



International Tax Agreements Amendment Bill (No. 2) 2010

This is a new edition of a Bills Digest previously prepared for the 42nd Parliament.

Morag Donaldson
Law and Bills Digest Section

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International Tax Agreements Amendment Bill (No. 2) 2010

Date introduced: 29 September 2010

House: House of Representatives

Portfolio: Treasury

Commencement:

Links: The links to the [Bill, its Explanatory Memorandum and second reading speech](#) can be found on the Bills home page, or through <http://www.aph.gov.au/bills/>. When bills have been passed they can be found at the ComLaw website, which is at <http://www.comlaw.gov.au/>.

This Bill lapsed on the proroguing of Parliament in July 2010. It has been re-introduced without any significant changes.

Purpose

The Bill amends the *International Tax Agreements Act 1953* (the Agreements Act) to give domestic legal effect to the 'second Singapore protocol'. That protocol was signed on 8 September 2009 and amends the existing tax treaty between Australia and Singapore.

Background

On 11 February 1969, the Governments of Australia and the Republic of Singapore (the contracting states) entered into an agreement for 'the avoidance of double taxation and the prevention of fiscal evasion with respect to taxes on income' (the Singapore Agreement).¹ The text of the agreement is set out in Schedule 5 to the Agreements Act.²

Like the other double tax agreements Australia has made with other nations, the Singapore Agreement is intended to avoid the situation where a taxpayer (who resides in Australia and/or the other contracting state—in this case, Singapore) is taxed on the same income in both Australia and the other state. (This concept of being taxed twice on the same income is referred to as 'double taxation'.) The agreement clarifies the taxing rights between the contracting states on different types of income, and also provides for the reduction (or exemption) of tax on certain types of income. It also aims to prevent income tax evasion by encouraging cooperation and the sharing of information between the contracting states, and by ensuring that the laws of Australia and the other state are enforced.

1. Preamble to the Singapore Agreement.

2. Schedule 5 to the Agreements Act is available electronically at http://www.austlii.edu.au/au/legis/cth/consol_act/itaa1953299/sch5.html (viewed 10 August 2010).

On 16 October 1989, the parties signed a protocol (the first Singapore protocol) amending the Singapore Agreement. The text of the first Singapore protocol is set out in Schedule 5A to the Agreements Act.³ It replaced various articles in the Singapore Agreement to reflect changes in terminology, legal drafting and financial practice that had occurred since the Singapore Agreement was made in 1969.

On 8 September 2009, the parties signed another protocol (the second Singapore protocol) amending the Singapore Agreement. The text of that protocol is to be inserted as **proposed Schedule 5B** to the Agreements Act.⁴ Essentially, the second Singapore protocol omits Article 19 of the Singapore Agreement and replaces it with revised text which not only meets the international standard on the exchange of tax information developed by the Organisation for Economic Co-operation and Development (OECD) (the OECD model tax convention) but almost replicates it verbatim.⁵

On 23 June 2010, the Gillard Government introduced a Bill (titled the 'International Tax Agreements Amendment Bill (No. 2) 2010') into Parliament, but it lapsed when the 42nd Parliament was prorogued and the House of Representatives was dissolved on 19 July 2010.⁶

Article 19 of the Singapore Agreement: the exchange of information

Article 19 of the Singapore Agreement deals with the exchange of information between Australia and Singapore in relation to matters covered by the tax treaty.

In its original 1969 form, Article 19 provided that the parties (through their 'competent authorities') 'shall' (that is, must) exchange information (which is at their disposal in the normal course of administering their respective taxation laws) as is necessary for the purposes of carrying out the Singapore Agreement, or for the prevention of fraud or administering statutory provisions against legal tax avoidance. Such exchanged information is to be treated as secret but may be disclosed to persons (including to courts and tribunals) concerned with the 'assessment, collection, enforcement or prosecution' of the taxes that are subject to the agreement. However, the parties cannot exchange information which would disclose any 'trade, business, industrial or professional secret or trade process'. Article 19 was not amended by the first Singapore protocol.

3. Schedule 5A to the Agreements Act is available electronically at http://www.austlii.edu.au/au/legis/cth/consol_act/itaa1953299/sch5a.html (viewed 10 August 2010).

4. See **item 7** of **Schedule 1** to the Bill.

5. See the text and commentary on the OECD Model Tax Convention on Income and on Capital at http://www.oecd.org/document/37/0,3343,en_2649_33747_1913957_1_1_1_1,00.html (viewed 20 August 2010). Article 26 of that Convention deals with the exchange of information.

6. That Bill's homepage is at <http://parlinfo.aph.gov.au/parlInfo/search/display/display.w3p;query=Id%3A%22legislation%2Fbillhome%2Fr4414%22> (viewed 16 August 2010).

