treatment’ to Australia – that is, reducing the taxes to the same level.

The Protocol also applies the provisions of the Protocol to all federal taxes administered by the ATO. Currently, all of Australia’s international tax agreements, with the exception of the Timor Sea Treaty, only deal with income tax.¹ It is now Australian Government policy that all future information exchange and collection assistance provisions in Australia’s international tax agreements should apply to the broader range of taxes.² The [National Interest Analysis](#) submitted to the Joint State Committee on Treaties (JSCOT) inquiry into the Protocol commented that the broader reach will:

assist in the administration and collection of Goods and Services Tax (GST) and the extension of the benefits of Australia’s Wine Equalisation Tax (WET) rebate to New Zealand.³

Financial implications

The Explanatory Memorandum states there are no financial implications, however it is expected that there will be a (unspecified) ‘positive impact on revenue collection’ by the ATO.⁴ [Evidence](#) given by ATO officials to the JSCOT inquiry into the Protocol state that:

We already have in place, as was mentioned, over 40 treaties. With a lot of them, some more than others, we are active in exchanging information. In that area I do not

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believe that there will be a need for a great increase or there will be a great burden, as we already have the infrastructure in place. Assistance in collection is new for us but it is something that will assist us. There will be some increased administrative costs around this area. It is one of those things where we do not know quite yet how much activity we will have and how much we will need to put into it. It is virtually impossible at this stage to do any models or anything like that on the costs.⁵

Main provisions

Schedule 1

This inserts the required legislative changes into the *Tax Administration Act 1953* to enable Australia to assist another country in collecting a tax debt (a 'foreign revenue claim') owed to that State. There must be an international tax agreement dealing with mutual assistance regarding tax debts between Australia and the relevant country.

Once a valid foreign revenue claim has been made by the relevant authority of the foreign country, the Federal Commissioner of Taxation (the Commissioner) must enter it on a special Register with 90 days of the claim being made: **new section 263-25**. Once registered, it becomes a debt due to the Commonwealth payable within 30 days⁶ of notice being given to the debtor: **new section 263-30**.⁷ The existing provisions of Part 4-15 (collection and recovery of tax-related liabilities) of the *Tax Administration Act 1953* apply to foreign revenue claims. However, if the Commissioner subsequently decides the debt should not be pursued – for example because of some error or an application by the debtor to the Commissioner – the claim can be deleted from the Register, thus removing any liability: **new section 263-35**.⁸ Similarly, the Register can also be amended to change the amount of the claim. Where the Commissioner decides to delete the foreign revenue claim from the Register following an application by the debtor, the Commissioner does not require the approval of the relevant foreign authority: **new subsections 263-35(3)-(4)**. No guidance is given as to the sort of grounds on which the Commissioner might delete the claim, particularly if this was against the wishes of the foreign country.⁹

When all or part of any debt has been recovered under the above process, the Commissioner must remit the amount to the relevant authority of the claiming State: **new section 263-40**.

Note that tax debts accruing before the commencement of the Bill will be recoverable under the assistance in collection provisions. However, the provisions will only apply to requests for assistance made after the Bill commences.

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Schedule 2

This inserts the required legislative changes into the *International Tax Agreements Act 1953* and *Tax Administration Act 1953* to allow for the exchange of tax-related information with another State. There must be an international tax agreement dealing with information exchange between Australia and the relevant State. It allows the Commissioner to make records of, and to exchange information, in accordance with his or her obligations of the international tax agreement.

Schedule 3

This adds the text of the Protocol as **new schedule 4A** of *International Tax Agreements Act 1953* as well as inserting references to the Protocol into other parts of that Act. Approximately 24 other international tax agreements are similarly included in various existing schedules.

Concluding comments

In its [report](#), JSCOT unanimously recommended that the Protocol should be ratified.

Potentially the most far-reaching aspect of the Bill is Schedule 1, dealing with mutual assistance between Australia and New Zealand in recovering tax debts.¹⁰ However, no evidence was provided to JSCOT or contained in the Explanatory Memorandum or second reading speech about how much might be potentially recoverable by Australia under this scheme.

Endnotes

1. [Submission](#) by the Department of the Treasury in inquiry of the Joint Standing Committee on Foreign Affairs Defence and Trade into Australia's trade and investment relations under the Australia-New Zealand Closer Economic Relations Trade Agreement.
2. *ibid.*
3. At paragraph 5.
4. *Explanatory Memorandum*, p. 4.
5. Transcript of public hearing into Treaties tabled on 11 October 2005 and in February 2006, p. 16.
6. Although more time can be given.

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7. Interest becomes payable if the debt is not paid by the due date.
8. Note that under the Protocol, a debtor cannot take legal action disputing the debt in the country that is assisting in collecting the debt. For example, suppose the New Zealand government claimed that a person now living in Australia owed tax. If the New Zealand Government lodged a valid foreign revenue claim under the *Tax Administration Act 1953* (as amended by the Bill) the debtor could not bring a case before an Australian court disputing the existence or amount of the debt.
9. The Explanatory Memorandum at page 14 only comments that the claim might be deleted if the Commissioner was 'satisfied with the foreign country debtor's explanation'.
10. And other countries, should appropriate international tax agreements be in place with them.

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