



International Tax Agreements Amendment Bill (No. 1) 2011

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International Tax Agreements Amendment (No. 1) Bill 2011

Date introduced: 23 March 2011

House: House of Representatives

Portfolio: Treasury

Commencement: The formal provisions and **Schedule 1** commence on Royal Assent. **Schedule 2** commences immediately after then.

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

Purpose

The Bill has two main purposes.

First, it significantly streamlines the appearance of the *International Tax Agreements Act 1953* (the Act) by removing 49 of the 50 Schedules to the Act. The Schedules do no more than set out in a convenient place the texts of the bilateral tax treaties to which Australia is a party. However, it is no longer necessary to include the texts of the treaties as part of the Act because they are now readily accessible to the public via a number of free government and legal websites, including the Australian Treaties Database on the website of the Department of Foreign Affairs and Trade (DFAT)¹ and the Australian Treaties Library on the AustLii website.²

Second, the Bill gives domestic legal effect to seven new bilateral tax treaties that Australia has recently entered into with Aruba, Chile, the Cook Islands, Guernsey, Malaysia, Samoa and Turkey.

Background and key provisions

Bilateral tax treaties

Australia has entered into a large number of treaties with other nations in order to avoid the situation where a taxpayer (who resides in Australia and/or the other contracting state) is taxed on the same income in both Australia and the other state. (This concept of being taxed twice on the

1. The Australian Treaties Database is available at <http://www.dfat.gov.au/treaties/index.html> (viewed 4 May 2011).

2. The Australian Treaties Library includes the Australian Treaties Series and is available at <http://www.austlii.edu.au/au/other/dfat/> (viewed 4 May 2011).

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.

same income is referred to as 'double taxation'.) The agreements clarify the taxing rights between the contracting states on different types of income, and also provide for the reduction (or exemption) of tax on certain types of income. They aim to prevent income tax evasion by encouraging co-operation and the sharing of information between the contracting states, and by ensuring that the laws of Australia and the other state are enforced.

Streamlining the structure of the *International Tax Agreements Act 1953*

The latest compilation of the Act includes 50 Schedules that set out the texts to the bilateral tax treaties to which Australia is a party and has given domestic legal effect. The Schedules run to about 1400 pages, even though the substantive provisions of the Act occupy less than 50 pages.

Among other things, **Schedule 1** to the Bill repeals 49 of the 50 Schedules (see **items 67 and 69 of Schedule 1**). However, in place of those Schedules, the Bill defines all current agreements in **proposed section 3AAA** of the Act (see **item 5 of Schedule 1** to the Bill), including references to where the text of the treaties may be found in the Australian Treaty Series or the Australian Treaties Library. It also defines agreements for earlier periods in **proposed section 3AAB** (which is also inserted by **item 5 of Schedule 1** to the Bill).

The only Schedule that is not repealed by the Bill is Schedule 41.³ It contains the text of the agreement between the Australian Commerce and Industry Office and the Taipei Economic and Cultural Office concerning 'the avoidance of double taxation and the prevention of fiscal evasion with respect to taxes on income' (the Taipei agreement). The Taipei agreement was done at Canberra on 29 May 1996. The text will continue to appear as a Schedule to the Act because of the unique nature of the agreement.⁴

The Bill also repeals a large number of provisions in the Act that give the force of law to provisions in particular agreements with particular states. In their place, **item 8 of Schedule 1** inserts **proposed sections 5 and 5A**. **Proposed section 5** sets out the provisions of current agreements that have the force of law on and after the date of entry into force of the particular provision.⁵ **Proposed section 5A** sets out a list of earlier agreements that continue to have the force of law in relation to income or fringe benefits covered by the particular agreement.

3. **Item 68 of Schedule 1** to the Bill renames Schedule 41 as 'Schedule 1' to the Act.