Article 19 is far more detailed in its 2009 form. Particularly, in replicating Article 26 of the OECD model tax convention (which, as mentioned above, deals with the exchange of information), it:

- expands the range of taxes to which the information exchange provisions of the Singapore Agreement will apply
- limits the information to that which is ‘foreseeably relevant’ to the administration or enforcement of those taxes, and
- clarifies that the absence of a ‘domestic tax interest’ in the information sought by either contracting state (and/or whether the information concerns a resident of either state) is not a reason for refusing to provide the information,

Further, while it is not immediately apparent from the revised text of Article 19, the Explanatory Memorandum states that the revised text also clarifies that bank secrecy laws are not a reason for limiting the exchange of information.⁷

In its revised form, Article 19 provides that the parties shall exchange information as is ‘foreseeably relevant’ for carrying out the provisions of the agreement or the administration or enforcement of domestic tax laws to which the Singapore Agreement applies.⁸ A contracting state that receives the exchanged information must treat it as secret ‘in the same manner as information obtained under [that party’s] domestic laws’. The state shall only disclose it to persons and authorities (including courts and administrative bodies) concerned with the assessment, collection, enforcement or prosecution of, and in relation to, the domestic tax laws. Any person or authority to whom the information is disclosed must use it only for these purposes too. They may disclose the information in public court proceedings or in judicial decisions.⁹

These obligations do not include:

- carrying out measures at variance with the laws or administrative practice of either contracting state
- supplying information which is not obtainable under the laws or in the normal course of the administration of either contracting state, or
- supplying information which would disclose any ‘trade, business, industrial, commercial or professional secret or trade process, or information, the disclosure of which would be contrary to public policy’.¹⁰

If a contracting state requests information, the other contracting state shall use its information-gathering measures to obtain the requested information, even though that state may not need such information for its own tax purposes.¹¹

7. Explanatory Memorandum, International Tax Agreements Amendment Bill (No. 2) 2010, p. 6.

8. Paragraph 1 of revised Article 19, as it appears in the second Singapore protocol.

9. Paragraph 2 of revised Article 19, as it appears in the second Singapore protocol.

10. Paragraph 3 of revised Article 19, as it appears in the second Singapore protocol.

11. Paragraph 4 of revised Article 19, as it appears in the second Singapore protocol.

A contracting state cannot decline to supply information solely because the information is held by a bank, other financial institution, nominee or a person acting in an agency or fiduciary capacity, or because the information relates to 'ownership interests' in a person.¹²

The second Singapore protocol comes into force 30 days after the parties last notify each other of the completion of the necessary domestic procedures.¹³ In the case of Australia, these procedures essentially involve the tabling of the second Singapore protocol and the enactment of the current Bill.¹⁴

Committee consideration

The second Singapore protocol was considered by the Joint Standing Committee on Treaties (JSCOT) in Chapter 3 of its report tabled on 10 March 2010.¹⁵ The committee supported the protocol and recommended that binding treaty action be taken.¹⁶

Financial implications

Treasury has estimated the revenue impact of the second Singapore protocol as 'unquantifiable'.¹⁷ However, the proposal is expected 'to improve taxpayer compliance and increase tax revenue'.¹⁸

Key provisions

Items 1–4 of Schedule 1 to the Bill amend subsection 3(1) of the Agreements Act to:

- insert definitions for the terms '*the first Singapore protocol*' and '*the second Singapore protocol*'
- amend the definition of the term '*the Singapore Agreement*' by inserting reference to both the first Singapore protocol and the second Singapore protocol, and
- repeal the definition of the term '*the Singapore protocol*' (because it has been replaced by the more specific reference to '*the first Singapore protocol*').

Item 6 inserts **proposed section 7B** into the Agreements Act. It provides that, subject to other provisions in the Agreements Act, the second Singapore protocol has the force of law on and after the date of its entry into force.

12. Paragraph 5 of revised Article 19, as it appears in the second Singapore protocol.

13. Article II of the second Singapore protocol.

14. The second Singapore protocol was tabled in both Houses on 25 November 2009.

15. JSCOT, *Report No. 110: Review into treaties tabled on 18, 25 (2) and 26 November 2009 and 2 (2) February 2010*, 15 March 2010, Chapter 3, viewed 18 August 2010, <http://www.aph.gov.au/house/committee/jsct/25november2009/report1/chapter3.pdf>

16. *Ibid.*, p. 14.

17. Explanatory Memorandum, International Tax Agreements Amendment Bill (No. 2) 2010, p. 3.

18. *Ibid.*

Item 7 inserts the second Singapore protocol as Schedule 5B to the Agreements Act.

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