



International Tax Agreements Amendment Bill (No. 1) 2007

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Law and Bills Digest Section

Contents

Purpose.	2
Background.	2
Basis of policy commitment.	3
Financial implications	4
Main provisions.	4
Concluding comments	4
Endnotes.	4

International Tax Agreements Amendment Bill (No. 1) 2007

Date introduced: 29 March 2007

House: House of Representatives

Portfolio: Treasury

Commencement: On Royal Assent

Purpose

To incorporate into Australian law two international treaties signed with France and Norway relating to the avoidance of double taxation with respect to taxes on income and the prevention of fiscal evasion.

Background

Australia has bilateral 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 agreement also aims 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* (the ITA Act) provides that agreements are, in most cases, to overrule provisions of the *Income Tax Assessment Act 1936* and the Act imposing Australian tax 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 aims of Double Tax Agreements are to prevent:

- the double taxation of income received in one country that is a party to an agreement by a resident of the other country that is a party to an agreement. This is achieved by the separation of taxing powers between the parties and, in certain circumstances, the giving of credits for the payment of tax in the other country, and
- tax evasion or avoidance by international tax arrangements. This is aimed to be achieved by the transfer of information between the taxation authorities of the countries that are parties to an agreement.

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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. Broadly, income from certain categories is reserved for taxation in the country of residence of the taxpayer while income from other sources may be taxed in its country of source, usually to a maximum percentage of the income (the most important categories covered by the later rule are dividends, royalties and interest). Where the country of residence also taxes these classes of income, it is required to allow a credit for the tax paid in the country of source. Agreements may also have general ‘catch all’ provisions designed to preserve the operation of Australia tax rules unless specifically excluded by the agreement.

Basis of policy commitment

On 21 June 2006, the Treasurer the Honourable Peter Costello announced by [press release](#) that Australia and the Republic of France signed the *Convention between the Government of Australia and 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* (the French Convention). The French Convention will replace the 1976 Australia-France Tax Agreement as amended by the 1989 protocol and the 1979 Australia-France Airline Profits Agreement¹.

On 8 August 2006 the Minister for Revenue and the Assistant Treasurer, the Honourable Peter Dutton, announce by [press release](#) that the Minister and the Norwegian Ambassador to Australia signed 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). The Norwegian Convention also replaced the previous 1982 Convention.

Both Conventions have been made consistent with the Government’s response to *Review of International Taxation Arrangements* to modernise international taxation arrangements which recommended that Australia’s tax treaties should move to a more residence based treaty policy in substitution for treaty policies based on the source taxation of income².

The General Manager, International Tax and Treaties Division, Department of the Treasury gave evidence to the Joint Standing Committee on Treaties and stated:

The proposed conventions fulfil our obligations under the most favoured nation clauses to renegotiate certain aspects of our tax treaties with France and Norway. The existing treaties with both countries include MFN clauses relating to the reductions in withholding taxes. The French treaty also includes an MFN clause concerning the inclusion of non-discrimination rules. The entry into force of the 2001 protocol to the Australia-United States tax agreement triggered our withholding tax MFN obligations and the 2003 Australia-United Kingdom treaty triggered our non-discrimination obligations.

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Financial implications

The [Explanatory Statement](#) states the direct cost to revenue is estimated to be approximately A\$10 million per annum for the France Convention and negligible for the Norway Convention³.

Main provisions

Schedule 1, items 1-9A make amendments to the *International Tax Agreements Act 1953* (the ITA Act). The amendments are consequential to the 2006 French Convention which replaces the three previous agreements, namely the 1969 French airline profits agreement, the 1976 French agreement and the 1976 French agreement as amended by the 1989 Protocol.

Items 11 and 12 will repeal Schedules 7, 11 and 11A which currently contain the existing three agreements and substitute **new Schedule 11** which sets out the new 2006 French Convention.

Similarly, **Schedule 2, items 1-6** amend the ITA Act to reflect the new 2006 Norwegian Convention which will be in **new Schedule 23**. There are currently 47 Schedules to the ITA Act which contain the international tax agreements with other countries.

Concluding comments

Both treaties will enter into force when both countries have completed their domestic requirements. This includes their incorporation into Australian law which will occur by the implementation of this Bill. The Standing Committee on Treaties acknowledges that the 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'⁴.

Endnotes

1. Report of the Joint Standing Committee on Treaties, *Report 79: Treaties tabled on 10 May (2), 5 and 6 September 2006*, p. 27.
2. *ibid*, paragraph 4.7, p. 29.
3. *Explanatory Statement International Tax Agreements Amendment Bill (No. 1) 2007*, p. 7.
4. *ibid*, paragraph 4.19, p. 31.

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