4. Taipei is the capital of Taiwan. Since 1972, the Australian Government has recognised Taiwan as a province of the People's Republic of China and therefore Australia does not have diplomatic relations with Taiwan. However, in the absence of formal diplomatic relations, the Australian Commerce and Industry Office in Taipei unofficially represents Australian interests in Taiwan. For further details, see Australian Government, *Australian Commerce and Industry Office (ACIO), Taiwan*, DFAT website, viewed 4 May 2011, <http://www.dfat.gov.au/missions/countries/tw.html> and Australian Government, *Taiwan brief*, DFAT website, viewed 4 May 2011, http://www.dfat.gov.au/geo/taiwan/taiwan_brief.html

5. Note that some current agreements are given the force of law by other provisions in the Act.

Giving domestic legal effect to seven new bilateral tax agreements

The Bill also gives domestic legal effect to seven new bilateral tax agreements entered into recently by the Australian Government for the primary purposes of avoiding double taxation with respect to income tax and fringe benefits and preventing tax evasion. The seven agreements are as follows:

- the Convention between the Government of Australia and the Government of the Republic of Turkey for the Avoidance of Double Taxation with respect to Taxes on Income and the Prevention of Fiscal Evasion (done at Ankara on 28 April 2010) (**the Turkish convention**)
- the Convention between Australia and the Republic of Chile for the Avoidance of Double Taxation with respect to Taxes on Income and Fringe Benefits and the Prevention of Fiscal Evasion (done at Santiago on 10 March 2010) (**the Chilean convention**)
- the Third Protocol amending the Agreement between the Government of Australia and the Government of Malaysia for the Avoidance of Double Taxation and the Prevention of Fiscal Evasion with respect to Taxes on Income, as amended by the First Protocol of 2 August 1999 and the Second Protocol of 28 July 2002 (done at Canberra on 24 February 2010) (**the Malaysian protocol (No. 3)**)
- the Agreement between the Government of Australia and the Kingdom of the Netherlands, in respect of Aruba, for the Allocation of Taxing Rights with respect to Certain Income of Individuals and to establish a Mutual Agreement Procedure in respect of Transfer Pricing Adjustments (done at Canberra on 16 December 2009) (**the Aruban agreement**)⁶
- the Agreement between the Government of Australia and the Government of Samoa for the Allocation of Taxing Rights with respect to Certain Income of Individuals and to establish a Mutual Agreement Procedure in respect of Transfer Pricing Adjustments (done at Canberra on 16 December 2009) (**the Samoan agreement**)
- the Agreement between the Government of Australia and the Government of the Cook Islands on the Allocation of Taxing Rights with respect to Certain Income of Individuals and to establish a Mutual Agreement Procedure in respect of Transfer Pricing Adjustments (done at Rarotonga on 27 October 2009) (**the Cook Islands agreement**) and
- the Agreement between the Government of Australia and the States of Guernsey for the Allocation of Taxing Rights with respect to Certain Income of Individuals and to establish a Mutual Agreement Procedure in respect of Transfer Pricing Adjustments (done at London on 7 October 2009) (**the Guernsey agreement**).⁷

6. Aruba is an island located off the coast of Venezuela in the southern Caribbean Sea. It is part of the Kingdom of the Netherlands but retains full autonomy in relation to domestic affairs. The Dutch Government is responsible for defence and foreign affairs. Australia has a separate tax treaty (including an amending protocol) with the Kingdom of the Netherlands. For further details about governance arrangements in Aruba, see Central Intelligence Agency (CIA), *The World Fact Book*, CIA website, viewed 4 May 2011, <https://www.cia.gov/library/publications/the-world-factbook/geos/aa.html>

7. The Bailiwick of Guernsey is one of the Channel Islands. It is located in the English Channel between France and the United Kingdom. It is a British crown dependency but is not part of the United Kingdom or of the European Union.

In summary, the Turkish convention and the Chilean convention are comprehensive tax treaties that are intended to promote closer economic cooperation between Australia and Turkey, and between Australia and Chile. They are largely based on the international standard on the exchange of tax information developed by the Organisation for Economic Co-operation and Development (the OECD), but contain some mutually-agreed variations.⁸

The Malaysian protocol (No. 3) amends the current tax treaty between Australian and Malaysia. Specifically, it updates the exchange of information article in that treaty (being Article 25) to reflect the current international standard.⁹ The revised version of Article 25 will permit the exchange of information in relation to a wider range of taxes than is the case under the current version of Article 25.

The Aruban agreement, the Samoan agreement, the Cook Islands agreement and the Guernsey agreement are part of a package of benefits offered to Aruba, Samoa, the Cook Islands and Guernsey in order to secure the tax information exchange agreements (known as TIEAs) signed in 2009.¹⁰

The Explanatory Memorandum for the Bill sets out the text of each of these agreements, together with a lengthy analysis of each agreement.

Committee consideration

The Bill itself has not been referred to a committee. Nonetheless, each of the seven new tax treaties has been considered by the Joint Standing Committee on Treaties (JSCOT).

The first five agreements mentioned in the list above were referred to JSCOT on 16 November 2010, having previously been tabled in Parliament but having lapsed on the prorogation of the 42nd Parliament.¹¹ JSCOT recommended that binding treaty action be taken in all cases.¹²

For further details, see Central Intelligence Agency (CIA), *The World Fact Book*, CIA website, viewed 4 May 2011, <https://www.cia.gov/library/publications/the-world-factbook/geos/gk.html>

8. The international standard is formally known as the 'OECD Model Tax Convention on Income and on Capital' (the OECD model tax convention). An electronic copy of the convention (and commentary) is available at: http://www.oecd.org/document/37/0,3343,en_2649_33747_1913957_1_1_1_1,00.html (viewed 5 May 2011).
 9. Article 26 of the OECD model tax convention deals with the exchange of information.
 10. B Shorten MP (Assistant Treasurer and Minister for Financial Services and Superannuation), 'Second reading speech: International Tax Agreements Amendment Bill (No. 1) 2011', House of Representatives, *Debates*, 23 March 2011, p. 2872, viewed 5 May 2011, <http://parlinfo.aph.gov.au/parlInfo/search/display/display.w3p;query=Id%3A%22chamber%2Fhansard%2F2011-03-23%2F0041%22>
- Further details about TIEAs can be found on the website of the Australian Taxation Office (ATO) at: ATO, *Tax information exchange agreements – overview*, ATO website, 14 August 2009, viewed 5 May 2011, <http://www.ato.gov.au/businesses/content.aspx?doc=/content/00161107.htm>
11. JSCOT, *Treaties referred on 16 November 2010*, JSCOT website, viewed 4 May 2011, <http://www.aph.gov.au/house/committee/jsct/16november2010/tor.htm>

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The last two agreements mentioned in the list above were referred to JSCOT on 10 March 2010. JSCOT recommended that binding treaty action be taken in both cases.¹³

Financial implications

The Bill has minimal financial impact.¹⁴

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12. In relation to the **Chilean convention**, see JSCOT, *Report 114: Review into Treaties referred on 16 November 2010 (Part 1)*, tabled 3 December 2010, Chapter 5, viewed 4 May 2011, <http://www.aph.gov.au/house/committee/jsct/16november2010/report1/chapter5.pdf>
In relation to the **Malaysian protocol (No. 3)**, see JSCOT, *Report 114: Review into Treaties referred on 16 November 2010 (Part 1)*, tabled 3 December 2010, Chapter 5, viewed 4 May 2011, <http://www.aph.gov.au/house/committee/jsct/16november2010/report1/chapter6.pdf>
In relation to the **Turkish convention**, see JSCOT, *Report 115: Review into Treaties tabled on 28 October and 24 November 2010 and Treaties referred on 16 November 2010 (Part 2)*, tabled 21 March 2011, Chapter 7, viewed 4 May 2011, <http://www.aph.gov.au/house/committee/jsct/16november2010/report2/chapter7.pdf>
In relation to the **Aruban agreement** and the **Samoa agreement**, see JSCOT, *Report 114: Review into Treaties referred on 16 November 2010 (Part 1)*, tabled 3 December 2010, Chapter 7, especially pp.35–36, viewed 4 May 2011, <http://www.aph.gov.au/house/committee/jsct/16november2010/report1/chapter7.pdf>
 13. JSCOT, *Report 112: Review into treaties tabled on 9, 10, 15, 16 and 29 March 2010*, tabled 21 June 2010, Chapter 2, viewed 5 May 2011, http://www.aph.gov.au/house/committee/jsct/9_10_march2010/report/chapter2.pdf
 14. Explanatory Memorandum, International Tax Agreements Amendment Bill (No. 1) 2011, pp.3–7.

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